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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1951

Servicing and Collections—Unauthorized Recipients of Financial Assistance

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This action amends the servicing regulations that apply when it is determined that unauthorized recipients have received financial assistance under USDA Business, Cooperative, and Community Facility loan and grant programs. The changes make clear that the first demand letter notifying the recipient of the Agency's determination serves as the initial step in the Agency's collection efforts, and that it may serve as the basis for the recipient's appeal rights. The terms of the first demand letter remain in full force and effect, unless the demand letter is subsequently amended in writing by the Agency after discussions with the recipient or modified as a result of judicial proceedings.

DATES: *Effective Date:* This rule is effective on December 19, 2006.

FOR FURTHER INFORMATION CONTACT: Bill Hagy, Deputy Administrator, Rural Development Business Programs, USDA, Stop 3220, Room 5811, 1400 Independence Ave., SW., Washington, DC 20250, telephone (202) 720–7287, or internet e-mail ''*bill.hagy@wdc.usda.gov*''.

SUPPLEMENTARY INFORMATION:

Classification

This action is not subject to the provisions of Executive Order 12866 because it pertains to internal Agency management only. Accordingly, public notice and comment are not warranted, and this action is published as a final rule rather than as a proposed rulemaking.

Programs Affected

The Catalog of Federal Domestic Assistance Program numbers assigned to these programs are: 10.352 Value-Added Producer Grants, 10.353 National Rural Development Partnership, 10.767 Intermediary Relending Program, 10.768, Business and Industrial Loans, 10.769 Rural Business Enterprise Grants, 10.771 Rural Cooperative Development Grants, 10.772 Empowerment Zones Program, 10.773 Rural Business Opportunity Grants, 10.775 Renewable Energy Systems and Energy Efficiency Improvements Program, 10.776 Agriculture Innovation Centers, 10.854 Rural Economic Development Loans and Grants, and 10.766 Community Facilities Loans and Grants,

Paperwork Reduction Act

This rule is not subject to the Paperwork Reduction Act.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, Subpart G, Environmental Program. It is the determination of the Rural Business and Cooperative Services that this action does not constitute a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (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, USDA must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local 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 UMRA generally requires USDA 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 rule contains no Federal mandates (under the regulatory provisions of Title II of the 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.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act is intended to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations. No regulatory flexibility analysis under the Regulatory Flexibility Act is necessary.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does this rule

impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Discussion

This rule revises the servicing regulations that apply when it has been determined that an unauthorized recipient has received financial assistance under the USDA Rural Development Business and Industry Direct Loan program, all other applicable grant and loan programs, and the USDA Rural Development Community Facilities Loan and Grant programs. Those parts of the Code of Federal Regulations that relate solely to internal Agency processes are removed, and procedures that apply to Agency notification to the recipient and decisionmaking with respect the Agency's determination(s) are clarified to state that an account receivable will be established to recover the amounts claimed by the Agency.

List of Subjects 7 CFR Part 1951

Accounting, Account servicing, Credit, Debt, Loan programs—agriculture, Low and moderate income housing loans—servicing, Rent subsidies.

■ Accordingly, chapter VXIII, title 7 of the Code of Federal Regulations, is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

■ 1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

■ 2. Subpart O of part 1951 is revised to read as follows:

Subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs.

Sec.

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1951.702 Definitions.
1951.703 Policy.
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1951.707 Determination of the amount of unauthorized assistance.
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1951.711 Servicing options in lieu of liquidation or legal action to collect.
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1951.718–1951.750 [Reserved].

§ 1951.701 Purpose.

This subpart prescribes the policies and procedures for servicing Community and Business Program loans and/or grants made by Rural Development when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, or any other direct financial assistance. It does not apply to guaranteed loans. Loans sold without insurance by Rural Development to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

§ 1951.702 Definitions.

As used in this subpart, the following definitions apply:

Active borrower. A borrower who has an outstanding account in the records of the Office of the Deputy Chief Financial Officer (ODCFO), including collection-only or an unsatisfied account balance where a voluntary conveyance was accepted without release from liability of foreclosure did not satisfy the indebtedness.

Assistance. Finance assistance in the form of a loan, grant, or subsidy received.

Debt instrument. Used as a collective term to include promissory note, assumption agreement, grant agreement, or bond.

False information. Information, known to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.

Inaccurate information. Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

Inactive borrower. A former borrower whose loan(s) has been paid in full or assumed by another party(ies) and who does not have an outstanding account in the records of the ODCFO.

Recipient. ''Recipient'' refers to an individual or entity that received a loan, or portion of a loan, an interest subsidy, a grant, or a portion of a grant which was unauthorized.

Rural Development. A mission area within the U.S. Department of Agriculture consisting of the Office of the Under Secretary for Rural Development, Office of Community Development, Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service and their successors.

Unauthorized assistance. Any loan, interest subsidy, grant, or portion thereof received by a recipient for which there was no regulatory authorization or for which the recipient was not eligible. Interest subsidy includes subsidy benefits received because a loan was closed at a lower interest rate than that to which the recipient was entitled, whether the incorrect interest rate was selected erroneously by the approval official or the documents were prepared in error.

§ 1951.703 Policy.

When unauthorized assistance has been received, an expeditious effort must be made to collect from the recipient the sum which is determined to be unauthorized, regardless of amount.

§§ 1951.704–1951.705 [Reserved].

§ 1951.706 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the USDA Office of Inspector General (OIG), through reviews made by Rural Development personnel, or through other means such as information provided by a private citizen who documents that unauthorized assistance has been received by a recipient of Rural Development assistance.

§ 1951.707 Determination of the amount of unauthorized assistance.

(a) *Unauthorized loan amount.* The unauthorized loan amount will be the unauthorized principal plus any interest accruing on the unauthorized principal at the note interest rate until the date paid unless otherwise agreed in writing by Rural Development.

(b) *Unauthorized grant amount.* The unauthorized amount will be the unauthorized grant amount actually expended under the grant agreement plus interest accrued beginning on the date of the demand letter at the interest rate stipulated in the applicable grant agreement, or, if none is stated, the default rate established by the U.S. Department of the Treasury, until the date paid unless otherwise agreed in writing by Rural Development.

§ 1951.708 Notification to recipient.

(a) Upon determination that unauthorized assistance was received, Rural Development will send a demand letter to the recipient that:

(1) Specifies the amount of unauthorized assistance, including any accrued interest to be repaid, and the standards for imposing accrued interest;

(2) States the amount of penalties and administrative costs to be paid, the

standards for imposing them, and the date on which they will begin to accrue;

(3) Provides detailed reason(s) why the assistance was determined to be unauthorized;

(4) States the amount is immediately due and payable to Rural Development;

(5) Describes the rights the recipient has for seeking review of Rural Development's determination pursuant to 7 CFR part 11;

(6) Describes the Agency's available remedies regarding enforced collection, including referral of debt delinquent more than 180 days for Federal salary, benefit, and tax offset under the Department of Treasury Offset Program (TOP); and

(7) Provides an opportunity for the recipient to meet with Rural Development to provide facts, figures, written records, or other information which might refute Rural Development's determination.

(b) If the recipient meets with Rural Development, Rural Development will outline to the recipient why the assistance was determined to be unauthorized. The recipient will be given an opportunity to provide information to refute Rural Development's findings. When requested by the recipient, Rural Development may grant additional time for the recipient to assemble documentation. Such extension of time for payment will be valid only if Rural Development documents the extension in writing and specifies the period in days during which period the payment obligation created by the demand letter (but not the ongoing accrual of interest) will be suspended. Interest and other charges will continue to accrue pursuant to the demand letter during any extension period unless the terms of the demand letter are modified in writing by Rural Development.

(c) Unless Rural Development modifies the original demand, it will remain in full force and effect.

§ 1951.709 Decision on servicing actions.

(a) *Payment in full.* If the recipient agrees with Rural Development's determination or will pay the amount in question, Rural Development may allow a reasonable period of time (usually not to exceed 90 days) for the recipient to arrange for repayment. The amount due will be determined according to § 1951.707.

(b) *Continuation with recipient.* If the recipient agrees with Rural Development's determination or is willing to pay the amount in question but cannot repay the unauthorized assistance within a reasonable period of time, continuation is authorized and servicing actions outlined in § 1951.711 may be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in § 1951.702.

(2) It would be highly inequitable to require prompt repayment of the unauthorized assistance.

(3) Failure to collect the unauthorized assistance in full will not adversely affect Rural Development's financial interest.

(c) *Appeals.* Appeals resulting from the letter prescribed in § 1951.708 will be handled according to 7 CFR Part 11. All appeal provisions will be concluded before proceeding with further actions.

(d) *Liquidation of loan(s) or legal action to enforce collection.* When a case cannot be handled according to the provisions of paragraph (a) or (b) of this section, or if the recipient refuses to execute the documents necessary to establish an obligation to repay the unauthorized assistance as provided in § 1951.711, one or more of the following actions will be taken:

(1) *Active borrower with a secured loan.* (i) Rural Development will attempt to have the recipient liquidate voluntarily. If the recipient does not agree to voluntary liquidation, or agrees but it cannot be accomplished within a reasonable period of time (usually not more than 90 days), forced liquidation action will be initiated in accordance with applicable provisions of subpart A of part 1955 of this chapter unless:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and any recoverable costs charged to the account, is less than $1,000; or

(B) It would not be in the best financial interest of the Government to force liquidation.

(ii) When all of the conditions of paragraph (a) or (b) of this section are met, but the recipient does not repay or refuses to execute documents to effect necessary account adjustments according of the provisions of § 1951.711, forced liquidation action will be initiated as provided in paragraph (d)(1)(i) of this section.

(iii) When forced liquidation would be initiated, except that the loan is being handled in accordance with paragraph (d)(1)(i)(A) or (d)(1)(i)(B) of this section, continuation with the loan on existing terms may be provided.

(iv) If the debt is not otherwise resolved, Rural Development will take appropriate debt collection actions in accordance with 7 CFR Part 3, subparts B and C, and the Federal Claims Collection Standards at 31 CFR Chapter IX, Parts 900–904.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as collection-only, or unsatisfied balance after liquidation).* Rural Development may pursue all reasonable legal remedies.

§ 1951.710 [Reserved].

§ 1951.711 Servicing options in lieu of liquidation or legal action to collect.

When the conditions outlined in § 1951.709(b) are met, the servicing options outlined in this section will be considered.

(a) *Continuation on modified terms.* When the recipient has the legal and financial capabilities, the case will be serviced according to one of the following, as appropriate.

(1) *Unauthorized loan.* A loan for the unauthorized amount determined according to § 1951.707(a) will remain accelerated per the demand letter sent in accordance with § 1951.708 unless modified terms are timely reached with the recipient and accrued at the interest rate specified in the outstanding debt instrument or at the present market interest rate, whichever is greater, for the respective Community and Business program area. The loan will be amortized per a repayment schedule satisfactory to Rural Development, but in no event may the revised repayment schedule exceed a period of fifteen (15) years, the remaining term of the original loan, or the remaining useful life of the facility, whichever is shorter.

(2) *Unauthorized grant.* The unauthorized grant amount determined according to § 1951.707(b) will be converted to an account receivable, with interest payable at the market interest rate for the respective Community Facilities or Business and Industry Program area in effect on the date the financial assistance was provided. In all cases, the receivable will be amortized per a repayment schedule satisfactory to Rural Development, but in no event may the amortization period exceed fifteen (15) years. The recipient will be required to execute a debt instrument to evidence this receivable, and the best security position available to adequately protect Rural Development's interest during the repayment period will be taken as security.

(3) *Unauthorized subsidy benefits received.* When the recipient was eligible for the loan but should have been charged a higher interest rate than that in the debt instrument, which resulted in the receipt of unauthorized subsidy benefits, the case will be handled as follows:

(i) The recipient will be given the option to submit a written request that

the interest rate be corrected to the lower of the rate for which they were eligible that was in effect at the date of loan approval or loan closing.

(ii) Any accrued unauthorized subsidy will be handled in accordance with § 1951.709.

(b) *Continuation on existing terms.* When the recipient does not have the legal and/or financial capabilities for the options outlined in paragraph (a)(1), (a)(2), or (a)(3) of this section, the recipient may be allowed to continue to meet the loan obligations outlined in the existing loan instruments. Rural Development will not continue with unauthorized grants on existing terms.

§§ 1951.712–1951.716 [Reserved].

§ 1951.717 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart, provided that any such exception is not inconsistent with any applicable law or opinion of the Comptroller General, and provided further, the Administrator determines that the application of the requirement or provision would adversely affect the Government's interest.

§§ 1951.718–1951.750 [Reserved].

Dated: December 11, 2006.

Jackie J. Gleason,

Administrator, Rural Business-Cooperative Service.

Dated: December 13, 2006.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 06–9763 Filed 12–18–06; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26502; Directorate Identifier 2006–NE–37–AD; Amendment 39–14859; AD 2006–26–01]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. CFM56 Series Turbofan Engines

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 CFM International CFM56 Series turbofan engines. This AD requires replacing certain fuel filters manufactured under parts manufacturer approvals (PMA). This AD results from 12 reports of failed fuel filters. We are issuing this AD to prevent the loss of engine thrust that could result in loss of control during takeoff or landing.

DATES: This AD becomes effective January 3, 2007.

We must receive any comments on this AD by February 20, 2007.

ADDRESSES: Use one of the following addresses to comment 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 20590–0001.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: We have received reports of 12 PMA fuel filters, fuel filters part numbers WF337661 and WF337017, manufactured by Western Filter, and part numbers 7595983–101 and 7588133, manufactured by PTI Technologies, that have failed in service on CFM56–7B engines since March 2006. These filters use a deeper pleat and are more susceptible to collapse or deterioration of the filter media than the original equipment manufacturer filters. A collapsed or deteriorated fuel filter can allow unfiltered fuel contamination in fuel components, including fuel nozzles, with no indication of fuel filter bypass to the flight crew. This condition, if not corrected, could result in the loss of engine thrust that could result in loss of control during takeoff or landing.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other CFM International CFM56 series engines of the same type design. For that reason, we are issuing this AD to prevent the potential loss of thrust that could result in loss of control during takeoff or landing.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2006–26502; Directorate Identifier 2006–NE–37–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

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

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2006–26–01 CFM International, S.A.: Amendment 39–14859. Docket No. FAA–2006–26502; Directorate Identifier 2006–NE–37–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 3, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to CFM International CFM56–2 series, –3 series, –5 series, and –7B series engines with fuel filters, Western Filter part numbers (P/Ns) WF337661 and WF337017 and PTI Technologies P/Ns 7595983–101 and 7588133, installed. These engines are installed on, but not limited to, Airbus A320 and A340 series airplanes, Boeing DC8–71 series, –72 series, and –73 series airplanes, and Boeing 737 series airplanes.

Unsafe Condition

(d) This AD results from 12 reports of failed fuel filters. We are issuing this AD to prevent the loss of engine thrust that could result in loss of control during takeoff or landing.

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.

Replacing the Fuel Filters on CFM56–7B Engines

(f) For CFM56–7B engines, within 600 flight hours or 60 days after the effective date of this AD, whichever occurs first, replace fuel filter, Western Filter P/Ns WF337661 or WF337017 and PTI Technologies P/Ns 7595983–101 or 7588133, with a filter that has a P/N not listed in this AD.

Replacing the Fuel Filters on CFM56–2, –3, and –5 Series Engines

(g) For CFM56–2 series, –3 series, and –5 series engines, at the next filter change or 4,000 flight hours, whichever occurs first, after the effective date of this AD, replace fuel filter, Western Filter P/Ns WF337661 or WF337017 and PTI Technologies P/Ns 7595983–101 or 7588133, with a filter that has a P/N not listed in this AD.

Prohibition Against Installing Fuel Filters with Certain P/Ns

(h) After the effective date of this AD, do not install any fuel filter, Western Filter P/Ns WF337661 or WF337017 or PTI Technologies P/Ns 7595983–101 or 7588133.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) None.

Material Incorporated by Reference

(k) None.

Issued in Burlington, Massachusetts, on December 12, 2006.

Peter A. White,

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

[FR Doc. E6–21485 Filed 12–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26193; Directorate Identifier 2001–NE–01–AD; Amendment 39–14853; AD 2006–25–12]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation 501–D Series Turboprop Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Rolls-Royce Corporation (RRC) 501–D series turboprop engines. That AD requires removal from service of certain turbine rotor components at reduced life limits. This AD requires the same actions but adds two new life limits. This AD results from RRC reevaluating and revising component life limits for 501–D22 series turboprop engines. We are issuing this AD to prevent uncontained turbine rotor failure resulting in an in-flight engine shutdown and possible damage to the airplane.

DATES: This AD becomes effective January 23, 2007. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 23, 2007.

ADDRESSES: You can get the service information identified in this AD from Rolls-Royce Corporation, P.O. Box 420, 2001 South Tibbs Avenue, Indianapolis, IN 46206–0420; telephone (317) 230–2000; fax (317) 230–4020 for the service information identified in this AD.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the

Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7870; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to RRC 501–D series turboprop engines. We published the proposed AD in the **Federal Register** on February 22, 2006 (71 FR 9048). That action proposed to require removal from service of certain turbine rotor components at reduced life limits, the same as AD 2003–07–02, but would add two new life limits.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Comments

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

Incorrect Supplemental Type Certificate (STC) Number

Since we issued the proposed AD, we became aware that the STC number SE1161EA, referenced in paragraph (c), is incorrect. We corrected the number to STC SA4–1100 in the AD.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously.

Costs of Compliance

We estimate that this AD will affect 684 engines installed on aircraft of U.S. registry. The action does not impose any additional labor costs if performed at the time of scheduled engine overhaul. Required parts will cost about $45,000 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $30,780,000.

Special Flight Permits Paragraph Removed

Paragraph (f) of the current AD, AD 2003–07–02, contains a paragraph pertaining to special flight permits. Even though this AD does not contain a similar paragraph, we have made no changes with regard to the use of special flight permits to operate the airplane to a repair facility to do the work required by this AD. In July 2002, we published a new Part 39 that contains a general authority regarding special flight permits and airworthiness directives; see Docket No. FAA 2004–8460, Amendment 39–9474 (69 FR 47998, July 22, 2002). Thus, when we now supersede ADs we will not include a specific paragraph on special flight permits unless we want to limit the use of that general authority granted in section 39.23.

Docket Number Change

We are transferring the docket for this AD to the Docket Management System as part of our on-going docket management consolidation efforts. The new Docket No. is FAA–2006–26193. The old Docket No. became the Directorate Identifier, which is 2001–NE–01–AD. This AD might get logged into the DMS docket, ahead of the previously collected documents from the old docket file, as we are in the process of sending those items to the DMS.

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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–13098 (68 FR 15937, April 2, 2003), and by adding a new airworthiness directive, Amendment 39–14853, to read as follows:

2006–25–12 Rolls-Royce Corporation (formerly Allison Engine Company): Amendment 39–14853. Docket No. FAA–2006–26193; Directorate Identifier 2001–NE–01–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 23, 2007.

Affected ADs

(b) This AD supersedes AD 2003–07–02, Amendment 39–13098.

Applicability

(c) This AD applies to Rolls-Royce Corporation (formerly Allison Engine Company) (RRC) 501–D series turboprop engines. These engines are installed on, but not limited to, Lockheed 188 series and 382 series turboprop airplanes, Airbus 377SG5–F (Super Guppy) airplanes, and Convair Models 340 and 440 airplanes which have RRC 501–D series turboprop engines

installed under Supplemental Type Certificate No. SA4–1100. These latter models are commonly referred to as Convair 580/580A or 5800 models.

(d) This AD results from RRC reevaluating and revising component life limits for 501-D22 series turboprop engines. We are issuing this AD to prevent uncontained turbine rotor failure resulting in an in-flight engine shutdown and possible damage to 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.

501–D13 Series Engines

(f) For 501–D13 series engines, remove turbine wheels and spacers from service as specified in the following Table 1:

TABLE 1.—501–D13 SERIES LIFE LIMITS

Part name	Part No.	Life limit for wheels that have complied with commercial overhaul information letter (COIL) 401, dated May 1978	Life limit for wheels that have not complied with COIL 401, dated May 1978
(1) Second-stage turbine wheel assembly.	6847142 and 6876892	Remove from service before or upon accumulating 16,000 cycles-in-service (CIS).	Remove from service before or upon accumulating 12,000 CIS.
(2) Third-stage turbine wheel assembly.	6845883 and 6849743	Remove from service before or upon accumulating 13,000 CIS.	Remove from service before or upon accumulating 10,000 CIS.
(3) Fourth-stage turbine wheel assembly.	6876468	Remove from service before or upon accumulating 24,000 CIS.	Remove from service before or upon accumulating 18,000 CIS.

501–D22 Series Engines

(g) For 501–D22 series engines, remove turbine wheels and spacers from service as specified in the following Table 2:

TABLE 2.—501–D22 SERIES LIFE LIMITS

Part name	Part No.	Remove from service
(1) Third-stage turbine wheel assembly.	6855083	Before or upon accumulating 10,000 cycles-in-service (CIS).
(2) 1st–2nd-stage spacer assembly	6844632, 23033463, 23064854, and 23064858.	Before or upon accumulating 4,700 CIS.
(3) 1st–2nd-stage spacer assembly	23056966	(i) Before or upon accumulating 8,000 CIS. (ii) If the 1st–2nd-stage spacer assembly passes the hardness criteria in RRC Commercial Engine Bulletin No. CEB–A–72–1135, Revision 2, dated July 11, 2003, then before or upon accumulating 10,000 CIS.
(4) 2nd–3rd-stage spacer assembly	23033456	Before or upon accumulating 4,200 CIS.
(5) 2nd–3rd-stage spacer assembly	23033464 and 6842683	Before or upon accumulating 5,200 CIS.
(6) 3rd–4th-stage spacer assembly	6844794 prior to revision letter "R"	Before or upon accumulating 5,100 CIS.

Alternative Methods of Compliance

(h) The Manager, Chicago Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Information on 501–D13 series engine turbine life limits can be found in RRC Commercial Service Letter (CSL) No. CSL–120, Revision No. 52, dated July 22, 2002.

(j) Information on 501–D22 series engine turbine life limits can be found in RRC CSL No. CSL–1001, Revision No. 20, dated April 5, 2005.

Material Incorporated by Reference

(k) You must use Rolls-Royce Corporation Commercial Engine Bulletin No. CEB–A–72–1135, Revision 2, dated July 11, 2003, to check if 1st–2nd stage spacer assemblies pass the hardness criteria required by Table 2 of this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Rolls-Royce Corporation, P.O. Box 420, 2001 South Tibbs Avenue, Indianapolis, IN 46206–0420; telephone (317) 230–2000; fax (317) 230–4020 for a copy of this service information. You may review copies at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on December 11, 2006.

Peter A. White,

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

[FR Doc. E6–21352 Filed 12–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25762; Airspace Docket No. 06–AAL–25]

Revision of Class E Airspace; Homer, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Homer, AK to provide adequate controlled airspace to contain aircraft executing four new Standard Instrument Approach Procedures (SIAPs). This rule results in the revision of Class E airspace upward from the surface, from 700 feet (ft.), and from 1,200 ft. above the surface at Homer, AK.

DATES: *Effective Date:* 0901 UTC, March 15, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Thursday, October 5, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Homer, AK (71 FR 58758). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing four new SIAPs for the Homer Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Z Runway (RWY) 03, Original (2) RNAV (GPS) Z RWY 21, Original (3) RNAV (GPS) Y RWY 03, Original and (4) RNAV (GPS) Y RWY 21, Original. Class E controlled airspace extending upward from the surface, from 700 ft., and from 1,200 ft. above the surface in the Homer Airport area is revised by this action. The Notice of Proposed Rulemaking did not mention in the Proposal section the fact that some of the airspace affected by this action is from the surface. However, the proposed rule included the actual text entry. The actual change to the existing surface area is administrative in nature and has negligible effect, if any, on the actual airspace footprint.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The class E airspace areas designated as surface areas are published in paragraph 6002 of FAA Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Homer Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing four new SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at the Homer Airport, Homer, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Homer Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6002 Class E Airspace Designated As Surface Areas

AAL AK E2 Homer, AK [Revised]

Homer Airport, AK
(Lat. 59°38″44′ N., long. 151°28″36′ W.)
Kachemak NDB
(Lat. 59°38″29′ N., long. 151°30″01′ W.)

Within a 4.2-mile radius of the Homer Airport, AK, and within 1.9 miles either side of the 055° bearing from the Homer Airport, AK, to 7.2-miles northeast of the Homer Airport, AK, and within 2.4-miles north and 4.2-miles south of the Kachemak NDB 235° radial extending from the Kachemak NDB to 8.3-miles southwest of the Kachemak NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AAL AK E5 Homer, AK [Revised]

Homer Airport, AK
(Lat. 59°38″44′ N., long. 151°28″36′ W.)
Kachemak NDB
(Lat. 59°38″29′ N., long. 151°30″01′ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Homer Airport, AK, and within 4 miles either side of the 055° bearing from the Homer Airport, AK, to 12-miles northeast of the Homer Airport, AK, and within 8-miles north and 4.2-miles south of the Kachemak NDB 235° bearing extending from the Kachemak NDB to 16 miles southwest of the

Kachemak NDB; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Homer Airport, AK.

* * * * *

Issued in Anchorage, AK, on December 8, 2006.

Anthony M. Wylie,

Manager, Alaska Flight Service Information Office.

[FR Doc. E6–21534 Filed 12–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25763; Airspace Docket No. 06–AAL–26]

Revision of Class E Airspace; Kodiak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Kodiak, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). The FAA Instrument Flight Procedures Production and Maintenance Branch had noticed that a section of airspace north of Kodiak, AK, needed to be converted to controlled airspace. This rule addresses this issue and results in the revision of Class E airspace upward from 3,500 feet (ft.) above the surface at Kodiak, AK.

DATES: *Effective Date:* 0901 UTC, March 15, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Thursday, October 5, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 3,500 ft. above the surface at Kodiak, AK (71 FR 58761). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing SIAPs for the Kodiak Airport. While conducting a review of Kodiak's instrument procedures, the FAA discovered that a small section (about 10 square miles) of uncontrolled airspace north of Kodiak, AK needed to be converted to controlled airspace. Class E controlled airspace extending upward from 3,500 ft. above the surface in the Kodiak Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Kodiak Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at the Kodiak Airport, Kodiak, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Kodiak Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AAL AK E5 Kodiak, AK [Revised]

Kodiak Airport, AK
(Lat. 57°45′00″ N., long. 152°29′38″ W.)
Kodiak VORTAC
(Lat. 57°46′30″ N., long. 152°20′23″ W.)
Kodiak Localizer
(Lat. 57°45′08″ N., long. 152°31′15″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Kodiak Airport, AK, and within 5 miles south and 9 miles north of the 070°

radial of the Kodiak VORTAC extending from the 6.8-mile radius to 17 miles northeast of the Kodiak VORTAC, and within 8 miles north and 4 miles south of the Kodiak Localizer front course extending from 6.8-mile radius to 20.3 miles east of the Kodiak Airport, AK, and within 14 miles of the Kodiak VORTAC extending from the 358° radial clockwise to the 107° radial; and that airspace extending upward from 1,200 feet above the surface within lat. 57°57′06″ N., long. 152°45′ 00″ W. to lat. 57°55′00″ N., long. 152°28′00″ W. to lat. 57°53′00″ N., long. 152°27′06″ W. to point of beginning and within 27 miles of the Kodiak VORTAC extending from the 023° radial clockwise to the 088° radial and within 8 miles north and 5 miles south of the Kodiak Localizer front course extending from the Kodiak Airport, AK, to 32 miles east of the Kodiak Airport; AK; and that airspace extending upward from 3,500 feet above the surface within 4 miles either side of the 012° radial of the Kodiak VORTAC to 40 miles north of the Kodiak VORTAC.

* * * * *

Issued in Anchorage, AK, on December 8, 2006.

Anthony M. Wylie,

Manager, Alaska Flight Service Information Office.

[FR Doc. E6–21535 Filed 12–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25825; Airspace Docket No. 06–AAL–27]

Revision of Class E Airspace; St. Michael, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at St. Michael, AK to provide adequate controlled airspace to contain aircraft executing one amended Standard Instrument Approach Procedure (SIAP). This rule results in the revision of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at St. Michael, AK.

DATES: *Effective Date:* 0901 UTC, March 15, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

History

On Thursday, October 5, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface at St. Michael, AK (71 FR 58762). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing one amended SIAP for the St. Michael Airport. The amended approach is the Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 20, Amendment 1. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the St. Michael Airport area is revised by this action. Some of the necessary controlled airspace lies over an area more than 12 miles offshore, and is designated as Offshore Airspace Area, Norton Sound Low. That Offshore Airspace action will be addressed in a separate pending rulemaking case.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9P, *Airspace Designations and Reporting Points*, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the St. Michael Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing an amended SIAP, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at the St. Michael Airport, St. Michael, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the St. Michael Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points,

dated September 1, 2006, and effective September 15, 2006, is amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AAL AK E5 St. Michael, AK [Revised]

St. Michael Airport, AK
(Lat. 63°29′24″ N., long. 162°06′37″ W.)

That airspace extending upward from 700 feet above the surface within an 8.4-mile radius of the St. Michael Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the St. Michael Airport.

* * * * *

Issued in Anchorage, AK, on December 8, 2006.

Anthony M. Wylie,

Manager, Alaska Flight Service Information Office.

[FR Doc. E6–21537 Filed 12–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25826; Airspace Docket No. 06–AAL–28]

Revision of Class E Airspace; Tok Junction, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Tok Junction, AK to provide adequate controlled airspace to contain aircraft executing a new Standard Instrument Approach Procedure (SIAP). This rule results in the revision of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Tok Junction, AK.

DATES: *Effective Date:* 0901 UTC, March 15, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

History

On Thursday, October 5, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Tok Junction, AK (71 FR 58760). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing a new SIAP for the Tok Junction Airport. The new approach is the Area Navigation (Global Positioning System) (RNAV (GPS)) A, Original. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Tok Junction Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Tok Junction Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing a new SIAP, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at the Tok Junction Airport, Tok, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Tok Junction Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AAL AK E5 Tok Junction, AK [Revised]

Tok Junction Airport, AK
(Lat. 63°19′46″ N., long. 142°57′13″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Tok Junction Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 64.8-mile radius of the Tok Junction Airport, AK; excluding that airspace east of 141°00′00″ W longitude.

* * * * *

Issued in Anchorage, AK, on December 8, 2006.

Anthony M. Wylie,

Manager, Alaska Flight Service Information Office.

[FR Doc. E6–21516 Filed 12–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24675; Airspace Docket No. 06–AAL–14]

Revision of Class E Airspace; Hooper Bay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action revises Class E airspace at Hooper Bay, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAPs). This rule results in the revision of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Hooper Bay, AK.

DATES: *Effective Date:* 0901 UTC, March 15, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Thursday, October 5, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Hooper Bay, AK (71 FR 58765). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing two new SIAPs for the Hooper Bay Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 05, Original and (2) RNAV (GPS) RWY 23, Original. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Hooper Bay Airport area is revised by this action. Some of the necessary controlled airspace lies over an area more than 12 miles offshore, and is designated as Offshore Airspace Area, Norton Sound Low. That Offshore Airspace action will be addressed in a separate pending rulemaking case.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Hooper Bay Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing two new SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at the Hooper Bay Airport, Hooper Bay, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Hooper Bay Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AAL AK E5 Hooper Bay, AK [Revised]

Hooper Bay Airport, AK
(Lat. 61°31′26″ N., long. 166°08′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Hooper Bay Airport, AK; and

that airspace extending upward from 1,200 feet above the surface within a 45-mile radius of Hooper Bay Airport, AK.

* * * * *

Issued in Anchorage, AK, on December 8, 2006.

Anthony M. Wylie,

Manager, Alaska Flight Service Information Office.

[FR Doc. E6–21532 Filed 12–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24748; Airspace Docket No. 06–AAL–15]

Revision of Class E Airspace; Perryville, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Perryville, AK to provide adequate controlled airspace to contain aircraft executing a new Standard Instrument Approach Procedure (SIAP) and a new Stardard Instrument Departure procedure (SID). This rule results in the revision of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Perryville, AK.

DATES: *Effective Date:* 0901 UTC, March 15, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Thursday, October 5, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Perryville, AK (71 FR 58764). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing one new SIAP and one new SID for the Perryville Airport. The new approach is the Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 02, Original. The SID is the CILAC TWO departure. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Perryville Airport area is revised by this action. There is an issue with charting domestic controlled airspace near Perryville, Alaska. Any airspace to the West of 160° West Longitude must be defined in the Offshore Airspace Area named Control 1234L, even if the airspace is within 12 miles of the shoreline. The Notice of Proposed Rulemaking mentioned this issue, but did not explain that this is a charting issue and does not impact controlled airspace. Any of the controlled airspace necessary for service at Perryville Airport which lies to the west of 160° W. Longitude must be described in the Offshore definition for Control 1234L. Domestic airspace east of 160° W. Longitude extends to 12 miles from the shoreline. The airspace definition delineation between Offshore and domestic controlled airspace is not necessary because the 12-mile limit line is shown on aeronautical charts. To address the delineation in the controlled airspace description would be redundant. The Offshore Airspace action associated with this rule is taking place concurrently in a separate airspace rule.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9P, *Airspace Designations and Reporting Points*, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Perryville Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing one new SIAP and one new SID, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at the Perryville Airport, Perryville, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Perryville Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AAL AK E5 Perryville, AK [Revised]

Perryville Airport, AK
(Lat. 55°54′24″ N., long. 159°09′39″ W.)

That airspace extending upward from 700 feet above the surface within a 14.7-mile radius of the Perryville Airport, AK; and that airspace east of long. 160°00′00″ W. extending upward from 1,200 feet above the surface within a 81.2-mile radius of Perryville Airport, AK.

* * * * *

Issued in Anchorage, AK, on December 8, 2006.

Anthony M. Wylie,

Manager, Alaska Flight Service Information Office.

[FR Doc. E6–21533 Filed 12–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 930

[Docket No. 030604145–4038–02]

RIN 0648–AR16

Coastal Zone Management Act Federal Consistency Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule; technical corrections.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) published a document (Final Rule) in the **Federal Register** on January 5, 2006, effective on February 6, 2006, revising the federal consistency regulations under the Coastal Zone Management Act of 1972 (CZMA). That document referenced an incorrect cross-reference in § 930.125(b) and unnecessarily required the submission of multiple copies of some documents in §§ 930.127(d)(1) and 930.127(i)(2). This document amends the final regulations by revising these sections.

DATES: Effective December 19, 2006.

FOR FURTHER INFORMATION CONTACT: David W. Kaiser, Senior Policy Analyst, Office of Ocean and Coastal Resource Management/NOAA, Phone: 603–862–2719, Fax: 603–862–3957.

ADDRESSES: Office of Ocean and Coastal Resource Management/NOAA, c/o Coastal Response Research Center, University of New Hampshire, 35 Colovos Road, 246 Gregg Hall, Durham, NH 03824–3534.

Headquarter and Official Mailing/Filing Address: Coastal Programs Division, Office of Ocean and Coastal Resource Management/NOAA, 1305 East-West Hwy., 11th Floor (N/ORM3), Silver Spring, MD 20910, Fax: 301–713–4367.

Additional information on federal consistency can be located at OCRM's federal consistency web page: *http://coastalmanagement.noaa.gov/consistency/welcome.html.*

SUPPLEMENTARY INFORMATION:

Background

The CZMA was enacted in 1972 to encourage States to be proactive in managing natural resources for their benefit and the benefit of the Nation. The CZMA recognizes a national interest in the resources of the coastal zone and in the importance of balancing the competing uses of those resources. The CZMA is a voluntary program for States. If a State elects to participate it must develop and implement a CMP pursuant to federal requirements. *See* CZMA section 306(d); 15 CFR part 923. State CMPs are comprehensive management plans that describe the uses subject to the management program, the authorities and enforceable policies of the management program, the boundaries of the State's coastal zone, the organization of the management program, and related State coastal management concerns. The State CMPs are developed with the participation of Federal agencies, industry, other interested groups and the public. Thirty-five coastal States are eligible to participate in the federal coastal management program. Thirty-four of the eligible States have federally approved CMPs. Illinois is not currently in program development.

The CZMA federal consistency provision is a cornerstone of the CZMA program and a primary incentive for States' participation. Federal agency activities that have coastal effects must be consistent to the maximum extent practicable with the federally approved enforceable policies of the State's CMP. In addition, non-federal applicants for federal authorizations and funding must be fully consistent with the enforceable policies of State CMPs. States either concur with or object to a federal agency's consistency determination, under 15 CFR part 930, subpart C, or an applicant's consistency certification, under 15 CFR part 930, subparts D, E or F.

For non-federal applicants for federal authorizations under 15 CFR part 930, subparts D, E or F, the applicant may appeal a State's CZMA objection to the Secretary of Commerce pursuant to CZMA sections 307(c)(3) and (d). The Secretary overrides the State's objection if the Secretary finds that the activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security. If the Secretary overrides the State(s objection, then the Federal agency may issue its authorization. NOAA's Federal consistency regulations were first promulgated in 1979.

On January 5, 2006, NOAA published a final rule amending the Agency's regulations implementing the CZMA, including procedural requirements governing the processing of consistency appeals filed under section 307 of the CZMA. These changes sought to effectuate necessary changes identified since the regulations were last amended in 2000, and respond to amendments to the CZMA enacted by Congress in the Energy Policy Act of 2005 (Pub. L. 109–58; 119 Stat. 594 (2005)) (Energy Policy Act).

Explanation of Changes to the Federal Consistency Regulations

Rule Change 1: § 930.125(b). The January 2006 amendments in part added new requirements concerning the content of a notice of appeal filed with the Secretary of Commerce. Section 930.125(b) now requires that a notice of appeal include a statement explaining the bases for appealing the State agency's objection. As noted in the Final Rule, this new requirement was promulgated to help the Secretary decide appeals within new time constraints established under the Energy Policy Act, by requiring that appellants clarify from the outset each separate basis for appeal. *See* 71 FR 788, 799 (Jan. 5, 2006). If identified in the notice of appeal, these bases can be argued in greater detail within an appellant's subsequent brief.

Section 930.125(b) includes an inadvertent error that necessitates technical correction. This section requires a statement explaining the bases for appeal under ''§ 923.121,'' a cross reference that has no relevance to

consistency appeals. The correct cross reference is §§ 930.121 and 122. Sections 930.121 and 122 are the two grounds available on which to base an appeal. With this technical correction, § 930.125(b) requires the notice of appeal to: (1) Explain why the project is consistent with the objectives or purposes of the CZMA (§ 930.121), and/or is otherwise necessary in the interest of national security (§ 930.122), outlining appellant's arguments for each element contained within §§ 930.121 and/or 930.122 (with the understanding that appellant will amplify upon these arguments in briefs); and (2) identify any procedural arguments pursuant to § 930.129(b).

Rule Change 2: § 930.127(d)(1) and § 930.127(i)(2). Both of these sections require the appellant to submit four copies of briefs, supporting materials and, in the case of appeals of energy projects under § 930.127(i)(2), the consolidated record maintained by the lead Federal permitting agency. NOAA has determined that one hard copy and one electronic copy are sufficient to process appeals to the Secretary. This technical change will also reduce paperwork burdens on appellants.

Miscellaneous Rulemaking Requirements

Executive Order 12372: Intergovernmental Review

This program is subject to Executive Order 12372.

Executive Order 12866: Regulatory Planning and Review

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

Executive Order 13211

Executive Order 13211 requires that agencies prepare and submit a ''Statement of Energy Effects'' to the Office of Management and Budget for certain actions. This action will not result in any adverse effect upon the supply, distribution, or use of energy. Rather, this rule makes technical corrections and changes that will clarify existing requirements and will reduce paperwork burdens on appellants.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Ocean Services, NOAA finds good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary. This Final Rule makes only minor technical amendments that will correct mistakes and provide clarification to the public. The first change will correct an internal cross-reference in order to provide correct information regarding the processing of appeals. The second change will reduce unnecessary paperwork submissions by states and appellants. Neither change affects the substance of the Secretarial appeal process. For this same reason, NOAA finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

Paperwork Reduction Act

This rule contains no additional collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA).

National Environmental Policy Act

NOAA has concluded that this regulatory action does not have the potential to pose significant impacts on the quality of the human environment. Further, NOAA has concluded that this rule will not result in any changes to the human environment. As defined in sections 5.05 and 6.03c3(i) of NAO 216–6, this action is of limited scope, of a technical and procedural nature and any environmental effects are too speculative or conjectural to lend themselves to meaningful analysis. Thus, this rule is categorically excluded from further review pursuant to NEPA.

List of Subjects in 15 CFR Part 930

Administrative practice and procedure, Coastal zone, Reporting and recordkeeping requirements.

■ Accordingly, 15 CFR part 930 is amended by making the following technical corrections:

PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS

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

Authority: 16 U.S.C. 1451 *et seq.*

§ 930.125 [Corrected]

■ 2. Section 930.125 is corrected in the first sentence of paragraph (b) by removing the term ''§ 923.121'' and adding in its place the phrase ''§§ 930.121 and/or 930.122.''

§ 930.127 [Corrected]

■ 3. Section 930.127 is corrected in the first sentence of paragraph (d)(1) and in the first sentence of paragraph (i)(2) by removing the word ''four'' and adding in its place the word ''two.''

Dated: December 14, 2006.

William Corso,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. E6–21615 Filed 12–18–06; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 800

[Docket No. 2003N–0056 (formerly 03N–0056)]

Medical Devices; Patient Examination and Surgeons' Gloves; Test Procedures and Acceptance Criteria

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to improve the barrier quality of medical gloves marketed in the United States. The rule will accomplish this by reducing the current acceptable quality levels (AQLs) for leaks and visual defects observed during FDA testing of medical gloves. By reducing the AQLs for medical gloves, FDA will also harmonize its AQLs with consensus standards developed by the International Organization for Standardization (ISO) and ASTM International (ASTM).

DATES: This rule is effective December 19, 2008.

FOR FURTHER INFORMATION CONTACT: Casper E. Uldriks, Office of Compliance, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 240–276–0100.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1990, FDA has tested patient examination and surgeons' gloves for barrier integrity in accordance with the sampling plans, test method, and AQLs contained in § 800.20 (21 CFR 800.20). The FDA test method was adopted by the consensus standards organizations, ISO and ASTM, who incorporated this method in ISO 10282, ISO 11193, ASTM D3577, and ASTM D 3578. Subsequently, ISO and ASTM lowered

the AQLs in their consensus standards to be more stringent than the criteria in the FDA test method. In the **Federal Register** dated March 31, 2003 (68 FR 15404), FDA published a proposed rule to amend the FDA test method and harmonize the acceptance criteria with those in the consensus standards. We provided a period of 90 days for comments from interested parties. We received comments from several parties, which we summarize and discuss below, and we have revised the final rule in response to the comments as appropriate.

(Comment 1) FDA received several comments expressing concern that the proposal to lower the AQLs in the FDA rule to match those in the ASTM standard does not truly harmonize with ASTM because ASTM applies the AQLs only to pinhole defects, whereas FDA applies the AQLs to both pinhole and visual defects.

Historically, FDA has always considered visual defects that affect barrier integrity as failures during glove testing. The visual analysis of gloves while conducting water leak testing was specifically included in the original FDA test method published in December 1990 and codified at § 800.20. Our experience with laboratory analyses of medical gloves indicates that visual defects are relatively rare. However, due to public health concerns, FDA cannot ignore visual defects when they are observed. FDA will continue to consider visual defects affecting barrier integrity as failures. FDA does not agree that including these defects in the analysis will affect harmonization with currently recognized consensus standards for the vast majority of samples.

FDA has, however, included language in the rule clarifying that only visual defects that are likely to affect the barrier integrity should be counted as failures and has described the main types of visual defects that are likely to affect barrier integrity. FDA understands the concerns of manufacturers that the lower AQLs could result in more sample failures, especially if FDA analysts count visual defects that do not affect barrier integrity. Therefore, FDA intends to provide guidance to analysts on how to identify visual defects that affect barrier integrity.

(Comment 2) One comment disagreed with the FDA statement ''Because the standards organization updated their standards to reflect the improvement in manufacturing technology, the consensus standards currently have lower AQLs for medical gloves than FDA's regulations'' on the grounds that the consensus standards' AQLs do not count visual defects. The commenter proposed that FDA reword this statement.

Until now, the AQLs in the consensus standards have been tighter than those in the FDA test method, even when visual defects are considered. As noted previously, visual defects are rarely observed. Even when they are found, they may not increase the total number of failures in an analysis because the tears and holes detected by means of a visual examination would most likely leak if subjected to water leak testing and count as failures. Other visually defective gloves, such as adhering gloves, which often tear when pulled apart, might also leak if subjected to water leak testing.

(Comment 3) FDA received a number of comments expressing concern that the phrase ''other defects visible upon initial examination that may affect the barrier integrity'' is subject to interpretation. Some comments recommended a list of specific criteria for identifying visually defective gloves. Other comments suggested adding the word ''obvious'' before ''defects.''

FDA understands these concerns and has revised the rule to include more examples of specific visual defects that should be considered as failures. However, FDA realizes that it cannot predict all possible defects that may be encountered. Therefore, the phrase immediately following the list of specifically identified visual defects has been revised to read, ''or other visual defects that are likely to affect the barrier integrity.'' FDA disagrees that adding ''obvious'' before ''defects'' would clarify the type of defects that should be counted or reduce the risk of subjective interpretation.

(Comment 4) FDA received several comments requesting us to revise the test procedure and acceptance criteria to have two sets of samples per lot, one set for testing for pinhole defects and the second set for testing or determining visual defects. The comments suggested that visual defects should have less stringent AQLs than pinhole defects. Also, one comment stated that the test certificates glove manufacturers routinely issue generally categorize pinholes and visual defects separately.

FDA disagrees with these comments. FDA is aware that glove manufacturers routinely inspect their gloves for visual cosmetic defects that may affect the acceptability of the gloves to buyers. Since these defects are related to the cosmetic appearance of gloves rather than safety, they are visually inspected at a lower AQL than pinhole defects. In contrast, FDA analysis of medical gloves is intended to ensure that gloves are safe and effective for their intended use, barrier protection. The FDA test method includes only those visual defects, such as tears, embedded foreign objects, etc., that are likely to affect the barrier integrity of the glove. As previously stated, FDA has historically considered visual defects that affect the barrier integrity as failures during glove testing and has always included them in the total count of defective gloves. Sampling and counting visual defects that affect barrier integrity separately from gloves that leak during the water leak test would change established FDA sampling procedures and could allow more total defects in glove lots than were allowed under the previous AQLs. This would not be consistent with the purpose of this rulemaking to improve the quality of gloves on the U.S. market. Also, because visual defects that affect barrier integrity are much less common than cosmetic visual defects, they would probably not be present in the majority of samples. Routinely taking two sets of samples when one sample is expected to have no defects would be an inefficient use of resources for the FDA. The increased time required for two analyses could also result in delaying entry of imported products.

(Comment 5) Three comments noted that the ASTM standards for patient examination and surgeons' gloves specify the use of single normal sampling plans rather than the multiple normal sampling plans used by FDA.

FDA understands that ASTM uses single normal sampling. However, the same ISO document that ASTM references for its single sampling plans (ISO 2859, ''Sampling Procedures for Inspection by Attributes'') also provides multiple sampling plans that establish the acceptability or non-acceptability of the lot with equivalent statistical confidence, but generally using a much smaller total sample size. In view of the volume of gloves that FDA must test each year, we cannot justify the additional expense that would accompany the use of the single sampling plans. Since the sampling plans are statistically very similar, we consider the revised test method and acceptance criteria to be harmonized with the ASTM standard.

(Comment 6) Another comment stated that it was unlikely that manufacturers could supply medical gloves that meet the new AQLs without any price increase. The comment further stated that tightening the AQLs would cause manufacturers to test to even tighter in-house specifications, which could lead to significant ''downgrading'' of some lots of gloves.

It is FDA's understanding, based on representations made in 510(k)

submissions and interactions with glove manufacturers, that the glove industry is already manufacturing gloves that meet the 1.5 and 2.5 AQLs for surgeons' and patient examination gloves, respectively. FDA recognizes that some manufacturers may decide to withhold from the market or ''downgrade'' some glove lots in order to reduce the risk of failing the FDA test. However, our analysis, described in section III.E of this document, indicates that the actual number of lots that would have to be withheld in order to maintain the current failure risk level is a small percentage of the total number of gloves manufactured and, consequently, will have a minimal impact on the industry.

(Comment 7) We received several comments that pointed out that an AQL value should not reference a percentage because it is technically a number without a unit. The comments suggested that we remove the reference to percent.

FDA agrees with this comment. The AQL values in the final rule do not refer to percent.

(Comment 8) One comment requested that the effective date of this rule be delayed until the year 2010.

FDA disagrees with this comment. ASTM lowered its AQLs for surgeons' and patient examination gloves in 1998. FDA believes that manufacturers have had sufficient time to adapt their manufacturing process to conform to these standards and that, in fact, the vast majority of currently manufactured gloves already meet the new AQLs.

(Comment 9) One comment suggested the use of normal sampling plans in ISO 2859 for reconditioned lots instead of the tightened sampling plans proposed by FDA. This comment maintained that the normal inspection plans were the optimal plans for glove lots and that these same sampling plans should also be used for reconditioned lots for both technical and economic reasons.

FDA disagrees with this comment. When testing reconditioned lots, FDA needs greater assurance that the gloves are safe and effective because there has already been an initial failure and an appearance of adulteration. It is important, therefore, that the tightened sampling plans be used to test reconditioned lots.

(Comment 10) One comment advised that the sampling plan for Surgeons' Gloves at 1.5 AQL Normal Sampling and a lot size of 1,201 to 3,200 does not provide for lot acceptance for the first 32 gloves sampled.

FDA agrees and has revised the chart.

(Comment 11) One comment asked why the tables for both the Surgeons' and Patients Examination Gloves were changed from the original rule to list increasing quantities of gloves from top to bottom rather than from bottom to top.

This change was made to harmonize with the tables in the ISO–2859 sampling plans.

(Comment 12) One comment noted that the leak test materials and set up described in § 800.20 are an example of what might be used in small scale testing environments, but that the use of these materials and set up in high volume test environments is not realistic. Another comment pointed out that many manufacturers use opaque cylinders rather than clear plastic cylinders, as described in paragraph § 800.20(b)(2)(i). A suggestion was made to note that the materials and set up described in § 800.20(b)(2) and (b)(3)(ii) are only examples.

FDA agrees that the materials and set up described in the referenced section are only examples and may not be realistic for high volume test settings and, therefore, has changed the wording in § 800.20(b)(2) *Leak test materials*, to ''FDA considers the following to be the minimal materials required for this test.'' FDA will continue to use clear cylinders to remain harmonized with the ASTM consensus standard D5151 for detection of holes in medical gloves.

(Comment 13) One comment recommended that FDA define the elongation and tensile strength required for medical grade gloves.

This comment is beyond the scope of this rule. This rule describes a barrier test method applicable to gloves of all materials and not a physical properties test method that will necessarily vary for differing materials.

(Comment 14) A suggestion was made to increase the water leak test duration to 3 minutes from the current 2 minutes because there are some gloves that begin to leak shortly after the 2 minute mark, usually at 2 minutes and 30 seconds.

Changes to this rule are intended to harmonize with the current consensus standards. Harmonization would not be accomplished if FDA were to increase its water leak test duration to 3 minutes. Moreover, there are no reliable data justifying the increase.

(Comment 15) One comment suggested that § 800.20(b)(2)(iv) should be moved to the preamble because it is a guidance.

It is important that FDA's test method for analyzing gloves be presented in a coherent manner that thoroughly describes the method in a way that is understandable. FDA believes that deleting § 800.20(b)(2)(iv) from the codified language would make the test method more difficult to understand and, therefore, disagrees that it should be moved to the preamble.

(Comment 16) A suggestion was made to move ''Record the number of defective gloves'' from (b)(3)(iii)(B) to a new paragraph (b)(3)(iii)(C). The rationale for this suggestion was that the data are generated in both (b)(3)(iii)(A) and (b)(3)(iii)(B), and not in just (b)(3)(iii)(B). Therefore, it appeared that the recording requirement should be in a separate paragraph.

FDA agrees and has removed ''Record the number of defective gloves'' from section (b)(3) (iii)(B) and added a new section ''(b)(3)(iii)(C), Record the number of defective gloves.''

(Comment 17) Another comment stated that the preamble should discuss the relationship between Import Alert 80–04 and § 800.20.

This rule describes FDA's analytical test method for determining whether individual gloves are defective and acceptance criteria for determining whether lots of medical gloves are adulterated. It applies equally to medical gloves offered for import and medical gloves already in domestic distribution. While the results of analysis could cause a firm to be placed on Import Alert 80–04, this rule is not intended to describe or modify FDA's current guidance to FDA field personnel regarding ''Surveillance and Detention Without Physical Examination of Surgeon's and or Patient Examination Gloves,'' which is contained in Import Alert 80–04.

(Comment 18) One comment suggested that we add the following or equivalent language to (d)(2)(ii) ''*Adulteration levels and acceptance criteria for reconditioned gloves*'': ''FDA considers the reconditioned lot of medical gloves tested by an independent laboratory under tightened sampling to meet the AQLs which will provide additional assurance to the consumers. If the retest result has been determined to be acceptable, the initial analysis of the failed lot before reconditioning shall be nullified.''

FDA disagrees with this comment. When a collection of gloves that has been seized or refused entry based on a violative sample is ''reconditioned,'' some of the problematic sizes or lots of the gloves may have been removed (segregated) from the reconditioned sample. When this occurs, and the reconditioned sample passes the test under the tightened sampling plan, FDA will consider the remaining/reconditioned lots in the collection of gloves to be acceptable, as described in § 800.20. However, FDA believes that, in the situation described previously, FDA

cannot ignore the initial failure which is part of the firm's historical record.

(Comment 19) Several comments mentioned that the rule would result in increased costs to consumers of gloves. These comments asserted that manufacturing and production changes at manufacturing sites would entail significant costs that would ultimately be passed on to consumers in the form of price increases.

FDA disagrees with these comments. As stated in section III of this document, most lots of imported gloves already meet the lower AQLs. This implies that significant changes in the manufacturing processes will not be necessary. In addition, there is no universal economic presumption that costs are passed on to consumers in order to maintain a constant profit margin to manufacturers. Market conditions will dictate the specific degree to which regulatory costs are borne by various economic sectors, i.e., manufacturers, distributors, purchasers, payers, or consumers. Because of the competitive nature of this industry and the relatively small proportion of gloves affected by this rule, FDA believes that these costs are not likely to be directly passed on in the form of price increases.

II. Environmental Impact

The agency has determined under 21 CFR 25.30(i) 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.

III. Analysis of Impacts

A. Introduction

FDA has examined the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–602), 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). FDA has determined that this final rule is not a significant regulatory action under the Executive order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the impact of the rule on small entities. Because this final rule will not result in economic impacts on domestic small entities, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing a final rule that includes any Federal mandate that may result in the expenditure of State, local and tribal governments, in the aggregate, or the private sector of $100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $118 million, using the most current (2004) implicit price deflator for the Gross National Product. The agency does not expect this final rule to result in a 1-year expenditure that would meet or exceed this amount.

The information in the following sections sets forth the bases for the above conclusions. We show the expected annual costs and benefits of this final rule next in Table 1. The average annualized costs of the final rule are estimated to be $6.6 million using either a 3 percent or 7 percent discount rate. Average annualized benefits are expected to be between $14.8 million and $15.1 million, depending on the discount rate. Average annualized net benefits are between $8.2 million and $8.5 million.

TABLE 1.—AVERAGE ANNUALIZED COSTS AND BENEFITS (IN MILLIONS)[1]

Annual Discount Rate	Costs	Benefits	Net Benefits
3 Percent	$6.6	$14.8	$8.2
7 Percent	$6.6	$15.1	$8.5

[1]Annualized over a 10-year evaluation period.

B. Objective of the Final Rule

The objective of the final rule is to reduce the risk of transmission of blood-borne pathogens (particularly human immunodeficiency virus (HIV), hepatitis B (HBV), and hepatitis C (HCV) infections). The rule accomplishes this objective by ensuring that medical gloves (surgeons' and patient examination gloves) maintain a high level of quality with respect to the level of noted defects. FDA is also harmonizing its level for acceptable defects with consensus quality standards developed by ISO and ASTM.

C. Current Risks of Blood-Borne Illness

Unnecessary exposures to blood-borne pathogens are of great importance to the health care community because contact with contaminated human blood or tissue products has led to increased cases of HIV, HBV, and HCV infections.

Available data cannot precisely quantify the number of new HIV cases that this final rule will prevent. This analysis, however, attempts to derive a conservative estimate. For the year 2000, the Centers for Disease Control (CDC) reported a cumulative total of approximately 900,000 persons in the United States who had contracted HIV, of which 775,000 cases had progressed to Acquired Immunodeficiency Syndrome (AIDS) (Ref. 1). Of those patients whose conditions had progressed to AIDS, almost 450,000 (58 percent) had died as of December 2000. For the year 2000, the CDC identified 21,704 new cases of HIV infection.

Approximately 5 percent of the reported HIV/AIDS cases were among health care personnel (Ref. 2). However, in an indepth analysis of occupational risk, the CDC reported that between 1992 and 2002 there had been 56 identified incidents of occupational transmission of the HIV pathogen and all but 7 of these cases (12.5 percent) were due to percutaneous cuts or needlesticks. In addition, there were 138 other cases of HIV infection or AIDS among health care workers with occupational exposures to blood who had not reported other risk factors for HIV infection (Ref. 2). Assuming the same 12.5 percent rate for these workers implies that 17 additional cases of HIV transmission to health care workers during this period might have been caused by cutaneous contact in an occupational setting. Consequently, a total of 24 incidents of occupational transmission of HIV to health care personnel may have occurred over the

10-year period (or 2.4 per year) due to problems with the barrier protection properties of gloves used in health care settings.

The CDC also reports approximately 80,000 new cases of HBV for the latest available reporting period (1999) (Ref. 3). There are approximately 1.25 million people in the United States chronically infected with HBV. While only 6 percent of those who contract hepatitis B after the age of 5 will develop chronic conditions, 15 to 25 percent of those that do will die prematurely. Health care personnel are at some risk from this pathogen, but the availability of a vaccine has reduced the risk of negative outcomes due to exposure.

FDA has no direct data for estimating the rate of new HBV infections in health care personnel. While the CDC has reported the risk to health care workers as ''low,'' there is no definition of that term (Refs. 3 and 4). FDA estimates that as many as 4,000, or 5 percent, of all new incidents of HBV occur in health care personnel. Because occupational transmissions for HBV may be approximately 5 times more likely than that for HIV, FDA imputes approximately 140 annual cases of occupational transmission of HBV to health care personnel (HIV rate of 7.3/1,085 x 5 x 4,000.) CDC analyses have stated that ''most'' of the occupational transmissions are due to percutaneous injuries (Ref. 4). Because 2.4 of the 7.3 annual HIV cutaneous contact transmissions (33 percent) were believed to be attributable to glove defects, FDA similarly expects about one-third of the 140 annual occupational transmissions of HBV infections (approximately 40 cases) may potentially be associated with the current quality level of medical gloves. If only 6 percent of these cases develop chronic conditions, then an average of 2.4 annual cases of chronic HBV are associated with defective medical gloves.

HCV currently infects 3.9 million persons in the United States (Ref. 3). Over 2.7 million patients have reported chronic conditions. More than 40,000 new cases were reported in 1999. The risk of exposure to health care workers, however, appears to be extremely low. In fact, according to the CDC, other than from needle stick punctures, there has been no documented transmission of HCV to health care personnel from intact or non-intact skin exposures to blood or other fluids or tissues (Ref. 4). Thus, there is little evidence that glove defects are associated with HCV exposures.

As a result, FDA estimates the overall annual transmission of blood-borne pathogens due to defects in glove barrier protection in health care settings to include 2.4 cases of HIV infection and 2.4 cases of HBV infection. Increasing the AQL of gloves by lowering the rate of acceptable defects should reduce the transmission rates of these pathogens.

D. Baseline Conditions

The previous AQL (being replaced by this rule) for medical gloves allowed a defect rate of 4.0 percent for patient examination gloves and 2.5 percent for surgeons' gloves. The AQL represents the proportion of sampled gloves from a given lot that may include defects such as leaks or foreign material and still be accepted for entry into the marketplace. Currently, if more than 4 percent of the sampled patient examination gloves exhibit defects in accordance with the sampling criteria, the entire lot of gloves is considered adulterated. Surgeons' gloves are sampled to a higher quality level (lower AQL requires a higher proportion of non-defective gloves in order to pass inspection), because these products have a higher likelihood of contact with bodily fluids. Of course, medical glove lots that fail to meet the AQL may be marketed as household or other products. If a sample of gloves fails to meet the AQL, the marketer may request resampling of the lot. The required sampling plan for a lot originally found to be out of compliance is more intensive than the original sampling plan for a randomly selected lot. Lots initially found to be out of compliance are either resampled and subsequently offered as medical devices after meeting the current AQL, offered as nonmedical gloves, or sold in foreign markets.

Approximately 39.2 billion medical gloves were imported into the United States during 2004 (Ref. 6). According to FDA records, there are over 400 manufacturers of medical gloves. Malaysian manufacturers supply almost 40 percent of the medical gloves in the United States while Chinese manufacturers supply approximately 30 percent (Ref. 7). Surgeons' gloves accounted for only about 15 percent of all imported medical gloves during 2004, and the impact of the final rule on this sector is negligibly different from overall patient examination gloves. Therefore, this analysis focuses exclusively on patient examination gloves.

FDA expects the demand for medical gloves to increase by the same rate as employment in the medical services industry. The Bureau of Labor Statistics has projected annual employment growth of 2.6 percent for this industry (North American Industry Classification System 6200) (Ref. 8), which implies an annual volume of over 50 billion medical gloves in 10 years. (A 2.6 annual growth rate results in an expected increase of 29.3 percent in 10 years.)

Medical glove lot sizes may vary from as few as 25 gloves to as many as 500,000. According to discussions with manufacturers (Eastern Research Group, Inc. (ERG) 2001), a typical production or import lot from a foreign manufacturer contains an average of 325,000 gloves (either patient examination or surgeons'). This implies that the U. S. medical glove market currently imports over 120,600 lots of gloves per year. FDA currently samples only about 1.5 percent of all glove lots, or 1,800 lots per year. Within 10 years, FDA expects the number of lots offered for import to increase to 156,000. If the compliance sampling rate remains constant, FDA would sample about 2,300 lots during that year.

FDA's Winchester Engineering and Analysis Center (WEAC) analyzed results from samples collected from 2000 and 2001. These samples represent approximately one-third of FDA's total sampling effort for the period. A total of 98,067 gloves were tested from 942 separate lots. Of these gloves, 2,354 were defective, which implies that 2.4 percent of marketed gloves are likely to be defective. If so, then approximately 940 million defective medical gloves are currently marketed (39.2 billion gloves x 0.024). At the current AQL of 4.0, 28 lots (2.97 percent) failed. Consequently, approximately 53 annually sampled lots are defective (1,800 sampled lots x 0.0297). By the 10th year, in the absence of the final regulation, 1.21 billion defective gloves would be marketed and 68 of the sampled lots would fail to meet the AQL.

FDA allows glove lots that fail to meet the AQL to be resampled. Sponsors usually attempt to resample the glove lot rather than divert the entire lot to alternative markets. According to discussions with industry sources and testing laboratories, the cost of glove lot resampling and retesting for leakage and tensile strength is approximately $1,400. The current annual industry cost of resampling glove lot failures with the current AQL is approximately $74,000 (53 lots times $1,400 per lot). This resampling and retesting cost would equal $95,000 within 10 years.

E. Costs of the Final Rule

FDA expects that the final rule will result in changed shipping practices by medical glove manufacturers. Currently, manufacturers use the target AQLs as a guide for releasing production lots of

gloves for export to the United States because the release criteria are lower in the United States than in other markets. Manufacturers attempt to avoid having three failures within a 24-month period, because this may result in refusal of future imports under Level 3 detention described in FDA's current policy, ''Surveillance and Detention Without Physical Examination of Surgeon's and/or Patient Examination Gloves.'' Thus, to maintain an uninterrupted supply of gloves to customers, and to guard brand loyalty while avoiding Level 3 detention, manufacturers would be expected to raise their level of quality control to at least maintain the current average lot rejection rate of 2.97 percent. FDA also expects the rule to increase the costs of sampling by requiring larger and more detailed sampling plans to assure the lower AQL is met for each inspected glove lot. FDA does not envision increased regulatory oversight costs because the rate of inspections is not expected to change. Costs have been analyzed and discounted using the methodology suggested by OMB's Circular A–4 (September 2003).

1. Costs of Quality Control

Manufacturers currently conduct quality control tests on glove lots prior to release. These tests include water-tight leak and tensile strength assays. According to interviews with glove manufacturers, the current cost of conducting these tests at the manufacturing site is approximately $310 per lot, while the more stringent quality control testing required by this rule may cost an additional $45 per lot. The additional cost is for increased inventory and larger sample sizes to ensure more precise measurements at the lower AQL. Because approximately 120,600 lots are currently imported per year, the expected costs are $5.4 million (120,600 lots x $45 per lot). The expected increase in the demand for medical gloves by the 10th evaluation year will result in a compliance cost of meeting this increased quality level of $7.0 million. Over the 10-year period, the average annualized cost of this increased level of testing, at a 3 percent annual discount rate, is $6.2 million and, at a 7 percent annual discount rate, is $6.2 million.

2. Increased Sampling Costs

A lower AQL will result in increased sampling costs for imported glove lots. The increased sampling costs will result from the need to test greater quantities of gloves in order to ensure sufficient statistical power. Based on reported costs from U.S. testing laboratories, ERG, an independent economic contractor, estimated that increased testing would add approximately $200 to the current costs of $1,400 per sample. (The difference between this increased cost and the $45 increased quality control cost is attributable to lower costs in foreign countries that produce medical gloves.) FDA currently samples about 1.5 percent of the 120,600 lots imported annually, or 1,800 samples. Thus, the increased sampling costs due to this final rule are $0.4 million (120,600 lots x 0.015 x $200). Within 10 years, this increased cost will equal $0.5 million (due to expected increases in the number of inspected glove lots). The average annualized sampling cost increase at a 3 percent annual discount rate is $0.4 million, and at a 7 percent annual discount rate is $0.4 million.

3. Withheld Lots

The lower AQL in this final rule is also likely to result in an increase in the number of lots of medical gloves that are not released for shipment to the U.S. medical market. For example, manufacturers may attempt to maintain a target compliance level in order to avoid FDA's Level 3 detention under ''Surveillance and Detentions Without Physical Examination of Surgeon's and or Patient Examination Gloves.'' FDA's WEAC laboratory sampled 942 lots and discovered that 28 failed using the current AQL while 79 lots failed using the lower AQL in this final rule. To maintain the original 0.0297 (28/942) lot failure rate, the 53 lots with the highest defect rate would have to be held back by the affected manufacturers (.056)[1].

Therefore, FDA anticipates that under the lower AQL in the final rule, approximately 6,900 lots will be held back by manufactures. In order to meet the expected demand in 10 years, FDA expects that 9,000 lots will be held back. FDA believes that glove lots that fail to meet the lower AQL in this final rule for medical quality standards will most likely be sold as nonmedical gloves. FDA believes that, although manufacturers and distributors may experience some loss of revenue from this shift (because of the price premium commanded by medical gloves), the loss will be inconsequential.

4. Costs of FDA Inspections

FDA does not envision increased inspection costs due to the final rule. The rate of sampled glove lots is not expected to differ and FDA resources are not expected to increase over the evaluation period.

5. Total Costs

In sum, FDA estimates that the final rule will have an average annualized cost of about $6.6 million using either a 3 percent or 7 percent annual discount rate. Table 2 presents the costs for each year of the evaluation period.

TABLE 2.—COSTS PER YEAR OF THE FINAL RULE (IN MILLIONS)

Year	Costs for Quality Control	Costs for Sampling	Total Costs
Current	$5.4	$0.4	$5.8
1	$5.6	$0.4	$6.0
2	$5.7	$0.4	$6.1
3	$5.9	$0.4	$6.3
4	$6.0	$0.4	$6.4
5	$6.2	$0.4	$6.6

[1]The current lot failure rate (28/942 = 0.0297) is reached by removing 53 defective lots from the sample. If only the 51 additional failing lots are removed, the overall failure rate is 0.0314 (28/891). The expected future failure rate is 0.0292 (26/889). FDA expects the withheld lots to include those with the highest defect rates.

TABLE 2.—COSTS PER YEAR OF THE FINAL RULE (IN MILLIONS)—Continued

Year	Costs for Quality Control	Costs for Sampling	Total Costs
6	$6.3	$0.4	$6.7
7	$6.5	$0.4	$6.9
8	$6.7	$0.4	$7.1
9	$6.8	$0.5	$7.3
10	$7.0	$0.5	$7.5
Present Values	3%–$53.2 7%–$43.4	3%–$3.6 7%–$2.9	3%–$56.8 7%–$46.3

F. Benefits of the Rule

The final rule will result in public health gains by reducing the frequency of blood-borne pathogen transmissions due to defects in the barrier protection provided by medical gloves. Based on an implied societal willingness to pay (WTP), FDA expects that an annualized monetary benefit of $14.8 million (using a 3 percent discount rate) or $15.1 million (using a 7 percent discount rate) will be realized due to fewer pathogen transmissions and unnecessary blood screens. Fewer glove defects will reduce the cost and anxiety associated with unnecessary blood screens (i.e., those that would yield negative results for health care personnel). Benefits have been analyzed and discounted using the methodology suggested by OMB's Circular A–4 (September 2003).

1. Reductions in the Number of Marketed Defective Gloves

As noted in the previous paragraphs, FDA has determined that approximately 940 million defective gloves are marketed each year in the United States, or 2.4 percent of all medical gloves. In the absence of this rule, FDA expects that the number of defective medical gloves marketed in the United States would increase to 1.21 billion per year within 10 years. The final rule will substantially reduce this figure.

WEAC's analysis of 98,067 medical gloves from 942 sampled lots collected in 2000 and 2001 resulted in approximately 3 percent lot failures with an AQL of 4.0 (28 lots would fail). This lot failure rate was associated with 2,356 defective gloves, or 2.4 percent of the total number of sampled gloves. Under the lower AQL of 2.5 in the rule, the WEAC analysis concluded that 51 additional lots would fail (a total of 79 failed lots), increasing the lot failure rate from 2.91 percent to 8.39 percent.

As previously mentioned, FDA provides a Level 3 detention status in its guidance, ''Surveillance and Detentions Without Physical Examination of Surgeon's and or Patient Examination Gloves.'' Manufacturers on Level 3 detention are not allowed to import medical gloves because they have repeatedly failed analysis. To avoid the denial of entry, manufacturers may be expected to hold a sufficient number of defective lots from shipment in order to maintain the same target lot failure rate (approximately 3 percent) with a new AQL. If so, removing the 53 most defective lots in the testing sample would result in 26 lot failures from 880 total lots, thereby maintaining the original 2.92 percent lot failure rate. This scenario leaves 85,172 total gloves in the sample, of which 1,512 were defective, resulting in a glove defect rate of 1.78 percent. The final rule, therefore, could reduce the proportion of marketed defective medical gloves from 2.4 percent of all marketed gloves to 1.78 percent of all marketed gloves.

The implications of this expected reduction in defective gloves are significant. The current AQL is associated with 940 million glove defects during the present year (based on 2004) and within 10 years would result in 1.21 billion marketed defective medical gloves. When the lower AQL is in place, the current number of defective gloves will approximate 700 million and within 10 years will result in 900 million defective marketed gloves. The number of defective gloves, therefore, should be reduced by more than 25 percent due to the new AQL.

2. Reductions in Blood-Borne Pathogens

FDA has estimated that there are potentially 4.8 annual transmissions of blood-borne pathogens associated with medical glove defects (section IV.C of this document). These transmissions include 2.4 cases of HIV and 2.4 cases of chronic HBV. Because there are currently no documented cases of cutaneous transmission of HCV that would be affected by improving glove quality levels, this analysis does not consider potential HCV transmission.

a. *Reductions in HIV transmission.* While the direct relationship between defective medical gloves and the transmission of HIV is unknown, FDA believes it is reasonable to apply the proportional reduction in the number of defective gloves due to the final rule (about 25 percent) to the annual transmission rate of the HIV pathogen to health care personnel. In the absence of this rule, the current expectation of 2.4 annual cases of HIV transmission to health care personnel would likely increase to 3.1 annual cases within 10 years due to the expected growth of employment in the health services industry. However, with the new AQL in place, FDA forecasts the expected annual transmission of HIV to health care personnel to equal 1.8 cases in current conditions and 2.3 cases by the 10th evaluation year (based on the expected proportionate decrease in marketed defective gloves). Over the entire 10-year evaluation period, these assumptions suggest that the rule should prevent approximately seven cases of HIV transmission to health care personnel.

b. *Reductions in HBV transmissions.* Hepatitis B transmissions to health care personnel are more common than cutaneous HIV transmissions. However, little specific data are available to identify affected patient populations and routes of transmission. FDA has estimated that as many as 2.4 cutaneous transmissions of chronic HBV may be due to defective medical gloves each year. In the absence of this rule, this number would be expected to increase to 3.1 annual transmissions within 10 years, based on the expected employment growth in the health services industry.

Implementation of the final rule should decrease these transmissions by about 25 percent. FDA expects 1.8 HBV transmissions under current conditions,

a reduction of 0.6 transmissions from baseline conditions. By the 10th evaluation year, FDA expects that there will be 2.3 chronic HBV transmissions with the lower AQL, or a total of 0.8 fewer cases. Overall, about seven transmissions of chronic HBV will be avoided due to the final rule over a 10-year evaluation period.

3. Reductions in the Number of Blood Screening Tests

As the number of defective gloves marketed in the United States decreases due to this rule, corresponding reductions would be expected in the number of unnecessary blood screens. FDA contacted several research hospitals to ascertain how frequently health care personnel identify glove failure as a reason for initiating blood screens. Respondents stated that about 5 percent of all glove failures are noticed by the user and about 1 percent of these identified failures are reported to the facility for additional screening (Ref. 9 and 10). Respondents noted that the glove failure could occur prior to patient contact. Therefore, the additional screening may apply to the affected health care personnel or the patient. The great majority of these screens result in negative findings.

As shown in the previous paragraphs, when the final rule is in effect, FDA expects the number of defective gloves marketed to decrease from 940 million to 700 million, a reduction of 240 million defective gloves. By the 10th year, the number of defective gloves is expected to decrease from 1.21 billion to 900 million, a reduction of 310 million defective gloves. At the rates of potential identification (5 percent) and reports of contact with pathogens (1 percent) obtained from the research hospital sector, the final rule should result in 120,000 fewer unnecessary blood screens under current conditions (240 million fewer defects x 0.05 x 0.01). By the 10th year, 155,000 fewer annual blood screens are expected. Over the entire evaluation period, the rule could result in over 1.4 million fewer unnecessary blood screens.

4. Cost-Effectiveness of the Final Rule

We analyzed the cost-effectiveness of the final rule using both the cost per transmission of blood-borne pathogen avoided and the cost per unnecessary blood screen avoided. The annual numbers of future avoided transmissions and tests were compared to the present values of the costs for the evaluation period and shown in Table 3. Table 3 shows the expected annual reductions in blood-borne pathogens and unnecessary blood screens due to the final rule.

TABLE 3.—EXPECTED ANNUAL REDUCTIONS IN BLOOD-BORNE PATHOGEN TRANSMISSIONS AND UNNECESSARY BLOOD SCREENS

Year	Reduction in Blood-Borne Pathogen Transmission	Reduction in Unnecessary Blood Screens
Current	1.2	120,000
1	1.2	120,000
2	1.2	125,000
3	1.4	135,000
4	1.4	135,000
5	1.4	140,000
6	1.4	145,000
7	1.6	150,000
8	1.4	145,000
9	1.6	155,000
10	1.6	155,000

Although these reductions should continue beyond the evaluation period, we have analyzed only through the 10th year. Each year's expected number of reduced blood-borne pathogen transmissions and unnecessary blood screens are discounted (using both a 3 percent annual discount rate and a 7 percent annual discount rate) to arrive at an equivalent number of reductions if valued during the first evaluation year. The present values of the regulatory costs (shown in Table 4) are divided by the present values of the expected reductions to arrive at the cost per avoided event. This is shown in Table 4.

TABLE 4.—REGULATORY COST-EFFECTIVENESS PER INCIDENCE OF BLOOD-BORNE PATHOGEN TRANSMISSION AVOIDED AND UNNECESSARY BLOOD SCREEN AVOIDED

Annual Discount Rate	Present Value of Costs (in millions)	Present Value of Blood-Borne Pathogens Avoided	Cost per Blood-Borne Pathogen Avoided (in millions)	Present Value of Blood Screens Avoided	Cost per Blood Screen Avoided
3 percent	$56.8	12.2	$4.7	1,191,000	$48
7 percent	$46.3	9.8	$4.7	971,000	$48

The cost-effectiveness of the final rule is $4.7 million per transmission of blood-borne pathogen avoided, or $48 per unnecessary blood screen avoided for both discount rates. We note that both reductions should occur and the allocation of costs to each outcome would reduce the costs per avoided event for both.

5. Value of Avoiding Blood-borne Pathogens

a. *Quality adjusted life-years*. The economic literature includes many attempts to quantify societal values of health. A widely cited methodology assesses wage differentials necessary to attract labor to riskier occupations. This research indicates that society appears to be WTP approximately $5 million to avoid the probability of a statistical death (Refs. 11, 12, and 13). That is, social values appear to show that people are WTP a significant amount to reduce even a small risk of death; or similarly, to demand significant payments to accept marginally higher risks.

Because this estimate is predominantly based on blue-collar occupations that mainly attract males

between the ages of 30 and 40, FDA adjusted the life-expectancy of a 35-year-old male to account for future bed and non-bed disability (Refs. 14, 15, and 16), and amortized the $5 million (at both 3 percent and 7 percent discount rates) over the resulting quality-adjusted life span. The results were estimates of $213,000 per quality adjusted life-year (QALY) using a 3 percent discount rate and $373,000 per QALY using a 7 percent discount rate, which implies that society is WTP between $213,000 and $373,000 for the statistical probability of a year of perfect health, depending on the discount rate.

b. *Value of morbidity losses*. In theory, loss of health reduces the willingness to pay for additional longevity. Many studies have attempted to estimate the relative loss of health for many different conditions of morbidity. One method utilizes the Kaplan-Bush Index of Well-Being. This index assigns relative weights to functional states, and then adjusts the resulting weighted value by the problem/symptom complex that contributed to loss of function (Refs. 16 and 17). Functional state is measured in three areas: Mobility, social activity, and physical activity. For example, with most treatment, chronic HBV is unlikely to have a major impact on any of these functions; a patient could drive a car, walk without a physical problem, and conduct work, school, housework and other activities. However, because a patient with HBV has an ongoing problem/symptom complex the relative weight of this functional state is 0.7433[2].

This methodology then adjusts the weighted value of the functional state by the most severe problem/symptom complex contributing to that state. In the case of chronic HBV, the most common symptom is general tiredness, weakness, or weight loss. This complex has a derived relative weight of +0.0027, which when added to the weighted functional state value results in a relative weight of 0.7460. The loss of relative health due to HBV, therefore, is expected to equal 1.0000 minus 0.7460, or 0.2540 of perfect health. When this relative health loss is applied to the derived value of a QALY, it implies that society would be WTP between $54,000 (3 percent) and $93,000 (7 percent) per year to avoid a case of HBV (QALY value x 0.2540). This value includes the potential costs of treatment and additional prevention, as well as any perceived pain and suffering.

FDA compared this methodology to a variety of published estimates of preference ratings of morbidity prepared by the Harvard Center for Risk Analysis (HCRA) (Ref. 17a). The published ratings of 14 studies of chronic HBV ranged from 0.75 to 1.00 (no impact). While the estimate used in this analysis (0.746) is in the low end of collected published studies, FDA notes that most of the expressed preferences that were derived from time trade-off and standard gamble methodologies, as compared to author judgment, were closer to the FDA estimate. A health care worker who may contract HBV may typically have a life expectancy of approximately 40 years (as of 2000, a 40-year-old female had a future life expectancy of 41.1 years (Ref. 14)). The present value (PV) of $54,000 (3 percent) and $93,000 (7 percent) for 40 years implies that society is WTP $1.25 million (3 percent) or $1.24 million (7 percent) to avoid the statistical likelihood of a case of chronic HBV in health care personnel.

Deriving society's implied WTP to avoid HIV is more complicated. The CDC has published data indicating that approximately 80 percent of all HIV infections progress to AIDS within 5 years. Of the cases of AIDS, over half (approximately 60 percent) result in mortality within an additional 5 years. Thus, for a 10-year period, FDA tracked 3 potential outcomes: Patients who contract HIV but do not progress to AIDS (20 percent), patients who contract HIV and progress to AIDS in 5 years and survive (32 percent), and patients who contract HIV, progress to AIDS within 5 years and then die within an additional 5 years (48 percent).

HIV infection is not expected to affect either mobility or social activity. However, such an infection is likely to somewhat inhibit physical activity. HIV patients are expected to be able to walk, but with some physical limitations. This functional state has a relative weight of 0.6769. The main problem/symptom complex of HIV is general tiredness (as for HBV), so the selected functional weight is adjusted by +0.0027 to result in relative well-being of 0.6796. As a result, the relative societal willingness to pay to avoid the statistical probability of a case of HIV in health care personnel is approximately $68,000 (3 percent) or $120,000 (7 percent) per year (QALY value x [1.0000 minus 0.6796]). According to the collected preference scores (ref. 17a) in the HCRA's Catalog of Preference Scores, the average estimated published preference rating for HIV infection was 0.7 (range 0.3 to 1.00).

If HIV progresses to AIDS, a patient's functional state is likely to be more restricted. An AIDS patient requires some assistance with transportation, is limited in physical activity, and is limited in work, school, or household activity. The relative weight for this functional state is 0.5402. The main problem/symptom of AIDS remains general tiredness and loss of weight (as with HIV and HBV), so the adjusted health state is 0.5429. This results in a derived societal willingness to pay to avoid the statistical probability of a case of AIDS of about $97,000 (3 percent) or $170,000 (7 percent) per year (QALY value x (1.0000 minus 0.5429)). The HCRA's Catalog of Preference Scores (ref. 17a) reports average preference ratings of 0.375 for cases of AIDS with ranges from 0.0 to 0.5.

As discussed earlier, the derived societal willingness to pay to avoid a statistical mortality has been estimated to equal approximately $5 million.

Using these estimates, the WTP to avoid the statistical probability of an HIV transmission in health care personnel is calculated as the sum of:

- 20 percent of the PV (at 3 percent and 7 percent discount rates) of avoiding 40 years of HIV infection.
- 32 percent of the sum of the PV of avoiding 5 years of a HIV infection plus the PV of avoiding 35 years of AIDS infection occurring 5 years in the future.
- 48 percent of the sum of the PV of avoiding 5 years of HIV infection plus the PV of avoiding 5 years of AIDS infection occurring 5 years in the future plus the discounted WTP of avoiding a statistical mortality occurring 10 years in the future.

The PV of avoiding 40 years of health loss valued at $68,000 per year (3 percent) is approximately $1.6 million and if valued at $120,000 per year (7 percent) is also approximately $1.6 million. Twenty percent of this figure equals $320,000.

The PV of avoiding 5 years of health loss to due HIV infection is equal to $311,000 (3 percent) or $492,000 (7 percent). The PV of avoiding the health loss expected from 35 years of AIDS infection (valued at $97,000 (3 percent) and $170,000 (7 percent) per year) is equivalent to $2.1 million (3 percent) and $2.2 million (7 percent). The present values of these amounts occurring 5 years in the future are $1.8 million (3 percent) and $1.6 million (7 percent). When added to the PV of avoiding the health loss associated with 5 years of HIV infection ($311,000 (3 percent) and $492,000 (7 percent)), the total estimated PV of the societal willingness to pay to avoid a statistical case of this outcome is about $2.1

[2]The implication is that an ideal health state is valued as 1.0000 and mortality at 0.0000. Each functional state between these extremes is a proportionate value of ''perfect'' health.

million (for both 3 percent and 7 percent discount rates). Thirty-two percent of this figure equals $660,000.

The PV of avoiding the health loss associated with 5 years of AIDS infection ($445,000 (3 percent) and $700,000 (7 percent)) occurring 5 years in the future is equivalent to $384,000 (3 percent) and $497,000 (7 percent). The PV of the societal value of avoiding a statistical mortality ($5 million) 10 years in the future is $3.72 million (at 3 percent) and $2.54 million (at 7 percent). The total societal WTP to avoid a case of HIV with mortality as an outcome, therefore, is $4.4 million using a 3 percent discount rate ($311,000 plus $384,000 plus $3.72 million) and $3.5 million using a 7 percent discount rate ($493,000 plus $497,000 plus $2.54 million). Forty-eight percent of these figures equals approximately $2.1 million (3 percent) and $1.7 million (7 percent).

Summing the weighted amounts of the three expected outcomes for a case of HIV infection equals an estimated societal willingness to pay of $3.08 million using a 3 percent discount rate ($320,000 plus $660,000 plus $2.1 million) and $2.68 million using a 7 percent discount rate ($320,000 plus $660,000 plus $1,700,000).

In sum, the estimated societal values of avoiding morbidity and mortality due to transmission of blood-borne pathogens are estimated to be equivalent to $1.25 million per transmission of chronic HBV and $3.08 million per transmission of HIV using a 3 percent discount rate and $1.24 million per transmission of HBV and $2.68 million per transmission of HIV using a 7 percent discount rate. FDA notes that other cost-effectiveness research (Ref. 18) has determined cost-effectiveness estimates (excluding pain and suffering) of $2.1 million per avoided case of HIV.

FDA believes the methodology used to estimate the value of avoided HBV and HIV infection is reasonable and supportable. However, comparative methodologies that demonstrate both higher and lower values on avoidance have been reported. FDA acknowledged these differences in the proposed rule and solicited comment on other appropriate measures for estimating the societal value of avoiding blood-borne pathogens. FDA received no responses.

c. *Benefit of morbidity avoidance*. The rule is expected to reduce both HBV and HIV transmissions by reducing the prevalence of defective medical gloves used as barrier protection. During the first evaluation year, the rule is expected to result in 0.6 fewer chronic HBV transmissions to health care personnel. Applying the assumed societal WTPs of $1.25 million (3 percent) and $1.24 million (7 percent) to avoid the probability of an HBV infection, the expected benefit of avoiding these transmissions is $0.8 million (3 percent) and $0.7 million (7 percent). By the 10th evaluation year, 0.8 annual transmissions are expected to be avoided at a value of $1.0 for either discount rate. The PV of avoiding approximately 7 chronic HBV transmissions over a 10-year period equals $7.6 million (at 3 percent discount rate) and $6.1 million (at 7 percent discount rate). This is equal to an average annualized value of $0.9 million for the entire 10-year evaluation period at either discount rate.

Also, in the first evaluation year, FDA expects that the final rule will result in the probability of 0.6 fewer transmissions of HIV caused by defective gloves. Assuming that society is WTP $3.08 million (at 3 percent discount rate) and $2.68 million (at 7 percent discount rate) to avoid the probability of a single HIV transmission, the benefit of avoiding these transmissions equals $1.8 million (3 percent) and $1.6 million (7 percent). By the 10th evaluation year, FDA expects the final rule to result in 0.8 fewer HIV transmissions, which are valued at $2.5 million (3 percent) and $2.1 million (7 percent). The societal PV of avoiding seven transmissions of HIV over the 10-year evaluation period is $18.8 million (at 3 percent discount rate) and $13.1 million (at 7 percent discount rate). These values are equivalent to average annualized benefits of $2.2 million (at 3 percent discount rate) and $1.9 million (at 7 percent discount rate).

In sum, FDA estimates that the reduction in blood-borne pathogen transmissions due to this final rule should produce health benefits valued at $3.1 million (at 3 percent discount rate) and $2.8 million (at 7 percent discount rate) per year. Most of this benefit (over 67 percent) is attributable to reducing the incidence of HIV.

6. Value of Avoiding Unnecessary Blood Screens

The expected decline in the number of defective medical gloves should lead to fewer unnecessary blood screens and thereby provide two potential benefits. First, the direct cost of conducting screens to determine whether the pathogen was transmitted to health care personnel should decrease. Second, the psychological anxiety and stress that accompanies the possibility that a pathogen was transmitted to an individual should also decrease.

a. *Cost of conducting blood screens*. FDA has collected data from the American Red Cross (Ref. 5) on the costs of conducting blood screening tests in order to ensure the safety of the blood supply. These estimates include the costs of collection (including personnel, needles, bags, and other supplies) at $47.66 per sample; sample testing at $25.16 per sample; and overhead at $3.26 per sample. The estimated direct testing cost per blood sample is the sum of these amounts, or $76 per test.

b. *Anxiety and stress associated with potential transmission of pathogens*. The psychological literature has noted that levels of anxiety and stress impact participation in public health screening programs and thereby affect physiological health (Refs. 19, 20, and 21). Also, patients with high levels of uncertainty about whether they have contracted serious, threatening diseases experience heightened levels of stress and anxiety until they learn the results of any testing screens are negative (Ref. 20). According to one measurement scale of well-being, reduced mental lucidity, depression, crying, lack of concentration, or other signs of adverse psychological sequelae may detract as much as 8 percent from overall feelings of well-being (Ref. 16) and have outcomes similar to physiological morbidity. Scaling of the relative stress caused by events shows that concerns about personal health, by themselves, are likely, on average, to contribute approximately one-sixth of the total weighting required to trigger a major stressful episode (Refs. 20, 21, and 22). Thus, FDA approximates that increased stress and anxiety concerning possible exposure to pathogens may reduce overall sense of well-being and result in health loss of approximately 1.3 percent (0.013).

As described earlier, FDA has calculated an assumed WTP of $213,000 (at 3 percent) and $373,000 (at 7 percent) for a statistical QALY. These figures imply that the probability of each day of quality adjusted life has a social value of about $585 (at 3 percent discount rate; $213,000 divided by 365) and $1,020 (at 7 percent discount rate; $373,000 divided by 365). If blood test results are usually obtained within 24 hours, the resultant loss of societal well-being for each test subject is valued at approximately $8 (at 3 percent discount rate; $585 x 0.013) and $13 (at 7 percent discount rate, $1,020 x 0.013).

c. *Benefit of test avoidance*. By combining avoided direct costs of tests and the value of avoided anxiety and stress, FDA estimates that the societal benefit of avoiding an unnecessary blood test is $84 per sample (at 3 percent discount rate) and $89 per sample (at 7 percent discount rate).

During the first evaluation year, FDA expects that there will be 120,000 fewer unnecessary blood screens because of the expected reduction in defective medical gloves due to the final rule. The implied societal WTP to avoid these unnecessary screens is $10.1 million (3 percent) and $10.7 million (7 percent). During the 10th evaluation year, approximately 155,000 fewer unnecessary blood screens are expected with a resultant benefit of $13.0 million (3 percent) and $14.0 million (7 percent). The PV of each year's reduced cost of testing and anxiety totals $100.0 million (at 3 percent discount rate) and $86.4 million (at 7 percent discount rate). The average annualized equivalent amounts are $11.7 million (3 percent) and $12.3 million (7 percent). Between 85 percent and 90 percent of the average annualized amounts represent reductions in the direct testing costs rather than the reduced anxiety associated with possible infection by a contagious agent.

7. Total Benefits

FDA estimates that the final rule will reduce the availability of defective medical gloves by over 25 percent, resulting in over 2.8 billion fewer defective gloves over a 10-year period. During this time, FDA expects that the reduction in defective gloves will result in approximately 7 fewer cases of chronic HBV, 7 fewer cases of HIV, and 1.4 million fewer unnecessary blood screens. Based on an implied societal WTP, the average annualized benefits of the fewer pathogen transmissions and unnecessary blood screens should equal $14.8 million (at 3 percent annual discount rate) and $15.1 million (at 7 percent discount rate).

G. Conclusion

As noted in the introduction to the analysis of impacts section, FDA is certifying that the final rule will not have a significant impact on a substantial number of small entities. We provided the above information to explain the costs and benefits of the rule. There are currently over 400 manufacturers of medical gloves, a vast majority of which are foreign and not covered by the Regulatory Flexibility Act. There will be little to no impact on domestic entities. Moreover, FDA does not expect any increased manufacturer costs to be directly passed on to end users because the cost increases will affect only a minority of global manufacturers and, therefore, competition will likely force these manufacturers to absorb these costs.

The estimated annualized costs equal $6.6 million using either a 3 percent annual discount rate or a 7 percent annual discount rate. Benefits of avoiding transmissions of blood-borne pathogens and unnecessary blood screens have been estimated to equal $14.8 million (using a 3 percent discount rate) or $15.1 million (using a 7 percent discount rate). The final rule is estimated to result in average annualized net benefits of $8.2 million (using a 3 percent discount rate) or $8.5 million (using a 7 percent discount rate).

IV. Paperwork Reduction Act of 1995

This final rule contains no collections of information that are subject to review by OMB under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The information collection described in this rule regarding testing to establish the reconditioning of adulterated gloves is exempted from the requirements of the PRA under 5 CFR 1320.4(a)(2) and (c): The rule describes testing to be conducted on specific lots of adulterated gloves ''during the conduct of an administrative action, investigation, or audit involving the agency against specific individuals'' (1320.4(a)(2)) and ''after a case file or equivalent is opened with respect to a particular party'' (1320.4(c)).

V. References

The following references have been placed on display in the Division of Dockets Management and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.

1. U.S. Centers for Disease Prevention and Control, ''HIV/AIDS Fact Sheet,'' *www.cdc.gov*, 2002.

2. U.S. Centers for Disease Prevention and Control, ''Surveillance of Health Care Workers with HIV/AIDS,'' *www.cdc.gov*, 2001.

3. U.S. Centers for Disease Prevention and Control, ''Hepatitis Fact Sheet,'' *www.cdc.gov*, 2002.

4. U.S. Centers for Disease Prevention and Control, ''Updated U.S. Public Health Service Guidelines for the Management of Occupational Exposures to HBV, HCV, and HIV and Recommendations for Postexposure Prophylaxis,'' *Morbidity and Mortality Weekly Report*, July 17, 2002.

5. American Red Cross, Washington Post, June 12, 2001.

6. U.S. International Trade Commission, ''Import Statistics,'' *www.itc.gov*, 2001.

7. Eastern Research Group, ''Labeling and Related Testing Costs for Medical Glove Manufacturers,'' April 17, 2002.

8. U.S. Bureau of Labor Statistics, ''Industrial Outlooks,'' *www.bls.gov*, 2002.

9. Bonel, L., Johns Hopkins University, correspondence with John Farnham, July 12, 2002.

10. Budnick, L., Michigan State University, correspondence with John Farnham, July 19, 2002.

11. Viscusi, K., ''Fatal Tradeoffs: Public and Private Responsibilities for Risk,'' Oxford University Press, 1992.

12. Fisher, A., L. Chestnut, et al., ''The Value of Reducing Risks of Death: A Note on New Evidence,'' *Journal of Policy, Analysis, and Management*, 8(1):88–100, 1989.

13. Mudarri D., EPA, ''The Costs and Benefits of Smoking Restrictions: An Assessment of the Smoke-Free Environment Act of 1993,'' (HR 3434), 1994.

14. U.S. National Center for Health Statistics, ''Vital Statistics of the United States,'' 2002.

15. Chen M., J. Bush, et al., ''Social Indicators for Health Planning and Policy Analysis,'' *Policy Sciences*, 6:71–89, 1975.

16. Kaplan R., J. Bush, et al., ''Health Status: Types of Validity and the Index of Well-Being,'' *Health Services Research*, winter, 478–507, 1976.

17. Kaplan R., J. Bush, ''Health Related Quality of Life Measurement for Evaluation Research and Policy Analysis,'' *Health Psychology*, 1(1):61–80, 1982.

17a. Harvard Center for Risk Analysis, 2002, ''CUA Database: Catalog of Preference Scores,'' Harvard School of Public Health, *www.hcra.harvard.edu/pdf/preferencescores/pdf*, accessed October 26, 2002.

18. Marin M., J. Van Lieu, et al., ''Cost-Effectiveness of a Post-Exposure HIV Chemoprophylaxis Program for Blood Exposures in Health Care Workers,'' *Journal of Occupational and Environmental Medicine*, 41:9, 754–60, 1999.

19. Radloff L., ''The CES-D Scale: A Self-Report Depression Scale for Research in the General Population,'' *Applied Psychological Measurement*, 1(3):385–401, 1977.

20. Shrout, P., ''The Scaling of Stressful Life Events,'' (in) Stressful Life Events and Their Contents, B.S. Dohrenwend and B.P. Dohrenwend (eds), Rutgers University Press, 1984.

21. Holmes, T. and R. Rahe, ''The Social Readjustment Rating Scale,'' *Journal of Psychosomatic Research*, 11:213–218, 1967.

22. Davis M., E. Eshelman, et al., ''The Relaxation and Stress Reduction Workbook,'' MJF Books, 1995.

List of Subjects in 21 CFR Part 800

Administrative practice and procedure, Medical devices, Opthalmic goods and services, Packaging and containers, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 800 is amended as follows:

PART 800—GENERAL

■ 1. The authority citation for 21 CFR part 800 continues to read as follows:

Authority: 21 U.S.C. 321, 334, 351, 352, 355, 360e, 360i, 360k, 361, 362, 371.

■ 2. Section 800.20 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 800.20 Patient examination gloves and surgeons' gloves; sample plans and test method for leakage defects; adulteration.

* * * * *

(b)(1) *General test method*. For the purposes of this part, FDA's analysis of gloves for leaks and visual defects will be conducted by a visual examination and by a water leak test method, using 1,000 milliliters (ml) of water.

(i) *Units examined*. Each medical glove will be analyzed independently. When packaged as pairs, each glove is considered separately, and both gloves will be analyzed.

(ii) *Identification of defects*. For this test, defects include leaks detected when tested in accordance with paragraph (b)(3) of this section. A leak is defined as the appearance of water on the outside of the glove. This emergence of water from the glove constitutes a watertight barrier failure. Other defects include tears, embedded foreign objects, extrusions of glove material on the exterior or interior surface of the glove, gloves that are fused together so that individual glove separation is impossible, gloves that adhere to each other and tear when separated, or other visual defects that are likely to affect the barrier integrity.

(iii) *Factors for counting defects*. One defect in one glove is counted as one defect. A defect in both gloves in a pair of gloves is counted as two defects. If multiple defects, as defined in paragraph (b)(1)(ii) of this section, are found in one glove, they are counted as one defect. Visual defects and leaks that are observed in the top 40 millimeters (mm) of a glove will not be counted as a defect for the purposes of this part.

(2) *Leak test materials*. FDA considers the following to be the minimum materials required for this test :

(i) A 60 mm by 380 mm (clear) plastic cylinder with a hook on one end and a mark scored 40 mm from the other end (a cylinder of another size may be used if it accommodates both cuff diameter and any water above the glove capacity);

(ii) Elastic strapping with velcro or other fastening material;

(iii) Automatic water-dispensing apparatus or manual device capable of delivering 1,000 ml of water;

(iv) Stand with horizontal rod for hanging the hook end of the plastic tube. The horizontal support rod must be capable of holding the weight of the total number of gloves that will be suspended at any one time, e.g., five gloves suspended will weigh about 5 kilograms (kg);

(v) Timer capable of measuring two minute intervals.

(3) *Visual defects and leak test procedures*. Examine the sample and identify code/lot number, size, and brand as appropriate. Continue the visual examination using the following procedures:

(i) *Visual defects examination*. Inspect the gloves for visual defects by carefully removing the glove from the wrapper, box, or package. Visually examine each glove for defects. As noted in paragraph (b)(1)(iii) of this section, a visual defect observed in the top 40 mm of a glove will not be counted as a defect for the purpose of this part. Visually defective gloves do not require further testing, although they must be included in the total number of defective gloves counted for the sample.

(ii) *Leak test set-up*. (A) During this procedure, ensure that the exterior of the glove remains dry. Attach the glove to the plastic fill tube by bringing the cuff end to the 40 mm mark and fastening with elastic strapping to make a watertight seal.

(B) Add 1,000 ml of room temperature water (i.e., 20 (deg)C to 30 (deg)C) into the open end of the fill tube. The water should pass freely into the glove. (With some larger sizes of long-cuffed surgeons' gloves, the water level may reach only the base of the thumb. With some smaller gloves, the water level may extend several inches up the fill tube.)

(iii) *Leak test examination*. Immediately after adding the water, examine the glove for water leaks. Do not squeeze the glove; use only minimum manipulation to spread the fingers to check for leaks. Water drops may be blotted to confirm leaking.

(A) If the glove does not leak immediately, keep the glove/filling tube assembly upright and hang the assembly vertically from the horizontal rod, using the wire hook on the open end of the fill tube (do not support the filled glove while transferring).

(B) Make a second observation for leaks 2 minutes after the water is added to the glove. Use only minimum manipulation of the fingers to check for leaks.

(C) Record the number of defective gloves.

(c) *Sampling, inspection, acceptance, and adulteration*. In performing the test for leaks and other visual defects described in paragraph (b) of this section, FDA will collect and inspect samples of medical gloves, and determine when the gloves are acceptable as set out in paragraphs (c)(1) through (c)(3) of this section.

(1) *Sample plans*. FDA will collect samples from lots of medical gloves in accordance with agency sampling plans. These plans are based on sample sizes, levels of sample inspection, and acceptable quality levels (AQLs) found in the International Standard Organization's standard ISO 2859, ''Sampling Procedures For Inspection By Attributes.''

(2) *Sample sizes, inspection levels, and minimum AQLs*. FDA will use single normal sampling for lots of 1,200 gloves or less and multiple normal sampling for all larger lots. FDA will use general inspection level II in determining the sample size for any lot size. As shown in the tables following paragraph (c)(3) of this section, FDA considers a 1.5 AQL to be the minimum level of quality acceptable for surgeons' gloves and a 2.5 AQL to be the minimum level of quality acceptable for patient examination gloves.

(3) *Adulteration levels and accept/reject criteria*. FDA considers a lot of medical gloves to be adulterated when the number of defective gloves found in the tested sample meets or exceeds the applicable rejection number at the 1.5 AQL for surgeons' gloves or the 2.5 AQL for patient examination gloves. These acceptance and rejection numbers are identified in the tables following paragraph (c)(3) of this section as follows:

ACCEPT/REJECT CRITERIA AT 1.5 AQL FOR SURGEONS' GLOVES

Lot Size	Sample	Sample Size	Number Examined	Number Defective	
				Accept	Reject
8 to 90	Single sample		8	0	1
91 to 280	Single sample		32	1	2

ACCEPT/REJECT CRITERIA AT 1.5 AQL FOR SURGEONS' GLOVES—Continued

Lot Size	Sample	Sample Size	Number Examined	Number Defective	
				Accept	Reject
281 to 500	Single sample		50	2	3
501 to 1,200	Single sample		80	3	4
1,201 to 3,200	First	32	32	—	4
	Second	32	64	1	5
	Third	32	96	2	6
	Fourth	32	128	3	7
	Fifth	32	160	5	8
	Sixth	32	192	7	9
	Seventh	32	224	9	10
3,201 to 10,000	First	50	50	0	4
	Second	50	100	1	6
	Third	50	150	3	8
	Fourth	50	200	5	10
	Fifth	50	250	7	11
	Sixth	50	300	10	12
	Seventh	50	350	13	14
10,001 to 35,000	First	80	80	0	5
	Second	80	160	3	8
	Third	80	240	6	10
	Fourth	80	320	8	13
	Fifth	80	400	11	15
	Sixth	80	480	14	17
	Seventh	80	560	18	19
35,000	First	125	125	1	7
	Second	125	250	4	10
	Third	125	375	8	13
	Fourth	125	500	12	17
	Fifth	125	625	17	20
	Sixth	125	750	21	23
	Seventh	125	875	25	26

ACCEPT/REJECT CRITERIA AT 2.5 AQL FOR PATIENT EXAMINATION GLOVES

Lot Size	Sample	Sample Size	Number Examined	Number Defective	
				Accept	Reject
5 to 50	Single sample		5	0	1
51 to 150	Single sample		20	1	2
151 to 280	Single sample		32	2	3
281 to 500	Single sample		50	3	4
501 to 1,200	Single sample		80	5	6
1,201 to 3,200	First	32	32	0	4
	Second	32	64	1	6
	Third	32	96	3	8
	Fourth	32	128	5	10
	Fifth	32	160	7	11
	Sixth	32	192	10	12
	Seventh	32	224	13	14
3,201 to 10,000	First	50	50	0	5
	Second	50	100	3	8
	Third	50	150	6	10
	Fourth	50	200	8	13
	Fifth	50	250	11	15
	Sixth	50	300	14	17
	Seventh	50	350	18	19
10,001 to 35,000	First	80	80	1	7
	Second	80	160	4	10

ACCEPT/REJECT CRITERIA AT 2.5 AQL FOR PATIENT EXAMINATION GLOVES—Continued

Lot Size	Sample	Sample Size	Number Examined	Number Defective	
				Accept	Reject
	Third	80	240	8	13
	Fourth	80	320	12	17
	Fifth	80	400	17	20
	Sixth	80	480	21	23
	Seventh	80	560	25	26
35,000 and above	First	125	125	2	9
	Second	125	250	7	14
	Third	125	375	13	19
	Fourth	125	500	19	25
	Fifth	125	625	25	29
	Sixth	125	750	31	33
	Seventh	125	875	37	38

(d) *Compliance*. Lots of gloves that are sampled, tested, and rejected using procedures in paragraphs (b) and (c) of this section, are considered adulterated within the meaning of section 501(c) of the act.

(1) *Detention and seizure*. Lots of gloves that are adulterated under section 501(c) of the act are subject to administrative and judicial action, such as detention of imported products and seizure of domestic products.

(2) *Reconditioning*. FDA may authorize the owner of the product, or the owner's representative, to attempt to recondition, i.e., bring into compliance with the act, a lot or part of a lot of foreign gloves detained at importation, or a lot or part of a lot of seized domestic gloves.

(i) *Modified sampling, inspection, and acceptance*. If FDA authorizes reconditioning of a lot or portion of a lot of adulterated gloves, testing to confirm that the reconditioned gloves meet AQLs must be performed by an independent testing facility. The following tightened sampling plan must be followed, as described in ISO 2859 ''Sampling Procedures for Inspection by Attributes:''

(A) General inspection level II,

(B) Single sampling plans for tightened inspection,

(C) 1.5 AQL for surgeons' gloves, and

(D) 2.5 AQL for patient examination gloves.

(ii) *Adulteration levels and acceptance criteria for reconditioned gloves*. (A) FDA considers a lot or part of a lot of adulterated gloves, that is reconditioned in accordance with paragraph (d)(2)(i) of this section, to be acceptable when the number of defective gloves found in the tested sample does not exceed the acceptance number in the appropriate tables in paragraph (d)(2)(ii)(B) of this section for reconditioned surgeons' gloves or patient examination gloves.

(B) FDA considers a reconditioned lot of medical gloves to be adulterated within the meaning of section 501(c) of the act when the number of defective gloves found in the tested sample meets or exceeds the applicable rejection number in the tables following paragraph (d)(2)(ii)(B) of this section:

ACCEPT/REJECT CRITERIA AT 1.5 AQL FOR RECONDITIONED SURGEONS' GLOVES

Lot Size	Sample	Sample Size	Number Defective	
			Accept	Reject
13 to 90	Single sample	13	0	1
91 to 500	Single sample	50	1	2
501 to 1,200	Single sample	80	2	3
1,201 to 3,200	Single sample	125	3	4
3,201 to 10,000	Single sample	200	5	6
10,001 to 35,000	Single sample	315	8	9
35,000 and above	Single sample	500	12	13

ACCEPT/REJECT CRITERIA AT 2.5 AQL FOR RECONDITIONED PATIENT EXAMINATION GLOVES

Lot Size	Sample	Sample Size	Number Defective	
			Accept	Reject
8 to 50	Single sample	8	0	1
51 to 280	Single sample	32	1	2

ACCEPT/REJECT CRITERIA AT 2.5 AQL FOR RECONDITIONED PATIENT EXAMINATION GLOVES—Continued

Lot Size	Sample	Sample Size	Number Defective	
			Accept	Reject
281 to 500	Single sample	50	2	3
501 to 1,200	Single sample	80	3	4
1,201 to 3,200	Single sample	125	5	6
3,201 to 10,000	Single sample	200	8	9
10,001 to 35,000	Single sample	315	12	13
35,000 and above	Single sample	500	18	19

Dated: December 12, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9303]

RIN 1545–BF84

Corporate Reorganizations; Distributions Under Sections 368(a)(1)(D) and 354(b)(1)(B)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations under section 368 of the Internal Revenue Code of 1986 (Code). The temporary regulations provide guidance regarding the qualification of certain transactions as reorganizations described in section 368(a)(1)(D) where no stock and/or securities of the acquiring corporation is issued and distributed in the transaction. These regulations affect corporations engaging in such transactions and their shareholders. 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 on December 19, 2006.

Applicability Date: For dates of applicability, see § 1.368–2T(l)(4)(i).

FOR FURTHER INFORMATION CONTACT: Bruce A. Decker at (202) 622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The IRS and Treasury Department have received requests for immediate guidance regarding whether certain acquisitive transactions can qualify as reorganizations described in section 368(a)(1)(D) where no stock of the transferee corporation is issued and distributed in the transaction. Currently, the IRS and Treasury Department are undertaking a broad study of issues related to acquisitive section 368(a)(1)(D) reorganizations. In the interest of efficient tax administration, the IRS and Treasury Department are issuing these temporary regulations to provide the requested certainty for taxpayers regarding these acquisitive transactions pending the broader study of issues. Although these rules also are being proposed in the Proposed Rules section in this issue of the **Federal Register**, the IRS and Treasury Department contemplate that the proposed rules may change upon completion of this broader study and the comments received.

The Code provides general nonrecognition treatment for reorganizations specifically described in section 368(a). Section 368(a)(1)(D) describes as a reorganization a transfer by a corporation (transferor corporation) of all or a part of its assets to another corporation (transferee corporation) if, immediately after the transfer, the transferor corporation or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the transferee corporation; but only if stock or securities of the controlled corporation are distributed in pursuance of a plan of reorganization in a transaction that qualifies under section 354, 355, or 356.

Section 354(a)(1) provides that no gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization. Section 354(b)(1)(B) provides that section 354(a)(1) shall not apply to an exchange in pursuance of a plan of reorganization described in section 368(a)(1)(D) unless the transferee corporation acquires substantially all of the assets of the transferor corporation, and the stock, securities, and other properties received by such transferor corporation, as well as the other properties of such transferor corporation, are distributed in pursuance of the plan of reorganization.

Further, section 356 provides that if section 354 or 355 would apply to an exchange but for the fact that the property received in the exchange consists not only of property permitted by section 354 or 355 without the recognition of gain or loss but also of other property or money, then the gain, if any, to the recipient shall be recognized, but not in excess of the amount of money and fair market value of such other property. Accordingly, in the case of an acquisitive transaction, there can only be a distribution to which section 354 or 356 applies where the target shareholder(s) receive at least some property permitted to be received by section 354.

Notwithstanding the requirement in section 368(a)(1)(D) that ''stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356'', the IRS and the courts have not required the actual issuance and distribution of stock and/or securities of the transferee corporation in circumstances where the same person or persons own all the stock of the transferor corporation and the transferee corporation. In such circumstances, the IRS and the courts have viewed an issuance of stock to be

a ''meaningless gesture'' not mandated by sections 368(a)(1)(D) and 354(b).

In Revenue Ruling 70–240, 1970–1 CB 81 (see § 601.601(d)(2) of this chapter), B owned all of the stock of both corporation X and corporation Y. X sold its operating assets to Y for $34x dollars, which represented the fair market value of X's assets. X had $33x of other assets, consisting generally of cash, accounts receivables, and investments in stocks and bonds, so that the assets sold by X to Y constituted approximately 51% of X's total assets. Following the sale to Y, X paid its debts, which amounted to $38x, and then liquidated, distributing $29x to B, while Y continued to conduct the business formerly operated by X. The IRS concluded that ''although no actual shares of the stock of Y were distributed to B as a result of the transaction, B is treated as having received Y stock since he already owned all the stock of Y.'' Accordingly, the IRS held that the sale of the operating assets by X to Y, followed by the liquidation and distribution of X's assets to B, resulted in a reorganization under section 368(a)(1)(D) and a distribution under section 356(a), despite the absence of an actual issuance and distribution of Y stock.

When considering a similar transaction between two corporations owned in identical proportions by a husband and wife, the Tax Court concluded that there was in substance an exchange of stock which meets the requirements of section 354 and 356, and stated, ''[t]he issuance of further stock would have been a meaningless gesture, and we cannot conclude that the statute requires such a vain act.'' *James Armour, Inc.* v. *Commissioner*, 43 T.C. 295, 307 (1964). See also *Wilson* v. *Commissioner*, 46 T.C. 334 (1966). The IRS has also applied this meaningless gesture doctrine to circumstances where the transferor corporation and the transferee corporation are wholly owned by a single party directly or indirectly through subsidiaries, or as a result of family attribution pursuant to section 318(a)(1).

However, the application of this meaningless gesture doctrine has generally been limited to situations in which there is identical shareholder identity and proportionality of interest in the transferor corporation and the transferee corporation. For example, in *Warsaw Photographic Associates, Inc.* v. *Commissioner*, 84 T.C. 21 (1985), there was no issuance of stock by the transferee corporation to the transferor corporation, and the stock ownership in the two corporations was not identical. On the basis of these facts, the Tax Court concluded that the distribution of stock would not be a mere formality and refused to apply the meaningless gesture doctrine. Accordingly, the transaction failed to qualify as a section 368(a)(1)(D) reorganization because there was no distribution of stock of the transferee corporation under sections 368(a)(1)(D) and 354(b)(1)(B).

Explanation of Provisions

These temporary regulations provide guidance regarding the circumstances in which the distribution requirement under sections 368(a)(1)(D) and 354(b)(1)(B) is deemed satisfied despite the fact that no stock and/or securities are actually issued in a transaction otherwise described in section 368(a)(1)(D). In cases where the same person or persons own, directly or indirectly, all of the stock of the transferor and transferee corporations in identical proportions, these temporary regulations provide that the distribution requirement under sections 368(a)(1)(D) and 354(b)(1)(B) will be treated as satisfied even though no stock is actually issued in the transaction. For purposes of determining whether the same person or persons own all of the stock of the transferor and transferee corporations in identical proportions, these temporary regulations provide that an individual and all members of his family that have a relationship described in section 318(a)(1) will be treated as one individual.

The temporary regulations also provide that the distribution requirement under sections 368(a)(1)(D) and 354(b)(1)(B) will be treated as satisfied in the absence of any issuance of stock and/or securities where there is a *de minimis* variation in shareholder identity or proportionality of ownership in the transferor and transferee corporations. Further, stock described in section 1504(a)(4) is disregarded for purposes of determining whether the same person or persons own all of the stock of the transferor and transferee corporations in identical proportions.

Under these temporary regulations, in each case where it is determined that the same person or persons own all of the stock of the transferor and transferee corporations in identical proportions, a nominal share of stock of the transferee corporation will be deemed issued in addition to the actual consideration exchanged in the transaction. The nominal share of stock in the transferee corporation will then be deemed distributed by the transferor corporation to its shareholders and, in appropriate circumstances, further transferred to the extent necessary to reflect the actual ownership of the transferor and transferee corporations.

These temporary regulations are being issued in response to requests for immediate guidance regarding whether transactions otherwise described in section 368(a)(1)(D) qualify as reorganizations where no stock and/or securities of the transferee corporation are actually issued in the transaction. The IRS and Treasury Department currently are undertaking a broad study of issues related to acquisitive reorganizations, including issues addressed by these temporary regulations. The IRS and Treasury Department are issuing these temporary regulations in order to provide certainty for taxpayers while these issues are under study.

The IRS and Treasury Department believe that these temporary regulations are a reasonable interpretation of section 368(a)(1)(D) and section 354(b)(1)(B) given the history of those provisions and the manner in which they have previously been interpreted by the courts and the IRS. However, no inference should be drawn from these temporary regulations regarding the law prior to the effective date of these temporary regulations. In the Proposed Rules section in this issue of the **Federal Register**, the IRS and Treasury Department are requesting comments on several issues relating to acquisitive reorganizations described in section 368(a)(1)(D).

In addition, the IRS and Treasury Department note that these temporary regulations do not expressly implement Prop. Reg. § 1.368–1(f)(4) (FR 70, 11903–11912), which provides that there must be an exchange of net value except in the case of a transaction that would otherwise qualify as a reorganization described in section 368(a)(1)(D), provided that the fair market value of the property transferred to the acquiring corporation by the target corporation exceeds the amount of liabilities of the target corporation immediately before the exchange (including any liabilities cancelled, extinguished, or assumed in connection with the exchange), and the fair market value of the assets of the acquiring corporation equals or exceeds the amount of its liabilities immediately after the exchange. The solvency requirement remains the IRS's and Treasury Department's proposal but the IRS and Treasury Department continue to consider whether this solvency requirement should be applied to the transactions described in these 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. For the applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were 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 Bruce A. Decker of the Office of the Associate Chief Counsel (Corporate).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 * * *

Par. 2. Section 1.368–2 is amended by adding paragraph (l) to read as follows:

§ 1.368–2 Definition of terms.

* * * * *

(l) [Reserved]. For further guidance, see § 1.368–2T(l).

Par. 3. Section 1.368–2T is added to read as follows:

§ 1.368–2T Definition of terms (temporary).

(a) through (k) [Reserved]. For further guidance, see § 1.368–2(a) through (k).

(l) *Certain transactions treated as reorganizations described in section 368(a)(1)(D)*—(1) *General rule.* In order to qualify as a reorganization under section 368(a)(1)(D), a corporation (transferor corporation) must transfer all or part of its assets to another corporation (transferee corporation) and immediately after the transfer the transferor corporation, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, must be in control of the transferee corporation; but only if, in pursuance of the plan, stock or securities of the transferee are distributed in a transaction which qualifies under section 354, 355, or 356.

(2) *Distribution requirement*—(i) *In general.* For purposes of paragraph (l)(1) of this section, a transaction otherwise described in section 368(a)(1)(D) will be treated as satisfying the requirements of sections 368(a)(1)(D) and 354(b)(1)(B) notwithstanding that there is no actual issuance of stock and/or securities of the transferee corporation if the same person or persons own, directly or indirectly, all of the stock of the transferor and transferee corporations in identical proportions. In such cases, the transferee corporation will be deemed to issue a nominal share of stock to the transferor corporation in addition to the actual consideration exchanged for the transferor corporation's assets. The nominal share of stock in the transferee corporation will then be deemed distributed by the transferor corporation to its shareholders and, where appropriate, further transferred through chains of ownership to the extent necessary to reflect the actual ownership of the transferor and transferee corporations.

(ii) *Attribution.* For purposes of paragraph (l)(2)(i) of this section, ownership of stock will be determined by applying the principles of section 318(a)(2) without regard to the 50 percent limitation in section 318(a)(2)(C). In addition, an individual and all members of his family described in section 318(a)(1) shall be treated as one individual.

(iii) *De minimis variations in ownership and certain stock not taken into account.* For purposes of paragraph (l)(2)(i) of this section, the same person or persons will be treated as owning, directly or indirectly, all of the stock of the transferor and transferee corporations in identical proportions notwithstanding the fact that there is a *de minimis* variation in shareholder identity or proportionality of ownership. Additionally, for purposes of paragraph (l)(2)(i) of this section, stock described in section 1504(a)(4) is not taken into account.

(3) *Examples.* The following examples illustrate the principles of paragraph (l) of this section. For purposes of these examples, each of A, B, C, and D is an individual, T is the acquired corporation, S is the acquiring corporation, P is the parent corporation, and each of S1, S2, S3, and S4 is a direct or indirect subsidiary of P. Further, all of the requirements of section 368(a)(1)(D) other than the requirement that stock or securities be distributed in a transaction to which section 354 or 356 applies are satisfied. The examples are as follows:

Example 1. A owns all the stock of T and S. The T stock has a fair market value of $100x. T sells all of its assets to S in exchange for $100x of cash and immediately liquidates. Because there is complete shareholder identity and proportionality of ownership in T and S, under paragraph (l)(2)(i) of this section, the requirements of sections 368(a)(1)(D) and 354(b)(1)(B) are treated as satisfied notwithstanding the fact that no S stock is issued. Pursuant to paragraph (l)(2)(i) of this section, S will be deemed to issue a nominal share of S stock to T in addition to the $100x of cash actually exchanged for the T assets, and T will be deemed to distribute all such consideration to A. The transaction qualifies as a reorganization described in section 368(a)(1)(D).

Example 2. The facts are the same as in *Example 1* except that C, A's son, owns all of the stock of S. Under paragraph (l)(2)(ii) of this section, A and C are treated as one individual. Accordingly, there is complete shareholder identity and proportionality of ownership in T and S. Therefore, under paragraph (l)(2)(i) of this section, the requirements of sections 368(a)(1)(D) and 354(b)(1)(B) are treated as satisfied notwithstanding the fact that no S stock is issued. Pursuant to paragraph (l)(2)(i) of this section, S will be deemed to issue a nominal share of S stock to T in addition to the $100x of cash actually exchanged for the T assets, and T will be deemed to distribute all such consideration to A. A will be deemed to transfer the nominal share of S stock to C. The transaction qualifies as a reorganization described in section 368(a)(1)(D).

Example 3. P owns all of the stock of S1 and S2. S1 owns all of the stock of S3, which owns all of the stock of T. S2 owns all of the stock of S4, which owns all of the stock of S. The T stock has a fair market value of $70x. T sells all of its assets to S in exchange for $70x of cash and immediately liquidates. Under paragraph (l)(2)(ii) of this section, there is indirect, complete shareholder identity and proportionality of ownership in T and S. Accordingly, the requirements of sections 368(a)(1)(D) and 354(b)(1)(B) are treated as satisfied notwithstanding the fact that no S stock is issued. Pursuant to paragraph (l)(2)(i) of this section, S will be deemed to issue a nominal share of S stock to T in addition to the $70x of cash actually exchanged for the T assets, and T will be deemed to distribute all such consideration to S3. S3 will be deemed to distribute the nominal share of S stock to S1, which, in turn, will be deemed to distribute the nominal share of S stock to P. P will be deemed to transfer the nominal share of S stock to S2, which, in turn, will be deemed to transfer such share of S stock to S4. The transaction qualifies as a reorganization described in section 368(a)(1)(D).

Example 4. A, B, and C own 34%, 33%, and 33%, respectively, of the stock of T. The T stock has a fair market value of $100x. A, B, and C each own 33% of the stock of S. D owns the remaining 1% of the stock of S. T sells all of its assets to S in exchange for $100x of cash and immediately liquidates. For purposes of determining whether the distribution requirement of sections

368(a)(1)(D) and 354(b)(1)(B) is met, under paragraph (l)(2)(iii) of this section, D's ownership of a *de minimis* amount of stock of S is disregarded and the transaction is treated as if there is complete shareholder identity and proportionality of ownership in T and S. Because there is complete shareholder identity and proportionality of ownership in T and S, under paragraph (l)(2)(i) of this section, the requirements of sections 368(a)(1)(D) and 354(b)(1)(B) are treated as satisfied notwithstanding the fact that no S stock is issued. Pursuant to paragraph (l)(2)(i) of this section, S will be deemed to issue a nominal share of S stock to T in addition to the $100x of cash actually exchanged for the T assets, T will be deemed to distribute all such consideration to A, B, and C, and the nominal S stock will be deemed transferred among the S shareholders to the extent necessary to reflect their actual ownership of S. The transaction qualifies as a reorganization described in section 368(a)(1)(D).

Example 5. The facts are the same as in *Example 4* except that A, B, and C own 34%, 33%, and 33%, respectively, of the common stock of T and S. D owns preferred stock in S described in section 1504(a)(4). For purposes of determining whether the distribution requirement of sections 368(a)(1)(D) and 354(b)(1)(B) is met, under paragraph (l)(2)(iii) of this section, D's ownership of S stock described in section 1504(a)(4) is ignored and the transaction is treated as if there is complete shareholder identity and proportionality of ownership in T and S. Because there is complete shareholder identity and proportionality of ownership in T and S, under paragraph (l)(2)(i) of this section, the requirements of sections 368(a)(1)(D) and 354(b)(1)(B) are treated as satisfied notwithstanding the fact that no S stock is issued. Pursuant to paragraph (l)(2)(i) of this section, S will be deemed to issue a nominal share of S stock to T in addition to the $100x of cash actually exchanged for the T assets, and T will be deemed to distribute all such consideration to A, B, and C. The transaction qualifies as a reorganization described in section 368(a)(1)(D).

Example 6. A and B each own 50% of the stock of T. The T stock has a fair market value of $100x. B and C own 90% and 10%, respectively, of the stock of S. T sells all of its assets to S in exchange for $100x of cash and immediately liquidates. Because complete shareholder identity and proportionality of ownership in T and S does not exist, paragraph (l)(2)(i) of this section does not apply. The requirements of sections 368(a)(1)(D) and 354(b)(1)(B) are not satisfied, and the transaction does not qualify as a reorganization described in section 368(a)(1)(D).

(4) *Effective date*—(i) *In general.* This section applies to transactions occurring on or after March 19, 2007, except that they do not apply to any transaction occurring pursuant to a written agreement which is binding before December 19, 2006, and at all times thereafter. A taxpayer may apply the provisions of these temporary regulations to transactions occurring before March 19, 2007. However, the transferor corporation, the transferee corporation, any direct or indirect transferee of transferred basis property from either of the foregoing, and any shareholder of the transferor or transferee corporation may not apply the provisions of these temporary regulations unless all such taxpayers apply the provisions of the temporary regulations.

(ii) *Expiration.* This section expires on or before December 18, 2009.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 6, 2006.

Eric Solomon,

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

[FR Doc. E6–21565 Filed 12–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9297]

RIN 1545–BG02

Residence Rules Involving U.S. Possessions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Tuesday, November 14, 2006 (71 FR 66232) relating to rules for determining bona fide residency in the following U.S. territories: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands.

DATES: These corrections are effective November 14, 2006.

FOR FURTHER INFORMATION CONTACT: David Varley, (202) 435–5262 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9297) that are the subject of these corrections are under section 937 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9297) contain errors that may be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final regulations (TD 9297) that were the subject of FR Doc. E6–19135 are corrected as follows:

1. On page 66232, column 2, in the preamble, under the ''Title Headings'', the language [TD[9297]]'' is corrected to read ''[TD 9297].''

2. On page 66232, column 2, in the preamble, under the paragraph heading, ''Background'', first paragraph of the column, lines 1 through 5 from the bottom of the paragraph, the language ''section 937(a) dealing with determining residency in a territory, adopting with amendments the proposed regulations (specifically, § 1.937–1 and 1.881–5T(f)(4))'' is corrected to read ''section 937(a) concerning the determination of residency in a territory and adopting with amendments the proposed regulations (specifically, §§ 1.937–1 and 1.881–5(f)(4)).''

3. On page 66232, column 3, in the preamble, under the paragraph heading, ''Background'', second paragraph of the column, line 8 from the bottom of the paragraph, the language ''relevant territory for the purposes of the'' is corrected to read ''relevant territory for purposes of the''.

4. On page 66232, column 3, in the preamble, under the paragraph heading, ''Background'', third paragraph of the column, line 10 from the bottom of the paragraph, the language ''presence test of section 7701(b) on the'' is corrected to read ''presence test of section 7701(b) to determine bona fide residency in a territory on the''.

5. On page 66233, column 1, in the preamble, under the paragraph heading, ''Explanation of Provisions'', first paragraph of the column, lines 12 and 13, the language, ''for business pursuits, have concluded nonetheless that such a rule would be'' is corrected to read ''for business pursuits but have concluded that such a rule would be''.

6. On page 66233, column 1, in the preamble, under the paragraph heading, ''Explanation of Provisions'', first paragraph, line 4 from the bottom of the paragraph, the language ''the final regulations, provide sufficient'' is corrected to read ''these final regulations, provide sufficient''.

7. On page 66233, column 1, in the preamble, under the paragraph heading, ''Explanation of Provisions'', second paragraph, lines 15 through 19 from the bottom of the paragraph, the language ''States, even though the individual is not present in the United States, and will treat such days as days of presence

in the relevant territory. In addition, the regulations provide for relief in case'' is corrected to read ''States, even if the individual is physically present in the United States, and will treat such days as days of presence in the relevant territory. In addition, the regulations provide for similar relief in case''.

8. On page 66233, column 2, in the preamble, under the paragraph heading, ''Explanation of Provisions'', third paragraph of the column, lines 8 and 9, the language ''accommodate the realities of business cycles and life in the territories. The IRS'' is corrected to read ''accommodate the reality that business cycles and life in the territories may require more time away from the territories in some years than in others. The IRS''.

La Nita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Office of Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–21566 Filed 12–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustments—Tustumena Lake

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustment.

SUMMARY: This provides notice of the Federal Subsistence Board's action to provide winter subsistence harvest opportunities for lake trout, Dolly Varden, and rainbow trout in Tustumena Lake. The fishing opportunity in Tustumena Lake provides an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on March 29, 2006. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2006 regulatory year.

DATES: This Board action is effective November 17, 2006, through March 31, 2007.

FOR FURTHER INFORMATION CONTACT: Peter J. Probasco, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of title VIII of ANILCA on public lands. The Departments administer title VIII through regulations at title 50, part 100 and title 36, part 242 of the Code of Federal Regulations (CFR). Consistent with subparts A, B, and C of these regulations, as revised January 8, 1999 (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2006 fishing seasons, harvest limits, and methods and means were published on March 29, 2006 (71 FR 15569). Because this action relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

Current Management Actions

These actions are authorized and in accordance with 50 CFR 100.19(d–e) and 36 CFR 242.19(d–e).

Tustumena Lake

The Ninilchik Traditional Council requested a special winter subsistence fishery through the ice in Tustumena Lake. The Southcentral Alaska Regional Advisory Council recommended adopting this seasonal adjustment with minor modifications during their fall 2006 meeting. The Board met in public work session on November 16–17, 2006, during which it took up and approved this request with modifications. The resulting seasonal adjustment will expire March 31, 2007.

The season adjustment provides for the take of fish in Tustumena Lake using a single gillnet not to exceed 10 fathoms fished under the ice or jigging gear used through the ice, under authority of a Federal subsistence fishing permit. The total annual harvest quota for this fishery is 200 lake trout, 200 rainbow trout, and 500 Dolly Varden. Gillnets are not allowed within ¼ mile of any tributary or outlet stream of Tustumena Lake. All harvests must be reported to the Federal fisheries manager within 72 hours upon leaving the fishing location. Gill nets must be checked at least once in every 48-hour period. Incidentally caught fish may be retained and must be recorded on the permit. When a harvest quota for any of the three species is reached, the gillnet fishery will be closed.

This fishery, along with ongoing existing fisheries, is within

recommended sustainable harvest guidelines based upon currently available information.

Conformance With Statutory and Regulatory Authorities

Administrative Procedure Act

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for this adjustment is impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate measures could adversely impact subsistence opportunities for rural Alaskans and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of this action and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, subparts A, B, and C (57 FR 22940, published May 29, 1992), implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. An environmental assessment related to expansion of jurisdiction for fisheries was prepared in November 1998. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999 (64 FR 1276).

Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A section 810 analysis was completed as part of the FEIS process. The final section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The information collection requirements contained in this seasonal adjustment have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB control number 1018–0075, which expires October 31, 2009. Federal Agencies 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.

Other Requirements

This seasonal adjustment has been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing gear, and gasoline dealers. The number of small entities affected is unknown; however, the effects will be seasonally and geographically limited in nature and will likely not be significant. The Departments certify that the adjustment will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does 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.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustment has no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies under the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustment will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustment meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

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 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no significant direct effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this action is not expected to significantly affect energy supply, distribution, or use, it is not a significant energy action and no Statement of Energy Effects is required.

Drafting Information

Bill Knauer drafted this document under the guidance of Peter J. Probasco, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Chuck Ardizzone, Alaska State Office, Bureau of Land Management; Jerry Berg, Alaska Regional Office, U.S. Fish and Wildlife Service; Nancy Swanton, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: December 1, 2006.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Dated: December 1, 2006.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 06–9761 Filed 12–18–06; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

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

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

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

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

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

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

State	City/town/county	Source of flooding	Location	# Depth in feet above ground * Elevation in feet (NGVD) + Elevation in feet (NAVD) Modified
Town of Brockton, Montana Docket No.: FEMA–B–7464				
Montana	Town of Brockton	Missouri River	Approximately 12.7 miles downstream of County Road Bridge.	+1,930
			Approximately 13.0 miles downstream of County Road Bridge.	+1,931

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

ADDRESSES

Town of Brockton

Maps available for inspection at: City Office, 716 B Avenue, Brockton, Montana.

State	City/town/county	Source of flooding	Location	# Depth in feet above ground * Elevation in feet (NGVD) + Elevation in feet (NAVD) Modified
Town of Culbertson, Montana Docket No.: FEMA–B–7464				
Montana	Town of Culbertson	Missouri River	Approximately 7.76 miles downstream of confluence of Big Muddy Creek. Approximately 7.0 miles downstream of confluence of Big Muddy Creek.	+1,910 +1,910

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

ADDRESSES

Town of Culbertson
Maps available for inspection at: Town Hall, 210 Broadway, Culbertson, Montana.

McCone County and Unincorporated Areas, Montana Docket No.: FEMA–B–7464				
Montana	McCone County (Unincorporated Areas).	Missouri River	Approximately 20 miles downstream of State Route 13. Approximately 26.9 miles upstream of confluence of Little Porcupine Creek.	+1,956 +2,038

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

ADDRESSES
McCone County (Unincorporated Areas)
Maps available for inspection at: County Courthouse, 1004 C Avenue, Circle, Montana.

Town of Medicine Lake, Montana Docket No.: FEMA–B–7464				
Montana	Town of Medicine Lake	Big Muddy Creek	Approximately 1,000 feet south of West Lake Road. Approximately 2,500 feet north of West Lake Road.	+1,944 +1,948

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

ADDRESSES

Town of Medicine Lake
Maps are available for inspection at 103 E. Hamilton St., Sheridan, Montana 59749.

City of Nashua, Montana Docket No.: FEMA–B–7464				
Montana	City of Nashua	Porcupine Creek	Approximately 0.41 miles downstream of U.S. Highway 2. Approximately 0.78 miles upstream of U.S. Highway 2.	+2,058 +2,068

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

ADDRESSES

City of Nashua
Maps available for inspection at: Civic Center, 805 Front Street, Nashua, Montana.

City of Poplar, Montana Docket No.: FEMA–B–7464				
Montana	City of Poplar	Poplar River	Approximately 0.23 miles upstream of U.S. Highway 2. Approximately 0.27 miles upstream of U.S. Highway 2.	+1,966 +1,966

Depth in feet above ground.

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

* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

City of Poplar
Maps available for inspection at: City Hall, 406 2nd Avenue West, Poplar, Montana.

City of Wolf Point, Montana
Docket No.: FEMA–B–7464

Montana	City of Wolf Point	Missouri River	Static flooding along 6th Avenue S. from Helena Street south to Idaho Street.	+1,985

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

ADDRESSES

City of Wolf Point
Maps available for inspection at: City Office, 201 4th Avenue South, Wolf Point, Montana.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevated in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Boone County, Kentucky and Incorporated Areas **Docket No.: FEMA–B–7468**			
Ohio River	At confluence of Dry Creek	+495	Boone County (Unincorporated Areas).
	At confluence of Big Bone Creek	+478	

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

ADDRESSES
Boone County (Unincorporated Areas)
Maps are available for inspection at the Boone County Planning Commission, Boone County Administration Building, 3rd Floor, 2950 Washington Street, Burlington, KY 41005.

De Soto County, Mississippi and Incorporated Areas **Docket No.: FEMA–B–7459**			
Arkabutla Reservoir	Flood pool	+245	De Soto County (Unincorporated Areas).
Bean Patch Creek	At confluence with Camp Creek	+273	De Soto County (Unincorporated Areas), City of Southaven.
	At Pleasant Hill Road	+302	
	At College Road	+328	
	200 feet downstream of Getwell Road	+372	
Bean Patch Creek Tributary 1.	At confluence with Bean Patch Creek	+282	De Soto County (Unincorporated Areas).
	2444 feet upstream of Sandy Betts Road	+331	
Bean Patch Creek Tributary 2.	At confluence with Bean Patch Creek	+296	De Soto County (Unincorporated Areas).
	78 feet upstream of Itasca Drive	+347	
Bean Patch Creek Tributary 3.	At confluence with Bean Patch Creek	+303	De Soto County (Unincorporated Areas).
	1467 feet upstream of College Road	+337	
Byhalia Creek	At confluence with Pigeon Roost Creek	+275	De Soto County (Unincorporated Areas).
	2638 feet upstream of Myers Road	+298	
Camp Creek	At confluence with Coldwater River	+256	De Soto County (Unincorporated Areas) City of Olive Branch.
	At College Road	+299	
	At Goodman Road	+331	
	At Germantown Road	+346	
	At Montrose Drive	+361	
	1790 feet upstream of Alexander Road	+372	
Camp Creek Tributary 1	At confluence with Camp Creek	+273	De Soto County (Unincorporated Areas).
	180 feet upstream of Ross Road	+317	
Camp Creek Tributary 2	At confluence with Camp Creek	+292	De Soto County (Unincorporated Areas).
	170 feet upstream of Dunn Lane	+348	
Cane Creek Tributary 1	At confluence with Arkabutla Reservoir	+245	De Soto County (Unincorporated Areas).
	2100 feet upstream of Robertson Gin Road	+251	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevated in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Cane Creek Tributary 1.1.	At confluence with Cane Creek Tributary 1	+245	De Soto County (Unincorporated Areas).
	4300 feet upstream of confluence with Cane Creek Tributary 1.	+245	
Coldwater River	16200 feet downstream of Arkabutla Dam	+191	De Soto County (Unincorporated Areas).
	3318 feet downstream of Arkabutla Dam	+195	
	26735 feet downstream of Holly Springs Road	+245	
	2010 feet upstream of confluence with Coldwater River Tributary 8.	+301	
Coldwater River Tributary 5.	At confluence with Coldwater River	+279	De Soto County (Unincorporated Areas).
	2390 feet upstream of Bethel Road	+299	
Coldwater River Tributary 6.	At confluence with Coldwater River	+283	De Soto County (Unincorporated Areas).
	160 feet downstream of Red Banks Road	+308	
Coldwater River Tributary 7.	At confluence with Coldwater River	+298	De Soto County (Unincorporated Areas).
	13233 feet upstream of Center Hill Road	+365	
Coldwater River Tributary 7.1.	At confluence with Coldwater River Tributary 7	+298	De Soto County (Unincorporated Areas).
	2515 feet upstream of Center Hill Road	+341	
Coldwater River Tributary 8.	At confluence with Coldwater River	+300	De Soto County (Unincorporated Areas).
	2038 feet upstream of Center Hill Road	+365	
Coldwater River Tributary 8.1.	At confluence with Coldwater River Tributary 8	+315,	De Soto County (Unincorporated Areas).
	5004 feet upstream of confluence with Coldwater River Tributary 8.	+368	
Cow Pen Creek	At Goodman Road	+261	City of Horn Lake
	At Nail Road	+274	
Dry Creek	At confluence with Coldwater River	+271	De Soto County (Unincorporated Areas).
	8348 feet upstream of Byhalia Road	+303	
Horn Lake Creek Tributary 1.	790 feet upstream of Goodman Road	+264	City of Horn Lake.
	407 feet upstream of Nail Road	+292	
Hurricane Creek	1535 feet upstream of Odom Road	+265	De Soto County (Unincorporated Areas), City of Hernando.
	423 feet upstream of Bridgemore Drive	+346	
Hurricane Creek Tributary 2.	1022 feet downstream of Horn Lake Road	+245	De Soto County Unincorporated Areas), City of Hernando.
	12800 feet upstream of Horn Lake Road	+275	
Hurricane Creek Tributary 3.1.	1079 feet downstream of Nesbit Road	+262	De Soto County (Unincorporated Areas), City of Hernando, City of Horn Lake, City of Southaven.
	740 feet downstream of Highway 51	+300	
Hurricane Creek Tributary 3.1.1.	At confluence with Hurricane Creek Tributary 3.1.	+262	De Soto County (Unincorporated Areas).
	600 feet upstream of Starlanding Road	+297	
Hurricane Creek Tributary 3.1.2.	At confluence with Hurricane Creek Tributary 3.1.	+291	De Soto County (Unincorporated Areas), City of Southaven.
	255 feet downstream of Highway 51	+301	
Hurricane Creek Tributary 4.	At confluence with Hurricane Creek	+266	De Soto County (Unincorporated Areas), City of Hernando.
	850 feet downstream of Harrow Cove	+329	
Hurricane Creek Tributary 5.	At confluence with Hurricane Creek	+268	De Soto County (Unincorporated Areas), City of Hernando.
	4236 feet upstream of Pleasant Hill Road	+310	
Hurricane Creek Tributary 6.	At confluence with Hurricane Creek	+273	De Soto County (Unincorporated Areas), City of Hernando.
	90 feet downstream of Clubhouse Drive	+316	
Hurricane Creek Tributary 7.	At confluence with Hurricane Creek	+284	De Soto County (Unincorporated Areas), City of Southaven.
	423 feet upstream of Starlanding Road	+339	
Hurricane Creek Tributary 7.1.	At confluence with Hurricane Creek Tributary 7	+294	De Soto County (Unincorporated Areas), City of Southaven.
	760 feet upstream of Starlanding Road	+354	
Hurricane Creek Tributary 8.	At confluence with Hurricane Creek	+295	De Soto County (Unincorporated Areas).
	940 feet upstream of Getwell Road	+324	
Jackson Creek	4620 feet upstream of confluence with Lake Cormorant Bayou.	+200	De Soto County (Unincorporated Areas).
	712 feet upstream of confluence with Jackson Creek Tributary 1.	+201	
Jackson Creek Tributary 1.	At confluence with Jackson Creek	+201	De Soto County (Unincorporated Areas).
	4665 feet upstream of Wilson Mills Road	+208	
Johnson Creek	At confluence with Lake Cormorant Bayou	+208	De Soto County (Unincorporated Areas), City of Horn Lake, Village of Memphis.
	3645 feet upstream of Church Road	+249	
Johnson Creek Tributary 1.	At confluence with Johnson Creek	+208	De Soto County (Unincorporated Areas), Village of Memphis.
	1810 feet upstream of Cheatham Road	+208	
Johnson Creek Tributary 2.	At confluence with Johnson Creek	+210	De Soto County (Unincorporated Areas), Village of Memphis.
	300 feet upstream of Starlanding Road	+227	
Johnson Creek Tributary 3.	At confluence with Johnson Creek	+212	De Soto County (Unincorporated Areas), Village of Memphis.
	1490 feet downstream of Poplar Corner Road	+244	
Johnson Creek Tributary 4.	At confluence with Johnson Creek	+215	De Soto County (Unincorporated Areas), Village of Memphis.
	4171 feet upstream of Starlanding Road	+231	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevated in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Johnson Creek Tributary 5.	At confluence with Johnson Creek	+226	De Soto County (Unincorporated Areas).
	35 feet upstream of Fogg Road	+269	
Johnson Creek Tributary 6.	At confluence with Johnson Creek	+235	De Soto County (Unincorporated Areas).
	20 feet upstream of Fogg Road	+256	
Lake Cormorant Bayou	At Green River Road	+200	De Soto County (Unincorporated Areas).
	500 feet downstream of confluence with Johnson Creek.	+208	
Lateral A	At confluence with Horn Lake Creek	+243	De Soto County (Unincorporated Areas), City of Horn Lake, City of Southaven.
	2506 feet upstream of Goodman Road	+276	
Lateral A Tributary 1	At confluence with Lateral A	+246	City of Horn Lake.
	148 feet downstream of Horn Lake Road	+259	
Licks Creek	At confluence with Camp Creek	+306	De Soto County (Unincorporated Areas), City of Olive Branch.
	At U.S. Highway 78	+334	
	At Lancaster Drive	+358	
	7700 feet upstream of Hacks Cross Road	+388	
Mussacuna Creek	4630 feet downstream of Highway 51	+280	De Soto County (Unincorporated Areas), City of Hernando.
	1480 feet upstream of Highway 51	+307	
Nolehoe Creek	At confluence with Camp Creek	+308	City of Olive Branch, City of Southaven.
	At Goodman Road	+348	
Norfolk Bayou	At confluence with Johnson Creek	+208	De Soto County (Unincorporated Areas).
	175 feet downstream of Highway 161	+208	
Pigeon Roost Creek	At confluence with Coldwater River	+267	De Soto County (Unincorporated Areas).
	1550 feet downstream of Ingrams Mill Road	+277	
Red Banks Creek	4330 feet upstream of Red Banks Road	+299	De Soto County (Unincorporated Areas).
	13140 feet upstream of Red Banks Road	+312	
Short Creek	At confluence with Coldwater River	+267	De Soto County (Unincorporated Areas).
	9228 feet upstream of Byhalia Road	+331	
Short Creek Tributary 1	At confluence with Short Creek	+271	De Soto County (Unincorporated Areas).
	3636 feet upstream of Byhalia Road	+297	
Short Fork Creek	At confluence with Coldwater River	+255	De Soto County (Unincorporated Areas), City of Hernando.
	2953 feet upstream of Jaybird Road	+309	
Short Fork Creek Tributary 1.	At confluence with Short Fork Creek	+265	De Soto County (Unincorporated Areas).
	1731 feet upstream of Byhalia Road	+341	
Short Fork Creek Tributary 2.	At confluence with Short Fork Creek	+278	De Soto County (Unincorporated Areas).
	5387 feet upstream of Brights Road	+325	
Short Fork Creek Tributary 3.	At confluence with Short Fork Creek	+296	De Soto County (Unincorporated Areas).
	2594 feet upstream of confluence with Short Fork Creek.	+304	
Turkey Creek	At confluence with Camp Creek	+287	De Soto County (Unincorporated Areas).
	758 feet upstream of Woolsly Road	+351	
Whites Creek	3740 feet upstream of confluence with Lake Cormorant Bayou.	+199	De Soto County (Unincorporated Areas).
	7410 feet upstream of Wetonga Lane	+234	
Whites Creek Tributary 1.	At confluence with Whites Creek	+224	De Soto County (Unincorporated Areas).
	2117 feet upstream of confluence with Whites Creek.	+233	

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

ADDRESSES

Unincorporated Areas of De Soto County

Maps are available for inspection at 365 Losher Street, Suite 310, Hernando, MS 38632.

City of Hernando

Maps are available for inspection at 475 W. Commerce Street, Hernando, MS 38632.

City of Horn Lake

Maps are available for inspection at 3101 Goodman Road, Horn Lake, MS 38637.

City of Olive Branch

Maps are available for inspection at 9189 Pigeon Root, Olive Branch, MS 38654.

City of Southaven

Maps are available for inspection at 8710 Northwest Drive, Southaven, MS 38671.

Village of Memphis

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevated in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Maps are available for inspection at P.O. Box 35, Walls, MS 38630.			
Richland County, Montana and Incorporated Areas Docket No.: FEMA–B–7464			
Lone Tree Creek	Approximately 0.47 miles downstream of Country Road 351.	+1,908	Richland County (Unincorporated Areas), City of Sidney.
	At 22nd Avenue Northwest	+1,969	
Missouri River	Approximately 8.14 miles downstream of confluence with Big Muddy Creek.	+1,910	Richland County (Unincorporated Areas).
	Approximately 11 miles upstream of confluence with Wolf Creek.	+1,995	

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

ADDRESSES

Richland County (Unincorporated Areas)

Maps available for inspection at: The County Courthouse, 201 West Main, Sidney, Montana.

City of Sidney

Maps are available for inspection at: City Hall, 115 2nd Street, SE., Sidney, Montana.

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

Dated: December 11, 2006.

David I. Maurstad,

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

[FR Doc. E6–21574 Filed 12–18–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

RIN 0750–AE73

Defense Federal Acquisition Regulation Supplement; Material Inspection and Receiving Report (DFARS Case 2003–D085)

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

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify requirements for preparation of material inspection and receiving reports under DoD contracts. In addition, the rule relocates text to the DFARS companion resource, Procedures, Guidance, and Information.

DATES: *Effective Date:* December 19, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2003–D085.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule updates DFARS Appendix F requirements for preparation of DD Form 250, Material Inspection and Receiving Report. The changes to Appendix F include—

○ Clarification of requirements for marking of shipments when a contractor's certificate of conformance is used as the basis for acceptance;

○ Relocation of the requirement for the contractor to provide sufficient copies of DD Form 250, from F–701 to F–103; and

○ Deletion of procedures for documenting Government contract quality assurance performed at a subcontractor's facility and for distribution and correction of DD Form 250–1 documents. This text has been relocated to the DFARS companion resource, Procedures, Guidance, and Information (PGI), at *http://www.acq.osd.mil/dpap/dars/pgi*.

DoD published a proposed rule at 70 FR 39975 on July 12, 2005. One respondent submitted comments on the proposed rule. The respondent recommended revision of Appendix F and the clause at DFARS 252.246–7000, Material Inspection and Receiving Report, to clarify that contractors are required to include a copy of the receiving report (either the paper DD Form 250 or the Wide Area WorkFlow-Receipt and Acceptance (WAWF–RA) receiving report) with the shipment. As a result of this comment, the proposed change to F–401(a), which stated that use of WAWF–RA satisfies DD Form 250 distribution requirements, has been excluded from this final rule; and DoD published another proposed rule at 71 FR 65769 on November 9, 2006, to request comments on the recommended revision.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not 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 the rule makes no significant change to DoD policy for the preparation and use of material inspection and receiving reports.

C. Paperwork Reduction Act

The information collection requirements of DD Form 250, Material Inspection and Receiving Report, have been approved by the Office of Management and Budget under Control Number 0704–0248, for use through March 31, 2008.

List of Subjects in 48 CFR Chapter 2

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Appendix F to Chapter 2 is amended as follows:

■ 1. The authority citation for 48 CFR Appendix F to subchapter I continues to read as follows:

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

Appendix F to Chapter 2—Material Inspection and Receiving Report

■ 2. Appendix F to Chapter 2 is amended in Part 1, Section F–103, by revising paragraph (c) to read as follows:

F–103 Use.

* * * * *

(c) The contractor prepares the MIRR, except for entries that an authorized Government representative is required to complete. The contractor shall furnish sufficient copies of the completed form, as directed by the Government representative.

* * * * *

■ 3. Appendix F to Chapter 2 is amended by revising Part 2 to read as follows:

PART 2—CONTRACT QUALITY ASSURANCE ON SHIPMENTS BETWEEN CONTRACTORS

F–201 Procedures.

Follow the procedures at PGI F–201 for evidence of required Government contract quality assurance at a subcontractor's facility.

■ 4. Appendix F to Chapter 2 is amended in Part 3, Section F–301, by revising paragraph (b)(21)(iii) in the first sentence and paragraph (b)(21)(iv)(D) introductory text to read as follows:

F–301 Preparation instructions.

* * * * *

(b) * * *

(21) * * *

(iii) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, the contractor shall enter in capital letters ''CERTIFICATE OF CONFORMANCE'' in Block 21a on the next line following the CQA and acceptance statements.

* * *

(iv) * * *

(D) When Certificate of Conformance procedures apply, inspection or inspection and acceptance are at source, and the contractor's Certificate of Conformance is required, the contractor shall enter in capital letters ''CERTIFICATE OF CONFORMANCE'' as required by paragraph (b)(21)(iii) of this section.

* * * * *

■ 5. Appendix F to Chapter 2 is amended by revising Part 7 to read as follows:

PART 7—DISTRIBUTION OF THE DD FORM 250–1

F–701 Distribution.

Follow the procedures at PGI F–701 for distribution of DD Form 250–1.

F–702 Corrected DD Form 250–1.

Follow the procedures at PGI F–702 when corrections to DD Form 250–1 are needed.

[FR Doc. E6–21515 Filed 12–18–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 201, 205, 207, 211, 217, 219, 223, 225, 228, 232, 237, and 252

RIN 0750–AF16

Defense Federal Acquisition Regulation Supplement; Inflation Adjustment of Acquisition-Related Thresholds (DFARS Case 2004–D022)

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

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to adjust acquisition-related thresholds for inflation. Section 807 of the National Defense Authorization Act for Fiscal Year 2005 requires periodic adjustment of statutory acquisition-related dollar thresholds, except those established by the Davis-Bacon Act, the Service Contract Act, or trade agreements. This rule also amends other acquisition-related thresholds that are BASED on policy rather than statute.

DATES: *Effective Date:* December 19, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2004–D022.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule implements Section 807 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375). Section 807 provides for adjustment of statutory acquisition-related dollar thresholds every 5 years, except for those established by the Davis-Bacon Act, the Service Contract Act, or trade agreements. This case presented an opportunity to review all acquisition-related dollar thresholds, including those that are non-statutory. DoD published a proposed rule at 71 FR 3446 on January 23, 2006. DoD received one comment from a public-private partnership in response to the proposed rule. That comment related to the proposed increase in the micro-purchase spending limit for the General Services Administration SmartPay Purchase Card Program. The comment did not specifically relate to this DFARS case and, therefore, has been forwarded to the General Services Administration for consideration.

A matrix showing the thresholds reviewed in preparation of this final rule is available at *http://www.acq.osd.mil/dpap/dars/dfars/changenotice/index.htm,* within the change notice summary containing the same date as this final rule. The statute requires adjustment of acquisition-related thresholds for inflation using the Consumer Price Index for all-urban consumers. Acquisition-related thresholds in statutes that were in effect on October 1, 2000, are subject to 5 years of inflation. The inflation adjustment factors in the proposed rule were calculated on the basis of December 2004 data. For the final rule, data through October 2005 was used. This resulted in a slight increase in the calculated inflation adjustment factors. For the 5-year period from October 2000 through October 2005, the inflation adjustment factor increased from 13 percent to 14.5 percent. However, due to rounding, most thresholds shown in the proposed rule did not change. The exceptions are—

- DFARS 217.170 and 217.171 (Multiyear Contracting)—Increased from $565.5 million to $572.5 million; and
- DFARS 237.170–2 (Service Contracting)—Increased from $77.5 million to $78.5 million.

The threshold at DFARS 207.170–3 (Consolidation of Contract Requirements) is the only threshold in the final rule that was not addressed in the proposed rule, because the calculated threshold now rounds up to $5.5 million, from $5 million.

The threshold at DFARS 216.203–4, for use of the economic price

adjustment clause at FAR 52.216–4, was increased from $50,000 to $55,000 in the proposed rule. This threshold change is no longer applicable as a result of the final rule published at 71 FR 39006 on July 11, 2006, which specified the simplified acquisition threshold as the general threshold for DoD use of the FAR economic price adjustment clauses.

The threshold at DFARS 236.601, for congressional notification of certain architect-engineer or construction design contracts, was increased from $500,000 to $550,000 in the proposed rule. This threshold change is no longer applicable as a result of the interim rule published at 71 FR 58540 on October 4, 2006, which increased the threshold to $1 million to implement a statutory change.

The threshold in the clause at DFARS 252.232–7009, Mandatory Payment by Governmentwide Commercial Purchase Card, was increased from $2,500 to $3,000 in the proposed rule. The final rule revises this threshold to the micro-purchase threshold, for consistency with the corresponding clause prescription at DFARS 232.1110.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not 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 the adjustment of acquisition-related dollar thresholds is intended to keep pace with inflation and thus maintain the status quo.

C. Paperwork Reduction Act

This rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The information collection requirements of the provision and clauses at 252.225–7003, 252.225–7004, and 252.225–7006 are approved for use through May 31, 2007, under OMB Control Number 0704–0229.

List of Subjects in 48 CFR Parts 201, 205, 207, 211, 217, 219, 223, 225, 228, 232, 237, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 201, 205, 207, 211, 217, 219, 223, 225, 228, 232, 237, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 201, 205, 207, 211, 217, 219, 223, 225, 228, 232, 237, and 252 continues to read as follows:

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

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Section 201.109 is added to read as follows:

201.109 Statutory acquisition-related dollar thresholds-adjustment for inflation.

(d) A matrix showing the most recent escalation adjustments of statutory acquisition-related dollar thresholds is available at PGI 201.109.

PART 205—PUBLICIZING CONTRACT ACTIONS

205.303 [Amended]

■ 3. Section 205.303 is amended by removing ''$5 million'' and adding in its place ''$5.5 million'' as follows:

■ a. In paragraph (a)(i) introductory text, in the first and second sentences;

■ b. In paragraph (a)(i)(A), in the second sentence; and

■ c. In paragraph (a)(i)(B), in the first and second sentences.

PART 207—ACQUISITION PLANNING

207.170–3 [Amended]

■ 4. Section 207.170–3 is amended in paragraph (a) introductory text by removing ''$5,000,000'' and adding in its place ''$5.5 million''.

PART 211—DESCRIBING AGENCY NEEDS

211.503 [Amended]

■ 5. Section 211.503 is amended in paragraph (b), in the first and second sentences, by removing ''$500,000'' and adding in its place ''$550,000''.

PART 217—SPECIAL CONTRACTING METHODS

■ 6. Section 217.170 is amended by revising paragraph (d)(1)(i) to read as follows:

217.170 General.

* * * * *

(d)(1) * * *

(i) Exceed $500 million for supplies (see 217.172(c) and 217.172(e)(4)) or $572.5 million for services (see 217.171(a)(6));

* * * * *

217.171 [Amended]

■ 7. Section 217.171 is amended in paragraph (a)(6) by removing ''$500 million'' and adding in its place ''$572.5 million''.

PART 219—SMALL BUSINESS PROGRAMS

219.502–2 [Amended]

■ 8. Section 219.502–2 is amended in paragraph (a)(i) by removing ''$2 million'' and adding in its place ''$2.5 million''.

PART 223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 9. Section 223.803 is revised to read as follows:

223.803 Policy.

No DoD contract may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard is specifically authorized at a level no lower than a general or flag officer or a member of the Senior Executive Service of the requiring activity in accordance with Section 326, Public Law 102–484 (10 U.S.C. 2301 (repealed) note). This restriction is in addition to any imposed by the Clean Air Act and applies after June 1, 1993, to all DoD contracts, regardless of place of performance.

PART 225—FOREIGN ACQUISITION

225.7204 [Amended]

■ 10. Section 225.7204 is amended as follows:

■ a. In paragraphs (a) and (b) by removing ''$10 million'' and adding in its place ''$11.5 million''; and

■ b. In paragraph (c) by removing ''$500,000'' and adding in its place ''$550,000''.

PART 228—BONDS AND INSURANCE

228.102–1 [Amended]

■ 11. Section 228.102–1 is amended in the second sentence of the introductory text and in paragraph (1) by removing ''$25,000'' and adding in its place ''$30,000''.

PART 232—CONTRACT FINANCING

232.404 [Amended]

■ 12. Section 232.404 is amended in paragraph (a)(9) by removing ''$2,500'' and adding in its place ''$3,000''.

232.502–1 [Amended]

■ 13. Section 232.502–1 is amended in paragraph (b)(1) by removing ''$50,000'' and adding in its place ''$55,000''.

PART 237—SERVICE CONTRACTING

237.170–2 [Amended]

■ 14. Section 237.170–2 is amended in paragraphs (a)(1) and (2) by removing ''$50,000,000'' and adding in its place ''$78.5 million''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 15. Section 252.209–7004 is amended by revising the clause date and paragraph (a) to read as follows:

252.209–7004 Subcontracting with Firms That are Owned or Controlled by the Government of a Terrorist Country.

* * * * *

Subcontracting With Firms That are Owned or Controlled by the Government of a Terrorist Country (Dec 2006)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of $30,000 with a firm, or a subsidiary of a firm, that is identified in the Excluded Parties List System as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

* * * * *

252.225–7003 [Amended]

■ 16. Section 252.225–7003 is amended as follows:
■ a. By revising the clause date to read ''(DEC 2006)'';
■ b. In paragraph (b)(1) by removing ''$10 million'' and adding in its place ''$11.5 million''; and
■ c. In paragraph (b)(2)(i) by removing ''$500,000'' and adding in its place ''$550,000''.

252.225–7004 [Amended]

■ 17. Section 252.225–7004 is amended as follows:
■ a. By revising the clause date to read ''(DEC 2006)''; and
■ b. In paragraph (b)(1) by removing ''$500,000'' and adding in its place ''$550,000''.

252.225–7006 [Amended]

■ 18. Section 252.225–7006 is amended as follows:
■ a. By revising the clause date to read ''(DEC 2006)''; and
■ b. In paragraph (f)(1) by removing ''$500,000'' and adding in its place ''$550,000''.

252.232–7009 [Amended]

■ 19. Section 252.232–7009 is amended as follows:
■ a. By revising the clause date to read ''(DEC 2006)''; and
■ b. By removing ''$2,500'' and adding in its place ''the micro-purchase threshold in Part 2 of the Federal Acquisition Regulation,''.

252.249–7002 [Amended]

■ 20. Section 252.249–7002 is amended as follows:
■ a. By revising the clause date to read ''(DEC 2006)''; and
■ b. In paragraph (d)(1) by removing ''$500,000'' and adding in its place ''$550,000''.

[FR Doc. E6–21513 Filed 12–18–06; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–AF17

Defense Federal Acquisition Regulation Supplement; Restriction on Carbon, Alloy, and Armor Steel Plate (DFARS Case 2005–D002)

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

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the restriction on the acquisition of foreign carbon, alloy, or armor steel plate. The restriction implements provisions of annual DoD appropriations acts.

DATES: *Effective Date:* December 19, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2005–D002.

SUPPLEMENTARY INFORMATION:

A. Background

Section 8111 of the Fiscal Year 1992 DoD Appropriations Act (Pub. L. 102–172) and similar sections in subsequent DoD Appropriations Acts (the most recent being Section 8024 of Pub. L. 109–289) contain a restriction on the acquisition of carbon, alloy, or armor steel plate, that is not melted and rolled in the United States or Canada, for use in any Government-owned facility or property under the control of the Department of Defense. This restriction is implemented in the DFARS at 225.7011–1 through 225.7011–3 and in the corresponding contract clause at 252.225–7030.

DoD published a proposed rule at 70 FR 73189 on December 9, 2005, to clarify the applicability of the restriction. Two respondents provided comments on the proposed rule. One of the respondents applauded DoD's initiative to clarify the restriction and recommended adoption of the rule as proposed. The other respondent raised two issues regarding the proposed rule. A discussion of these issues is provided below.

1. *Property under the control of DoD.* The respondent interpreted the statutory phrase ''property under the control of the Department of Defense'' to mean personal property as well as real property, and recommended amendment of the rule to reflect this interpretation.

DoD has not adopted this recommendation, as DoD believes that limitation of the restriction to real property is consistent with the statutory provisions; and that, if the statutory phrase ''for use in any * * * property under the control of the Department of Defense'' were intended to include all personal property controlled by DoD, the words of the statute ''for use in any Government-owned facility'' would be without added meaning. The current interpretation of the statute has been in use since 1992 without objection.

2. *Use as a raw material.* The respondent stated that the rule's limitation of the restriction to plate used as a ''raw material'' sets a limitation that does not appear in the statute. In addition, the respondent stated that carbon, alloy, and armor steel plate is not a ''raw material''; it is a finished steel mill product that can be used ''as is'' in certain applications or as an intermediate material for the fabrication of other products. Therefore, the respondent recommended that the phrase ''as a raw material'' be removed from the rule.

DoD notes that the phrase ''as a raw material'' has been in the clause at 252.225–7030 since 1992 without objection. The phrase was added to the clause as a result of a public comment submitted by an industry association in response to the interim rule published

at 57 FR 14988 on April 23, 1992 (Defense Acquisition Circular 91–2, Item XI). The industry association did not believe that the statute was intended to apply to end items (hardware) delivered to the Government and used in Government facilities. The association recommended revision of the prescriptive language to require application of the clause to only those contracts for the direct acquisition of carbon, alloy, or armor steel plate. As a result, the final rule published at 57 FR 53596 on November 12, 1992 (Defense Acquisition Circular 91–4, Item XI), required application of the clause to carbon, alloy, and armor steel plate furnished as a deliverable under the contract or purchased by the contractor as a raw material. The statutory language addressing use of the plate in a Government-owned facility or property under the control of DoD expresses an intent not to apply the restriction to the manufacture of items in the plants of commercial contractors. For example, the restriction should not apply if a contractor acquires a machine tool for use in a Government-owned facility, if the machine tool is manufactured by another contractor in a facility that is not Government-owned. DoD has amended the rule to make this concept clearer, without use of the term ''raw material''.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not 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 the rule clarifies existing policy regarding the statutory restriction on the acquisition of foreign carbon, alloy, or armor steel plate.

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.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

■ 2. Section 225.7011–1 is revised to read as follows:

225.7011–1 Restriction.

(a) In accordance with Section 8111 of the Fiscal Year 1992 DoD Appropriations Act (Pub. L. 102–172) and similar sections in subsequent DoD appropriations acts, do not acquire any of the following types of carbon, alloy, or armor steel plate for use in a Government-owned facility or a facility under the control of (*e.g.*, leased by) DoD, unless it is melted and rolled in the United States or Canada:

(1) Carbon, alloy, or armor steel plate in Federal Supply Class 9515.

(2) Carbon, alloy, or armor steel plate described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.

(b) This restriction—

(1) Applies to the acquisition of carbon, alloy, or armor steel plate as a finished steel mill product that may be used ''as is'' or may be used as an intermediate material for the fabrication of an end product; and

(2) Does not apply to the acquisition of an end product (*e.g.*, a machine tool), to be used in the facility, that contains carbon, alloy, or armor steel plate as a component.

■ 3. Section 225.7011–3 is amended by revising paragraph (a) to read as follows:

225.7011–3 Contract clause.

* * * * *

(a) Require the delivery to the Government of carbon, alloy, or armor steel plate that will be used in a Government-owned facility or a facility under the control of DoD; or

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.225–7030 is revised to read as follows:

252.225–7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate.

As prescribed in 225.7011–3, use the following clause:

Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate (DEC 2006)

(a) Carbon, alloy, and armor steel plate shall be melted and rolled in the United States or Canada if the carbon, alloy, or armor steel plate—

(1) Is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute; and

(2)(i) Will be delivered to the Government for use in a Government-owned facility or a facility under the control of the Department of Defense; or

(ii) Will be purchased by the Contractor for use in a Government-owned facility or a facility under the control of the Department of Defense.

(b) This restriction—

(1) Applies to the acquisition of carbon, alloy, or armor steel plate as a finished steel mill product that may be used ''as is'' or may be used as an intermediate material for the fabrication of an end product; and

(2) Does not apply to the acquisition of an end product (*e.g.*, a machine tool), to be used in the facility, that contains carbon, alloy, or armor steel plate as a component.

(End of clause)

[FR Doc. E6–21511 Filed 12–18–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990506119–9236–02; I.D. 121106C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2006 Red Snapper Commercial Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined the fall portion of the annual commercial quota for red snapper will have been reached by December 26, 2006. This closure is necessary to protect the red snapper resource.

DATES: Closure is effective noon, local time, December 26, 2006, until 12:01 a.m., local time, on January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jason Rueter, telephone 727–824–5350,

fax 727–824–5308, e-mail *Jason.Rueter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 2006. The red snapper commercial fishing season was split into two time periods, the first commencing at noon on February 1 with two-thirds of the annual quota (3.10 million lb (1.41 million kg)) available, and the second commencing at noon on October 1 with the remainder of the annual quota available. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 10th of each month, until the applicable commercial quotas are reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. Based on current statistics, NMFS has determined that the available fall commercial quota of 1.65 million lb (0.75 million kg) for red snapper will be reached when the fishery closes on December 26, 2006. Accordingly, NMFS is closing the commercial red snapper fishery in the Gulf of Mexico EEZ from noon, local time, on December 26, 2006, until 12:01 a.m., local time, on January 1, 2007, when the red snapper individual fishing quota (IFQ) program becomes effective. The operator of a vessel with a valid commercial vessel permit for Gulf reef fish having red snapper aboard must have landed and bartered, traded, or sold such red snapper prior to noon, local time, December 26, 2006.

During the closure, the sale or purchase of red snapper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to noon, local time, December 26, 2006, and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fishery. The Administrator, Southeast Region, NMFS, finds the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Similarly, there is a need to implement these measures in a timely fashion to prevent an overage of the commercial quota of Gulf of Mexico red snapper, given the capacity of the fishing fleet to harvest the quota quickly. Any delay in implementing this action would be impractical and contrary to the Magnuson-Stevens Act, the FMP, and the public interest. For these same reasons, NMFS finds good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is waived.

This action is required under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: December 12, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–21536 Filed 12–18–06; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 71, No. 243

Tuesday, December 19, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26570; Directorate Identifier 2006–NE–39–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Makila 1A and 1A1 Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The back-up mode can be activated by an electrostatic discharge or by a malfunction of the collective pitch signal. The two engines fitted on the same helicopter can therefore be frozen in this back-up position at 85% N1.

Freezing both engines in the back-up mode can lead to an inability to continue safe flight and forced landing. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 18, 2007.

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

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *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.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park 01803; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–26570; Directorate Identifier 2006–NE–39–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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 we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the airworthiness authority for the European Union, has issued EASA Airworthiness Directive 2006–0070, dated April 13, 2006, (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

The control system of the engines covered by this Airworthiness Directive includes an electrical back-up mode at 85% N1 (gas generator speed) activated on the detection of certain occurrences affecting engine control. The activation of the back-up mode is irreversible and freezes the engine at 85% N1.

An analysis of reported occurrences in service showed that the back-up mode can be activated by an electrostatic discharge or by a malfunction of the collective pitch signal. The two engines fitted on the same helicopter can therefore be frozen in this back-up position at 85% N1.

The present Airworthiness Directive therefore imposes the application of modification TU241 on the LPG board of the Makila 1A and 1A1 ECU, which reduces the aforementioned risk by changing the conditions in which the engines switch to and are maintained in the 85% NG back-up mode.

Freezing both engines in the back-up mode can lead to an inability to continue safe flight and forced landing.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Turbomeca has issued Mandatory Service Bulletin No. 298 73 0241, dated April 5, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the proposed AD. These requirements, if ultimately adopted, will take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about five products of U.S. registry. We also estimate that it would take about 1.0 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $3,500 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $17,900, or $3,580 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed 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 proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Turbomeca S.A.: Docket No. FAA–2006–26570; Directorate Identifier 2006–NE–39–AD.

Comments Due Date

(a) We must receive comments by January 18, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca Makila 1A and 1A1 turboshaft engines. These engines are used on, but not limited to Eurocopter AS 332 Super Puma helicopters.

Reason

(d) European Aviation Safety Agency (EASA) AD No. 2006–0070, dated March 30, 2006, states:

The control system of the engines covered by this Airworthiness Directive includes an electrical back-up mode at 85% N1 (gas generator speed) activated on the detection of certain occurrences affecting engine control. The activation of the back-up mode is irreversible and freezes the engine at 85% N1.

An analysis of reported occurrences in service showed that the back-up mode can be activated by an electrostatic discharge or by a malfunction of the collective pitch signal. The two engines fitted on the same helicopter can therefore be frozen in this back-up position at 85% N1.

The present Airworthiness Directive therefore imposes the application of modification TU241 on the LPG board of the Makila 1A and 1A1 ECU, which reduces the aforementioned risk by changing the conditions in which the engines switch to and are maintained in the 85% NG back-up mode.

Freezing both engines in the back-up mode can lead to an inability to continue safe flight and forced landing.

Actions and Compliance

(e) Unless already done, before January 31, 2007, apply the modification TU 241 by replacing the LPG board of the ECU in accordance with the mandatory Turbomeca Service Bulletin No. 298 73 0241, dated April 5, 2006.

FAA AD Differences

(f) None.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection

requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Contact Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park 01803; telephone (781) 238–7175; fax (781) 238–7199 for more information about this AD.

(i) Refer to MCAI EASA Airworthiness Directive 2006–0070, dated March 30, 2006, and Turbomeca Mandatory Service Bulletin No. 298 73 0241, dated April 5, 2006, for related information.

Issued in Burlington, Massachusetts, on December 13, 2006.

Peter A. White,

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

[FR Doc. E6–21586 Filed 12–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. FHWA–2006–25203]

RIN 2125–AF10

Temporary Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

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

SUMMARY: The FHWA is extending the comment period for a notice of proposed rulemaking (NPRM) and request for comments, which was published on November 1, 2006, at 71 FR 64173. The original comment period is set to close on January 2, 2007. The extension is based on concern expressed by the National Committee on Uniform Traffic Control Devices (NCUTCD) that the January 2 closing date does not provide sufficient time for discussion of the issues in committee and a subsequent comprehensive response to the docket. The FHWA recognizes that others interested in commenting may have similar time constraints and agree that the comment period should be extended. Therefore, the closing date for comments is changed to February 16, 2007, which will provide the NCUTCD and others interested in commenting additional time to discuss, evaluate, and submit responses to the docket.

DATES: Comments must be received on or before February 16, 2007.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit* or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov*. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or print the acknowledgement page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Persons making comments may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Chung Eng, Office of Transportation Operations, (202) 366–8043; or Mr. Raymond W. Cuprill, Office of the Chief Counsel, (202) 366–0791, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit*. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara*.

Background

On November 1, 2006, the FHWA published in the **Federal Register** an NPRM that proposes to supplement its regulation governing work zone safety and mobility in highway and street work zones. The NPRM proposes to include conditions for the appropriate use of, and expenditure of funds for, uniformed law enforcement officers, positive protective measures between workers and motorized traffic, and installation and maintenance of temporary traffic control devices during construction, utility, and maintenance operations. The proposed changes are intended to decrease the likelihood of fatalities and injuries to workers who are exposed to motorized traffic (vehicles using the highways for the purposes of travel) while working on Federal-aid highway projects.

The original comment period for the NPRM closes on January 2, 2007. The NCUTCD has expressed concern that this closing date does not provide sufficient time to review and discuss the proposed changes; and then, develop and submit complete responses to the docket. To allow time for this organization and others to submit comprehensive comments, the closing date is changed from January 2, 2007, to February 16, 2007.

Authority: 23 U.S.C. 109(c) and 112; Sec. 1110 of Pub. L. 109–59; 23 CFR 1.32; and 49 CFR 1.48(b).

Issued on: December 12, 2006.

J. Richard Capka,

Federal Highway Administrator.

[FR Doc. E6–21579 Filed 12–18–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125632–06]

RIN 1545–BF83

Corporate Reorganizations; Distributions Under Sections 368(a)(1)(D) and 354(b)(1)(B)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rule making 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 that provide guidance regarding the qualification of certain transactions as reorganizations described in section 368(a)(1)(D) where no stock and/or securities of the acquiring corporation is issued and distributed in the transaction. These regulations affect corporations engaging in such transactions and their

shareholders. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 19, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–125632–06), Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered to CC:PA:LPD:PR (REG–125632–06), Courier Desk, Internal Revenue Service, Crystal Mall 4, 1901 South Bell Street, Arlington, Virginia, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–125632–06).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Bruce A. Decker, (202) 622–7550; concerning submissions of comments, the hearing, and/or to be placed on the access list to attend the hearing, Kelly Banks, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1. The temporary regulations provide guidance on circumstances where the distribution of stock and/or securities under section 354(b)(1)(B) will be deemed satisfied in the absence of an actual issuance of stock and/or securities pursuant to a reorganization described in section 368(a)(1)(D). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Explanation of Provisions

These temporary regulations provide guidance regarding the circumstances in which the distribution requirement under sections 368(a)(1)(D) and 354(b)(1)(B) is deemed satisfied despite the fact that no stock and/or securities are actually issued in a transaction otherwise described in section 368(a)(1)(D). These regulations will affect certain cash sales of assets between two corporations that have the same direct or indirect shareholders or a de minimis variation in shareholder identity and proportionality.

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 regulation does 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 Internal Revenue 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 (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. The IRS and Treasury Department request comments on several issues relating to acquisitive reorganizations described in section 368(a)(1)(D). Specifically, the IRS and Treasury Department request comments on whether the meaningless gesture doctrine is inconsistent with the distribution requirement in sections 368(a)(1)(D) and 354(b)(1)(B), especially in situations in which the cash consideration received equals the full fair market value of the property transferred such that there is no missing consideration for which the nominal share of stock deemed received and distributed could substitute. The IRS and Treasury Department also request comments on the extent, if any, to which the continuity of interest requirement should apply to a reorganization described in section 368(a)(1)(D). The IRS and Treasury Department request comments on whether these temporary regulations should apply when the parties to the reorganization are members of a consolidated group. Finally, the IRS and Treasury Department request comments on the continued vitality of various liquidation-reincorporation authorities after the enactment of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085 (1986)). 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 Bruce A. Decker, Office of Associate Chief Counsel (Corporate).

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 1.368–2 is amended by revising paragraph (l) to read as follows:

§ 1.368–2 Definition of terms.

* * * * *

(l) [The text of this proposed amendment to § 1.368–2(l) is the same as the text of § 1.368–2T(l)(1) through (l)(4)(i) published elsewhere in this issue of the **Federal Register**]

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–21572 Filed 12–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AU71

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D: 2008–09 Subsistence Taking of Fish and Shellfish Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for fishing seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2008–09 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When

final, this rulemaking would replace the fish and shellfish taking regulations included in the ''Subsistence Management Regulations for Public Lands in Alaska, Subpart D: 2007–08 Subsistence Taking of Fish and Wildlife Regulations,'' which expire on March 31, 2008. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board and the General Regulations related to the taking of fish and shellfish.

DATES: The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than March 23, 2007. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change this proposed rule between February 19, 2007, and March 21, 2007. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

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

- *E-mail: Subsistence@fws.gov*.
- *Fax:* 907–786–3898.
- *Mail:* Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503.

See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. The public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Public Review Process—Regulation Comments, Proposals, and Public Meetings

The Federal Subsistence Program will hold meetings on this proposed rule at the following locations in Alaska:

Region 1—Southeast Regional Council, Kake, February 26, 2007
Region 2—Southcentral Regional Council, Anchorage, March 13, 2007
Region 3—Kodiak/Aleutians Regional Council, King Cove, March 12, 2007
Region 4—Bristol Bay Regional Council, Naknek, February 20, 2007
Region 5—Yukon-Kuskokwim Delta Regional Council, Hooper Bay, March 15, 2007
Region 6—Western Interior Regional Council, Aniak, March 6, 2007
Region 7—Seward Peninsula Regional Council, Nome, February 20, 2007
Region 8—Northwest Arctic Regional Council, Kotzebue, March 8, 2007
Region 9—Eastern Interior Regional Council, Arctic Village, March 20, 2007
Region 10—North Slope Regional Council, Barrow, March 1, 2007

We will publish notice of specific dates, times, and meeting locations in local and Statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Councils agenda will determine the length of each Regional Council meetings.

Electronic filing of comments (preferred method): Please submit electronic comments (proposals) and other data to *Subsistence@fws.gov*. Please submit as either MS Word or Adobe Acrobat (PDF) files.

During May 2007, we will compile and distribute for additional public review the written proposals to change Subpart D fishing regulations and Subpart C customary and traditional use determinations. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on distributed proposals during the public comment period, which is presently scheduled to end on June 29, 2007.

We will hold a second series of Regional Council meetings in September and October 2007, at which the Regional Councils will develop recommendations to the Board. You may also present comments on published proposals to change fishing and customary and traditional use determination regulations to the Regional Councils at those fall meetings.

The Federal Subsistence Board (Board) will discuss and evaluate proposed changes to the subsistence taking of fish and shellfish regulations during a public meeting to be held in Anchorage in January 2008. You may provide additional oral testimony on specific proposals before the Board at that time. The Board will then deliberate and take final action on proposals received that request changes to this proposed rule at that public meeting.

Please Note: The Board will not consider proposals for changes relating to hunting or trapping regulations at this time. The Board anticipates calling for proposed changes to those regulations in August 2007.

The Board's review of your comments and fish and shellfish proposals will be facilitated if you provide the following information: (a) Your name, address, and telephone number; (b) The section and/or paragraph of the proposed rule for which your change is being suggested; (c) A statement explaining why the change is necessary; (d) The proposed wording change; (e) Any additional information you believe will help the Board in evaluating your proposal. Proposals that fail to include the above information, or proposals that are beyond the scope of authorities in § __.24, subpart C, and §§ __.25,__ .27, or __.28, subpart D, may be rejected. The Board may defer review and action on some proposals to allow time for local cooperative planning efforts, or to acquire additional needed information, or if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council, staff members, and on the basis of least harm to the subsistence user and the resource involved. Proposals should be specific to customary and traditional use determinations or to subsistence fishing seasons, harvest limits, and/or methods and means.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary

Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114). Consistent with subparts A, B, and C of these regulations, as revised October 14, 2004 (69 FR 60957), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for subparts A, B, and C, and the annual subpart D regulations.

All Board members have reviewed this proposed rule and agree with its substance. Because this proposed rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this proposed rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 would apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (2004) and 50 CFR 100.11 (2004), and for the purposes identified therein, we divide Alaska into 10 subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in January 2008.

Proposed Changes From 2007–08 Seasons and Harvest Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations (§ __.24 of subpart C) are also subject to an annual review process providing for modification each year. The text of the 2006–07 subparts C and D final rule, as modified by Federal Subsistence Board actions during their January 9–11, 2007, public meeting, serves as the foundation for the 2008–09 subparts C and D proposed rule. Please see the 2006–07 subparts C and D final rule published in the March 29, 2006 (71 FR 15569), issue of the **Federal Register**. The modifications for 2007–08 made by the Board during their January 2007 meeting may be viewed on the Office of Subsistence Management Web site at *www.alaska.fws.gov/asm/home.html*. The regulations contained in this proposed rule would take effect on April 1, 2008, unless elements are changed by subsequent Board action following the public review process outlined herein.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance—A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture–Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, subparts A, B, and C (57 FR 22940, published May 29, 1992), implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available from the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action significantly affecting the human environment, and has, therefore, signed a Finding of No Significant Impact.

Compliance with section 810 of ANILCA—A section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

During the environmental assessment process, an evaluation of the effects of this rule was also conducted in accordance with section 810. This evaluation supports the Secretaries' determination that the rule will not reach the ''may significantly restrict'' threshold for notice and hearings under

ANILCA section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act—The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB control number 1018–0075, which expires October 31, 2009. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a current valid OMB control number.

Economic Effects—This rule is not a significant rule subject to OMB review under Executive Order 12866. This rulemaking will impose no significant costs on small entities; this rule does not restrict any existing sport or commercial fishery on the public lands, and subsistence fisheries will continue at essentially the same levels as they presently occur. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, and gasoline dealers. The number of small entities affected is unknown; however, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that about 26.2 million pounds of fish (including about 9 million pounds of salmon) are harvested Statewide by the local subsistence users annually and, if based on a replacement value of $3.00 per pound, would equate to $78.6 million in food value Statewide. The cultural benefits of maintaining a subsistence lifestyle can be of considerable value to the participants. This makes the $78.6 million estimate for the consumptive value of this rule an underestimate of the total benefit.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments certify based on the above figures that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does 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.

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

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 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no significant direct effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

Drafting Information—William Knauer drafted these regulations under the guidance of Peter J. Probasco, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Chuck Ardizzone, Alaska State Office, Bureau of Land Management; Nancy Swanton, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; Jerry Berg, Alaska Regional Office, U.S. Fish and Wildlife Service; and Steve Kessler, USDA-Forest Service provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR 242 and 50 CFR 100 for the 2008–09 regulatory year. The text of the amendments would be the same as the final rule for the 2006–07 regulatory year (71 FR 15569) as modified by Federal Subsistence Board actions on January 9–11, 2007.

Dated: December 1, 2006.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Dated: December 1, 2006.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 06–9760 Filed 12–18–06; 8:45 am]

BILLING CODE 4310–55–P; 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2003–0079, FRL–8256–8]

RIN 2060–AJ99

Phase 2 of the Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Notice of Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 29, 2005, EPA published Phase 2 of the final rule to implement the 8-hour ozone national ambient air quality standard (NAAQS). Subsequently, EPA received a petition to reconsider specific aspects of this final rule. In this action, EPA is announcing its decision to reconsider and take additional comment on three provisions in the final Phase 2 8-hour ozone implementation rule: The determination that electric generating units (EGUs) that comply with rules implementing the Clean Air Interstate Rule (CAIR) and that are located in States where all required CAIR emissions reductions are achieved from EGUs meet the 8-hour ozone State implementation plan (SIP) requirement for application of reasonably available control technology (RACT) for nitrogen oxide (NO_X) emissions; a new source review (NSR) requirement allowing sources to use certain emission reductions as offsets under certain circumstances; and an NSR provision addressing when requirements for the lowest achievable emission rate (LAER) and emission offsets may be waived. In addition, EPA requests comment on postponing the submission date for the RACT SIP for RACT SIPs for EGUs in the CAIR region. The EPA is seeking comment only on the three issues specifically identified in this notice and the submission date issue. We do not intend to respond to comments addressing other provisions of the final 8-hour ozone implementation rule that we are not reconsidering.

DATES: *Comments.* Comments must be received on or before January 18, 2007.

If anyone contacts us requesting a public hearing by December 29, 2006, the hearing will be held on January 3, 2007. If a public hearing is requested, the record for this action will remain open until February 2, 2007 to accommodate submittal of information related to the public hearing. For additional information on the public hearing, see the **SUPPLEMENTARY INFORMATION** section of this notice of reconsideration.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0079, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov*.
- Mail: EPA Docket Center, EPA West (Air Docket), Attention Docket ID No. EPA–HQ–OAR–2003–0079, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include two copies if possible.
- Hand Delivery: EPA Docket Center (Air Docket), Attention Docket ID No. EPA–HQ–OAR–2003–0079, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket Center's normal hours of operation, and special arrangements should be made for deliveries of boxed information.
- *Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0079. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov*, or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Public Hearing: If a hearing is held it will be held at the U.S. Environmental Protection Agency, 109 TW Alexander Drive, Research Triangle Park, North Carolina 27709, Building C.

Docket: All documents in the docket are listed in *www.regulations.gov*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center (Air Docket), EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. For information on accessing docket materials during the temporary closure of the EPA docket center see note above.

FOR FURTHER INFORMATION CONTACT: For further information on the issue relating to NO_X RACT for EGU sources in CAIR States, contact Mr. John Silvasi, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, (C539–01), Research Triangle Park, NC 27711, phone number (919) 541–5666, fax number (919) 541–0824 or by e-mail at *silvasi.john@epa.gov* or Ms. Denise Gerth, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, (C539–01), Research Triangle Park, NC 27711, phone number (919) 541–5550, fax number (919) 541–0824 or by e-mail at *gerth.denise@epa.gov*. For further information on the NSR issues discussed in this notice, contact Mr. David Painter, Office of Air Quality Planning and Standards, (C504–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5515, fax number (919) 541–5509, e-mail: *painter.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

1. Issue on Determination of CAIR/RACT Equivalency for NO_X EGUs

Entities potentially affected by the subject rule for today's action include States (typically State air pollution control agencies), and, in some cases, local governments that develop air pollution control rules, in the region affected by the CAIR.[1] The EGUs are also potentially affected by virtue of State action in SIPs that implement provisions resulting from final rulemaking on today's action; these sources are in the following groups:

[1] **Federal Register** of May 12, 2005 (70 FR 25162).

Industry group	SIC [a]	NAICS [b]
Electric Services	492	221111, 221112, 221113, 221119, 221121, 221122.

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

2. NSR Issues

Entities potentially affected by the subject rule for today's action include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups.

Industry group	SIC [a]	NAICS [b]
Electric Services	492	221111, 221112, 221113, 221119, 221121, 221122.
Petroleum Refining	291	324110.
Industrial Inorganic Chemicals	281	325181, 325120, 325131, 325182, 211112, 325998, 331311, 325188.
Industrial Organic Chemicals	286	325110, 325132, 325192, 325188, 325193, 325120, 325199.
Miscellaneous Chemical Products	289	325520, 325920, 325910, 325182, 325510.
Natural Gas Liquids	132	211112.
Natural Gas Transport	492	486210, 221210.
Pulp and Paper Mills	261	322110, 322121, 322122, 322130.
Paper Mills	262	322121, 322122.
Automobile Manufacturing	371	336111, 336112, 336211, 336992, 336322, 336312, 336330, 336340, 336350, 336399, 336212, 336213.
Pharmaceuticals	283	325411, 325412, 325413, 325414.

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

Entities potentially affected by the subject rule for today's action also include State, local, and Tribal governments that are delegated authority to implement these regulations.

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

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed to be CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where Can I Get a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of today's notice is also available on the World Wide Web. A copy of today's notice will be posted at *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/*.

D. What Information Should I Know About the Public Hearing?

If requested, EPA will hold a public hearing on today's notice. The EPA will hold a hearing only if a party notifies EPA by December 29, 2006, expressing its interest in presenting oral testimony on issues addressed in today's notice. Any person may request a hearing by calling Ms. Pamela S. Long at (919) 541–0641 before 5 p.m. by December 29, 2006. Any person who plans to attend the hearing should visit the EPA's Web site at *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/* and contact Ms. Pamela S. Long at (919) 541–0641 to learn if a hearing will be held.

If a public hearing is held on today's notice, it will be held on January 3, 2007 at the EPA, Building C, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709. Because the hearing will be held at a U.S. Government facility, everyone planning to attend should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please check our Web site at *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/* for information and updates concerning the public hearing.

If held, the public hearing will begin at 10 a.m. and end at 2 p.m. The hearing will be limited to the subject matter of this document. Oral testimony will be limited to 5 minutes. The EPA encourages commenters to provide written versions of their oral testimony either electronically (on computer disk or CD ROM) or in paper copy. The list of speakers will be posted on EPA's Web site at *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/*. Verbatim transcripts and written statements will be included in the rulemaking docket.

A public hearing would provide interested parties the opportunity to present data, views, or arguments concerning issues addressed in today's notice. The EPA may ask clarifying questions during the oral presentations,

but would not respond to the presentations or comments at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at a public hearing.

If a public hearing is held, the record for this action will remain open until February 2, 2007 to accommodate submittal of information related to the public hearing. Otherwise, if a hearing is not held, the record for this action will remain open until January 18, 2007.

E. How Is This Notice Organized?

The information presented in this notice is organized as follows:

I. General Information
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C. Where Can I Get a Copy of This Document and Other Related Information?
D. What Information Should I Know About the Public Hearing?
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2. Petition for Reconsideration
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1. Our Previous Proposed and Final Rules
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III. This Action
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2. Supplemental Technical Analysis
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B. Provisions of Final Rule Regarding the Criteria for Emission Reduction Credits From Shutdowns and Curtailments
1. Why We Changed Major Source NSR Criteria for Emission Reduction Credits (ERC) From Shutdowns and Curtailments
2. Legal Basis for Changes to Criteria for Emission Reduction Credits From Shutdowns and Curtailments
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C. Applicability of Appendix S, Section VI
1. Final Changes to Applicability of Appendix S, Section VI
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3. Reconsideration of Appendix S, Section VI Final Rule Language and Request for Public Comments
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
V. Statutory Authority

II. Background

On November 29, 2005, EPA published the final Phase 2 rulemaking to implement the 8-hour ozone NAAQS (the Phase 2 Rule). That rule established requirements relating to several specific elements of the SIPs for nonattainment areas for the 8-hour ozone standard including: The attainment demonstration; the RACT requirement; the reasonable further progress (RFP) requirement; and new source review.

The Natural Resources Defense Council (NRDC) filed a petition for reconsideration dated January 30, 2006 under section 307(d) of the Clean Air Act (CAA) concerning three provisions of the Phase 2 rule. The EPA has granted the petition and, in this notice, EPA announces its decision to reconsider the three provisions discussed below and requests public comment on these issues.

A. NO_X RACT for EGUs in CAIR States

1. Proposed and Final Rules and Guidance

In the Phase 2 rulemaking to implement the 8-hour ozone NAAQS, EPA determined that EGU sources complying with rules implementing the CAIR requirements meet ozone NO_X RACT requirements in States where all required CAIR emissions reductions are achieved from EGUs only.[2] We noted that the CAIR final rulemaking established a region-wide NO_X emissions cap, effective in 2009, at a level that, assuming the reductions are achieved from EGUs, would result in EGUs installing emission controls on the maximum total capacity on which it is feasible to install emission controls by that date. In addition, the CAIR's 2015 NO_X cap will eliminate all NO_X emissions from EGUs that are highly cost effective to control, and the 2009 cap represents an interim step toward that end. We also noted additional arguments in the phase 2 rule, which we are summarizing below under Section III. A. 1. below.

2. Petition for Reconsideration

The EPA received a petition for reconsideration of the final Phase 2 rule from the NRDC. This petition raised several objections to EPA's determination that, in certain circumstances, EGUs in CAIR States may satisfy the NO_X RACT requirement for ozone if they comply with rules implementing the CAIR. Specifically, they argued that:

- The EPA unlawfully and arbitrarily failed to seek public comment on the final rule's determination that the CAIR satisfies NO_X RACT requirements.
- The EPA's CAIR–RACT determinations are unlawful and arbitrary because EPA's action illegally abrogates the Act's RACT requirements.

The EPA granted NRDC's petition by letter of June 21, 2006. In this action, EPA is announcing the initiation of the reconsideration process and requesting additional public comment on this issue. Also, EPA is supplementing the record with additional technical analyses that addresses the determination that the CAIR satisfies the NO_X RACT requirement for covered EGUs.

B. NSR Issues

1. Our Previous Proposed and Final Rules

The major NSR provisions in the November 29, 2005 Phase 2 rulemaking were proposed as part of two different regulatory packages. On July 23, 1996 (61 FR 38250), we proposed changes to the major NSR program, including codification of the requirements of part D of title I of the 1990 CAA Amendments for major stationary sources of volatile organic compounds (VOC), NO_X, particulate matter having a nominal aerodynamic diameter less than or equal to 10 microns (PM_{10}), and CO. On June 2, 2003 (68 FR 32802), we proposed a rule to implement the 8-hour ozone NAAQS. In the 2003 action, we proposed a rule to identify the statutory requirements that apply for purposes of developing SIPs under the CAA to implement the 8-hour ozone NAAQS (68 FR 32802). We did not propose specific regulatory language for implementation of NSR under the 8-hour NAAQS. However, we indicated

[2] However, as noted below, a State that elects to bring its NO_X SIP Call non-EGU sources into the CAIR ozone season trading program may continue to rely on EPA's determination that RACT is met for EGU sources covered by the CAIR trading program. It may rely on this determination if and only if the State retains a summer season EGU budget under the CAIR that is at least restrictive as the EGU budget that was set in the State's NO_X SIP call SIP.

that we intended to revise the nonattainment NSR regulations to be consistent with the rule for implementing the 8-hour ozone NAAQS (68 FR 32844). On April 30, 2004 (69 FR 23951), we published a final rule that addressed classifications for the 8-hour NAAQS. The April 2004 rule also included the NSR permitting requirements for the 8-hour ozone standard, which necessarily follow from the classification scheme chosen under the terms of subpart 1 and subpart 2.

In 1996, we proposed to revise the regulations limiting offsets from emissions reductions due to shutting down an existing source or curtailing production or operating hours below baseline levels (''shutdowns/curtailments''). We proposed substantive revisions in two alternatives that would ease, under certain circumstances, the existing restrictions on the use of emission reduction credits from source shutdowns and curtailments as offsets.

On July 23, 1996, we proposed to revise 40 CFR 52.24 to incorporate changes made by the 1990 CAA Amendments related to the applicability of construction bans (61 FR 38305). To clarify our intent, our proposed 8-hour ozone NAAQS implementation rule in June 2003 explained that section 52.24(k) remained in effect and would be retained. In that action, we also proposed that we would revise section 52.24(k) to reflect the changes in the 1990 CAA Amendments (68 FR 32846). On June 2, 2003 (68 FR 32802), we explained implementation of the major NSR program under the 8-hour ozone NAAQS during the SIP development period, and proposed flexible NSR requirements for areas that expected to attain the 8-hour NAAQS within 3 years after designation.

In the final regulations, we included several revisions to the regulations governing the nonattainment NSR programs mandated by section 110(a)(2)(C) and part D of title I of the CAA. First, we codified requirements added to part D of title I of the CAA in the 1990 Amendments related to permitting of major stationary sources in areas that are nonattainment for the 8-hour ozone, particulate matter (PM), and carbon monoxide (CO) NAAQS. Second, we revised the criteria for crediting emissions reductions credits from shutdowns and curtailments as offsets. Third, we revised the regulations for permitting of major stationary sources in nonattainment areas in interim periods between designation of new nonattainment areas and EPA's approval of a revised SIP. Also, we changed the regulations that impose a moratorium (ban) prohibiting construction of new or modified major stationary sources in nonattainment areas where the State fails to have an implementation plan meeting all of the requirements of part D.

2. Petition for Reconsideration

The NRDC petition for reconsideration raised two objections to the major NSR aspects of the Phase 2 rulemaking:

- Allowing sources to use emission reductions as offsets if they occur after the last day of the base year for the SIP planning process; and
- Changes to Section VI of Appendix S allowing for waiver of nonattainment major NSR requirements for some source categories.

The EPA granted the petition by letter of June 21, 2006 and in this action EPA announces its decision to reconsider and to request additional public comment on these issues.

III. This Action

A. NO_X RACT for EGUs in CAIR States

1. Reconsideration and Request for Comment on NO_X RACT for EGUs in CAIR States

In this notice, EPA announces its decision to reconsider and request additional comment on the determination that EGU sources complying with rules implementing CAIR requirements meet ozone NO_X RACT requirements in States where all required CAIR reductions are achieved from EGUs only.[3] This determination provided the basis for our determination that, for purposes of meeting the NO_X RACT requirement, States need not perform (or submit) NO_X RACT analyses for sources subject to a NO_X trading program meeting the CAIR NO_X requirements (in a State achieving all CAIR reductions from EGUs only). According to this provision, States relying on this conclusion for the affected EGU sources need to document their reliance on EPA's determination in their RACT SIPs. A full discussion of EPA's rationale and the conditions under which the above determination is valid appears in the Phase 2 Rule preamble at FR 71656–71658 (November 29, 2005). However, we are summarizing that rationale here:

In the Phase 2 rulemaking to implement the 8-hour ozone NAAQS, EPA determined that EGU sources complying with rules implementing the CAIR requirements meet ozone NO_X RACT requirements in States where all required CAIR emissions reductions are achieved from EGUs only.[4] We noted that the CAIR final rulemaking established a region-wide NO_X emissions cap, effective in 2009, at a level that, assuming the reductions are achieved from EGUs, would result in EGUs installing emission controls on the maximum total capacity on which it is feasible to install emission controls by that date. In addition, the CAIR's 2015 NO_X cap will eliminate all NO_X emissions from EGUs that are highly cost effective to control, and the 2009 cap represents an interim step toward that end. We also noted the following in the Phase 2 rulemaking:

- The EPA's prior views on the details of the NO_X RACT program were set forth in the ''NO_X Supplement to the General Preamble,'' November 25, 1992 (57 FR 55620). In that document, EPA determined that in the majority of cases, RACT will result in an overall level of control equivalent to specified maximum allowable emission rates (in pounds of NO_X per million Btu) for certain specified electric utility boilers. Section 4.6 of this document (57 FR 55625) noted in part, ''In general, EPA considers RACT for utilities to be the most effective level of combustion modification reasonably available to an individual unit. This implies low NO_X burners, in some cases with overfire air and in other instances without overfire air; flue gas recirculation; and conceivably some situations with no control at all.'' The NO_X Supplement also provided, ''* * * the State may allow individual owners/operators in the nonattainment area (or, alternatively, Statewide within an ozone transport region) to have emission limits which result in greater or lesser emission reductions so long as the areawide average emission rates described above are met on a Btu-weighted average.'' (57 FR at 55625). The NO_X Supplement also set forth (in section 4.7) guidance on RACT for utility boilers other than those specified in section 4.6 and also for other source categories. This section noted in part, ''In general, EPA expects that NO_X RACT for these other sources will be set at levels that are comparable to the RACT guidance specified above [in section 4.6] * * *''

[3] However, see footnote 1 above and exception described below.

[4] However, as noted below, a State that elects to bring its NO_X SIP Call non-EGU souces into the CAIR ozone season trading program may continue to rely on EPA's determination that RACT is met for EGU sources covered by the CAIR trading program. It may rely on this determination if and only if the State retains a summer season EGU budget under the CAIR that is at least as restrictive as the EGU budget that was set in the State's NO_X SIP call SIP.

• ''The [CAIR] budgets are based on the level of emissions that can be achieved through highly cost-effective controls that EPA determined are available from EGUs; however, States have flexibility to choose the measures they will use to achieve the necessary emissions reductions. Due to feasibility constraints, EPA is requiring the CAIR budgets to be achieved in two phases. For summertime NO_X, the first phase starts in 2009 (covering 2009–2014); [5] the second phase of NO_X reductions begins in 2015 (covering 2015 and thereafter).'' (70 FR 71621). We also noted in the June 2, 2003, proposal that we considered highly-cost effective controls for NO_X for EGUs and non-EGUs that were used to establish the Statewide NO_X emission caps in the NO_X SIP call to constitute a greater level of control than RACT. (68 FR 32839.)

• In general, we expect that the largest-emitting EGU sources will be the first to install NO_X control technology and that such control technology will gradually be installed on progressively smaller-emitting EGU sources until the ultimate cap is reached.

• We do not believe that requiring source-specific RACT controls on EGUs in nonattainment areas will reduce total NO_X emissions from EGU sources covered by the CAIR below the levels that would be achieved under the CAIR alone.

• We believe that EGU source-specific RACT would result in more costly emission reductions on a per ton basis. We noted the following: ''As discussed more fully in the CAIR final rulemaking, EPA has set the 2009 CAIR NO_X cap at a level that, assuming the reductions are achieved from EGUs, would result in EGUs installing emission controls on the maximum total capacity on which it is feasible to install emission controls by those dates. The 2015 NO_X cap is specifically designed to eliminate all NO_X emissions from EGUs that are highly cost effective to control (the first cap represents an interim step toward that end) * * * In general, we expect that the largest-emitting sources will be the first to install NO_X control technology and that such control technology will gradually be installed on progressively smaller-emitting sources until the ultimate cap is reached.'' (70 FR 71657, col. 3).

• The combination of EGU source specific RACT and the CAIR emissions cap would not reduce the collective total emissions from EGUs covered by the CAIR, but would likely achieve the same total emissions reductions as the CAIR alone, in a more costly way.

• As a result, we believe that EGUs subject to the CAIR NO_X emissions cap meet the RACT requirement for NO_X (in States that require all CAIR NO_X reductions from EGUs).

The EPA made the finding for all areas in the CAIR region, such that States meeting the CAIR emissions reduction requirements with reductions from EGUs only, need not submit RACT analyses for covered EGU sources subject to and in compliance with rules implementing CAIR requirements. At this time, EPA is not proposing to make any changes to this provision. The petition for reconsideration did not provide information sufficient to convince EPA that any aspect of the determination in the final Phase 2 8-hour ozone rule was in error, and EPA's supplemental technical analysis lends support to this determination. However, EPA acknowledges that the agency did not provide sufficient opportunity for public comment on this determination. We recognize the significant public interest in this issue and request additional comment on this determination.

As explained in the preamble to the final Phase 2 Rule, EPA does not believe that requiring source-specific RACT controls on EGUs in nonattainment areas will reduce total NO_X emissions from sources covered by the CAIR below the levels that would be achieved under the CAIR alone. As discussed more fully in the CAIR final rulemaking, EPA has set the 2009 CAIR NO_X cap at a level that, assuming the reductions are achieved from EGUs, would result in EGUs installing emission controls on the maximum total capacity on which it is feasible to install emission controls by that date. Under cap-and-trade programs such as the CAIR program, there is a direct relationship between the total number of allowances held by participating sources and the collective emissions from those sources. EGU source-specific control requirements (such as EGU source-by-source RACT) layered on top of the overall allowance-based emissions cap may affect the temporal distribution of emissions (by reducing banking and thus delaying early reductions) or the spatial distribution of emissions (by moving them around from one place to another), but such requirements do not affect total allowed emissions in the CAIR region.

Furthermore, we believe that EGU source-specific RACT could result in more costly emission reductions on a per ton basis. The 2015 NO_X cap is specifically designed to eliminate all NO_X emissions from EGUs that are highly cost effective to control (the 2009 cap represents an interim step toward that end). In general, we expect that the largest-emitting EGU sources will be the first to install NO_X control technology and that such control technology will gradually be installed on progressively smaller-emitting EGU sources until the ultimate cap is reached. If States choose to require smaller-emitting EGU sources in nonattainment areas to meet source-specific RACT requirements by 2009 (the required compliance date for RACT), they would likely use labor and other resources that would otherwise be used for emission controls on larger EGU sources. Because of economies of scale, more boiler-makers (skilled workers needed to install control equipment on EGUs) and other resources may be required per megawatt of power generation for smaller units than for larger units. Thus, the cost of achieving such reductions would be greater on a per ton basis. If it were possible to strategically target source-specific requirements at the EGUs that can be controlled most cost effectively, then the imposition of source-specific controls would achieve the same temporal and spatial distribution of controls as the projected CAIR cap-and-trade program. But this would require accurate forehand knowledge of each EGU's control costs, which would be practically difficult for regulators to obtain. Without this accurate source-specific control cost information, the imposition of EGU source-specific requirements would make any given level of emission reduction more costly than it would be under the cap-and-trade program alone. Thus, in States that achieve all CAIR reductions from EGUs, requiring both source-specific RACT on EGUs and compliance with rules implementing the CAIR would not achieve greater collective total emissions reductions from EGUs covered by the CAIR, and the collective reductions would likely be achieved at higher overall cost.

The CAIR is implemented on an annual and (for ozone) a seasonal basis. We believe that these averaging periods on which RACT is being implemented under the Phase 2 Rule are not in conflict with existing EPA policy. In general, the RACT requirement is applied on a short-term basis up to 24 hours.[6] However, EPA guidance permits

[5] The CAIR first phase also provides an annual NO_X budget, which also starts in 2009.

[6] 6 See, *e.g.*, 52 FR at 45108 col. 2, ''Compliance Periods'' (November 24, 1987). ''VOC rules should describe explicitly the compliance timeframe associated with each emission limit (*e.g.*, instantaneous or daily). However, where the rules are silent on compliance time, EPA will interpret it as instantaneous.

averaging times longer than 24 hours under certain conditions.[7] Although these earlier EPA guidance documents were directed at VOC, the NO_X Supplement to the General Preamble[8] provides, ''While this guidance has been largely directed at application within the VOC program, much of the guidance is also applicable to RACT for stationary sources of NO_X.'' Section 4.6 (''RACT for Certain Electric Utility Boilers'') of the NO_X Supplement provides generally applicable NO_X RACT emission rates for certain utility boilers on a pounds of NO_X per million Btu basis and indicates, ''Compliance with these limits may be determined on a continuous basis through the use of a 30 day rolling average emission rate, calculated each operating day as the average of all hourly data for the pr[e]ceeding 30 operating days.''

Other EPA guidance and policy allow for longer averaging times in certain circumstances. The EPA's ''Economic Incentive Policy''[9] (EIP) provides guidance on use of long-term averages for RACT and generally provides for averaging times of no greater than 30 days. However, that guidance also states, ''For NO_X sources that are required to comply with the [Ozone Transport Region] NO_X MOU regulation or the NO_X SIP call, the averaging time of an emission limit must not exceed a compliance period of an area's ozone season. Sources involved with EIP trades must meet all requirements applicable to the program.'' The EPA interprets this policy as applying to all trading programs and providing that the averaging time may not exceed the period for determining compliance with the trading program (*e.g.*, one year for the CAIR annual trading programs—and the ozone season for the CAIR ozone season trading program).

In addition, the RACT emission reductions need to be permanent, *i.e.*, once implemented, they also need to be continuously implemented. The EPA believes that emissions reductions from the CAIR will continue to be applied on a permanent basis. The EPA believes that EGUs covered by the CAIR that make the economic decision to install permanent controls will generally reduce their emissions for an extended period of time and not fluctuate in their level of control significantly over short periods, since it will generally be in their economic interest to control in order to generate emission allowances for sale to EGUs that opt not to install controls. Sources that comply with the CAIR comply with the overall NO_X emission caps on an annual and (for ozone) a seasonal basis. We note that sources covered by the CAIR are expected to reduce emissions to either comply with State emission limits (or to ''overcontrol'' beyond mere compliance and create surplus emission reduction credits that would be used to provide allowances to under-controlling sources) through permanent installation of emission controls such as selective catalytic reduction or selective non-catalytic reduction or combustion modification. As we noted in the Phase 2 Rule preamble in relation to the NO_X SIP call, ''In addition to operating advanced controls at least in the ozone season, many sources have installed combustion controls that function all the time; emissions reductions from these controls will occur year round.'' (70 FR 71656). Therefore, because of the expected general level of permanence of the controls on individual sources, EPA believes that sources that install controls will generally continue to provide the level of control for an extended period of time.

For these reasons, we continue to believe that EGUs subject to rules implementing the CAIR NO_X emission reduction requirements satisfy the RACT requirements for NO_X (in States that require all CAIR NO_X reductions from EGUs). Thus, at this time, EPA is not proposing to make any changes to the determination concerning NO_X RACT for EGUs in CAIR States in the Phase 2 Rule. The EPA continues to support its determination that States achieving all CAIR reductions from EGUs need not submit RACT analyses for EGU sources that are subject to and in compliance with rules implementing the CAIR requirements.

The determination that EGU sources complying with rules implementing CAIR requirements thereby also meet ozone NO_X RACT requirements applies only to EGUs in States achieving all required CAIR reductions from EGUs, except as noted below. As explained in the preamble to the final Phase 2 Rule, under the CAIR, a State may elect to meet its State budget for NO_X emissions solely through requiring reductions from EGUs or through requiring reductions from a combination of sources, including non-EGUs. If the State requires reductions from sources other than EGUs, it is not eligible to participate in the EPA-administered CAIR trading programs. Additionally, separate provisions of the CAIR rule allow States to choose to allow large NO_X sources that are not EGUs to opt-in to the trading programs. States that elect to allow such opt-ins, and States that require reductions from sources other than EGUs in implementing CAIR, may not rely on EPA's determination that EGUs complying with rules implementing the CAIR satisfy NO_X RACT. If only part of the CAIR reductions are required from EGUs, and the balance of the reductions obtained from non-EGU sources, then the stringency of the CAIR EGU control would be diminished to some extent (an amount that cannot be determined until a State submits a SIP indicating which sources are participating in the program). Therefore, in these cases, the rationale for our determination that these sources satisfy the RACT requirement would not necessarily apply.

Nonetheless, a State that elects to bring its NO_X SIP Call non-EGU sources into the CAIR ozone season trading program may continue to rely on EPA's determination that RACT is met for EGU sources covered by the CAIR trading program. It may rely on this determination if and only if the State retains a summer season EGU budget under the CAIR that is at least as restrictive as the EGU budget that was set in the State's NO_X SIP call SIP. The rationale for this determination is that the sources covered by the NO_X SIP call were shown to meet a level of NO_X control that exceeds EPA's presumption of control under NO_X RACT. Note that EPA is not reconsidering or requesting additional comment on its determination that the NO_X SIP Call constitutes RACT for sources covered by the NO_X SIP Call. Therefore, as explained in the final Phase 2 Rule, if the summer season EGU budget under CAIR is at least as restrictive as set out in the NO_X SIP call SIP, and if non-EGU sources after 2008 continue to be subject to a SIP that regulates those non-EGU sources equally or more stringently than the State's current rules meeting the NO_X SIP call, then those EGUs are meeting a level of control at least as stringent as RACT. (See 68 FR 32839, col. 1 ''Proposed Approach for NO_X RACT Determinations in Areas Affected by the NO_X SIP Call;'' and 70 FR 71656, col. 2, ''Response,'' and col. 3, ''NO_X SIP Call.'') If the State does not meet these conditions, the State would need to conduct RACT analyses for those EGUs (either on an individual basis, or using the averaging approach within the nonattainment area). The published

[7] Memorandum from John O'Connor, Acting Director of the Office of Air Quality Planning and Standards, January 20, 1984, ''Averaging Times for Compliance with VOC Emission Limits—SIP Revision Policy.''

[8] 57 FR at 55625, col. 1 sec. 4.5 ''Relation to VOC RACT Policies'' (November 25, 1992).

[9] Improving Air Quality with Economic Incentive Programs, January 2001, available at *http://www.epa.gov/region07/programs/artd/air/policy/search.htm.*

CAIR summer season NO_X budgets for each State are at least as stringent as the NO_X budgets for the NO_X SIP call. Also, the CAIR rule permits a State to bring its NO_X SIP Call non-EGU sources into the CAIR ozone season trading program only if they continue to be regulated at the same level of stringency as under the NO_X SIP call. 40 CFR 96.340 (published at 70 FR 25392, May 12, 2005)).

In addition, as we noted in the Phase 2 Rule, a State has discretion to require beyond-RACT NO_X reductions from any source (including sources covered by the CAIR or NO_X SIP Call programs), and has an obligation to demonstrate attainment of the 8-hour ozone standard as expeditiously as practicable. In certain areas, States may require NO_X controls based on more advanced control technologies as necessary to provide for attainment of the ozone standards.

2. Supplemental Technical Analysis

To provide further support for the determination regarding CAIR and ozone NO_X RACT, EPA conducted an additional technical analysis. For each geographic area within the CAIR region where 8-hour ozone RACT determinations are required, EPA examined whether the emissions reductions projected from the CAIR equal or exceed the emissions reductions projected to occur from application of source-by-source RACT.[10] Specifically, this analysis was conducted for operating coal-, oil-, and gas-fired EGUs for each ozone transport region (OTR) State within the CAIR region and for each nonattainment area in the CAIR region for which a RACT SIP, separate from an attainment demonstration SIP, is expected to be required.[11] The analysis was conducted on the basis of annual emissions and also summer season emissions. This analysis illustrates that the CAIR achieves greater overall emissions reductions across the CAIR region and across the OTR than would be achieved through the application of EGU source-by-source RACT controls. The docket contains a Technical Support Document[12] describing the analysis.

This emissions analysis, though not quantitatively definitive, is suggestive of the appropriateness of the determination that areas meet the 8-hour ozone SIP requirement for application of RACT for NO_X emissions where all EGUs comply with rules implementing the CAIR and those areas are located in States where all required CAIR emissions reductions are achieved exclusively from EGUs. There is uncertainty in the assumptions made in the analysis, although, as noted in the Technical Support Document, the assumptions tended to be conservative, i.e., erring on the side of projecting more emission reductions under the RACT scenario. The analysis does not project that CAIR emission reductions are equivalent to or exceed the reductions from source-by-source RACT for EGUs for every relevant nonattainment area and every State within the OTR. However, CAIR emission reductions are overall significantly greater regionwide than reductions obtained from source-by-source RACT for EGUs in both the CAIR region and the OTR. It is our belief that, due to the nature of regional emissions transport, local nonattainment area emissions reductions alone will not achieve the most effective or economically efficient impact on ozone air quality in nonattainment areas. We believe a combination of local and broader regional reductions, such as those driven by the CAIR requirements for EGUs, will achieve a more effective and economically efficient air quality improvement in nonattainment areas than application of source-by-source RACT.

Further, EPA believes that the term ''reasonable'' in RACT may be construed to allow consideration of the air quality impact of required emissions reductions from a region-wide cap and trade program such as the CAIR. As stated earlier, the region-wide CAIR NO_X emissions cap for 2009 was established based on the maximum total capacity on which it was possible to install controls by that date. So by design, the 2009 CAIR region-wide NO_X emissions cap for EGUs represents the most reductions that are reasonable to achieve. Because the CAIR achieves more NO_X emission reductions overall across the CAIR region and the OTR than EGU-by-EGU application of RACT, we believe this will result in more region-wide air quality improvements than application of RACT in the absence of the CAIR. The CAIR is projected to improve ozone air quality across much of the eastern half of the country, including many current and projected future nonattainment areas. A list of the counties projected to be in nonattainment in 2010 and 2015 (in the absence of the CAIR and 8-hour ozone SIPs), and the air quality improvement provided by the CAIR in each county, is provided in the preamble to the final CAIR (70 FR 91, May 12, 2005, pp. 25254–25255, Tables VI–12 and VI–13) and in the final Air Quality Modeling Technical Support Document in the CAIR final rule docket (docket document EPA–OAR–2003–0053–2123). The CAIR improves air quality in all of the 40 projected 2010 nonattainment counties, and in all 22 of the projected 2015 nonattainment counties, that were identified in the CAIR rule modeling. The modeling also showed air quality improvement in numerous counties projected to be in attainment.

3. Request for Public Comment Period on Submission Date for RACT SIP for RACT SIPs for EGUs in CAIR Region

Because EPA is reconsidering the RACT determination discussed above, we believe it is appropriate to postpone the submission date for the portion of the 8-hour ozone SIP that addresses NO_X RACT for EGUs in the CAIR region. The EPA therefore proposes a new date of June 15, 2007 for States in the CAIR region to submit RACT SIPs for these sources.

Such a postponement would affect only moderate 8-hour ozone nonattainment areas in the CAIR region and only the portion of the RACT SIPs that covers EGUs. For moderate areas in the CAIR region, the States must still submit RACT SIPs for all other affected sources per 40 CFR 51.912(a) by September 15, 2006.

B. Provisions of Final Rule Regarding the Criteria for Emission Reduction Credits from Shutdowns and Curtailments

1. Why We Changed Major Source NSR Criteria for Emission Reduction Credits (ERC) from Shutdowns and Curtailments

The final 8-hour ozone implementation rule removed the requirement that a State must have an

[10] Since RACT is a technology requirement prescribing year-round controls, it is appropriate to consider how participation in both CAIR trading programs (annual and seasonal) will affect annual emissions of NO_X and to compare that to how RACT will affect annual emissions of NO_X.

[11] 40 CFR 51.912(c)(1) (promulgated in the Phase 2 Rule) provides that for a subpart 1 area ''* * * that submits an attainment demonstration that requests an attainment date 5 or less years after designation for the 8-hour NAAQS, the State shall meet the RACT requirement by submitting an attainment demonstration SIP demonstrating that the area has adopted all control measures necessary to demonstrate attainment as expeditiously as practicable.'' Thus, these areas are not required to submit RACT SIPs separate from their attainment demonstrations. However, a State must submit a RACT SIP separate from an attainment demonstration SIP for the following areas: Under 40 CFR 51.912(a), subpart 2 moderate and above areas; and under 40 CFR 51.912(c)(2), subpart 1 areas with attainment dates beyond 5 years after designation.

[12] Technical Support Document for Phase 2 of the Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Notice of Reconsideration; NO_X RACT for EGUs in CAIR States—Supplemental Technical Analysis.

approved attainment plan before a source may use pre-application credits from shutdowns or curtailments as offsets. It also revised the availability of creditable offsets, consistent with the requirements of section 173 of the CAA. We revised the provisions at 40 CFR 51.165(a)(3)(ii)(C) and appendix S concerning emission reduction credits generated from shutdowns and curtailments as proposed in Alternative 2 of the 1996 proposal, with one exception. Alternative 2 of the 1996 proposal provided that, in order to be creditable, the shutdown of an existing emission unit or curtailing of production or operating hours must have occurred after the ''most recent emissions inventory.'' We agreed with the commenter who found the regulatory term ''most recent emissions inventory'' confusing. In particular, the commenter believed this language could be mistaken to mean that the base year for the purpose of determining emissions that may be used as creditable offsets would continue to shift. The commenter noted that it would be more accurate to state that the base year emissions inventory is the starting point, and all creditable emissions reductions must result from the shutdown or curtailment of emissions that have been reported in the base year inventory or a subsequent emissions inventory. (For the 8-hour ozone NAAQS, the base year is 2002.[13]) We agreed with the commenter that the terminology ''most recent emissions inventory'' could be confusing and revised 40 CFR 51.165(a)(3)(C)(1) and Appendix S paragraph IV.C.3. accordingly, specifying the cutoff date after which the shutdown or curtailment of emissions must occur as ''the last day of the base year for the SIP planning process. For purposes of this paragraph, a reviewing authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units.'' This provision is consistent with the previous regulation which also allowed the reviewing authority to treat prior shutdowns or curtailments as occurring after the date of the most recent emissions inventory, but we have modified the regulatory language to clarify the appropriate emissions inventory. Further, this regulatory language is consistent with our previous guidance on how emission reduction credits from shutdowns and curtailments are used in attainment planning.[14] The base year inventory includes actual emissions from existing sources and would not normally reflect emissions from units that were shutdown or curtailed before the base year, as these emissions are not ''in the air.'' To the extent that these emission reduction credits are to be considered available for use as offsets and are thus ''in the air'' for purposes of demonstrating attainment, they must be specifically included in the projected emissions inventory used in the attainment demonstration along with other growth in emissions over the base year inventory. This step assures that emissions from shutdown and curtailed units are accounted for in attainment planning.[15] As with the prior rules, reviewing authorities thus retain the ability to consider a prior shutdown or curtailment to have occurred after the last day of the base year if emissions that are eliminated by the shutdown or curtailment are emissions that were accounted for in the attainment demonstration. However, in no event may credit be given for shutdowns that occurred before August 7, 1977, a provision carried over from the previous regulation. *See 40 CFR 51.165(a)(3)(C)(1)(ii) and 40 CFR part 51 Appendix S paragraph IV.C.3.*

Other changes made to the provisions of the final Phase 2 Rule regarding emissions reduction credits from shutdowns and curtailments were nonsubstantive and merely clarified the restrictions on credits from shutdowns or curtailments. Specifically, the rule proposed on June 2, 2003 retained the requirement that a State have an approved attainment demonstration before a source may use preapplication credits from shutdowns or curtailments as offsets, but made that requirement inapplicable where the credits occurred after the last day of the base year for the SIP planning process or where they were included in the most recent emissions inventory. Our final rule recognized there is no requirement for an approved attainment demonstration in those circumstances, and thus deleted the reference to that former requirement since under the revised rule it would never apply.

2. Legal Basis for Changes to Criteria for Emission Reduction Credits From Shutdowns and Curtailments

The revisions made to the rules governing use of emissions reductions from shutdowns/curtailments as offsets were warranted by the more detailed attainment planning and sanction provisions of the 1990 CAA Amendments. These provisions specifically address air quality concerns in nonattainment areas lacking EPA-approved attainment demonstrations. As a threshold matter, we noted (see 70 FR 71677, November 29, 2005) that CAA section 173 does not mandate the prior restrictions on shutdown credits, specifically, the requirement to have an approved attainment demonstration before shutdown credits may be allowed. (See 48 FR 38742, 38751; August 25, 1983.) Rather, in promulgating these restrictions in 1989, EPA recognized that it had a large degree of discretion under the CAA to shape implementing regulations, as well as the need to exercise that discretion such that offsets are consistent with reasonable further progress (RFP) as required in CAA section 173. (See 54 FR 27286, 27292; June 28, 1989.) Originally, EPA believed that areas without approved attainment demonstrations lacked adequate safeguards to ensure that shutdown/curtailment credits would be consistent with RFP. We thus subjected those areas to more restrictive requirements to ensure a link between the new source and the source being shutdown/curtailed (that is, shutdown/curtailment must occur after the application for a new or modified major source is filed).

The 1990 CAA Amendments changed the considerations involved. For areas subject to subpart 2 of CAA part D, Congress emphasized the emission inventory requirement in section 172(c)(3) as a fundamental tool in air quality planning (see section 182(a)(1)). Congress also added new provisions keyed to the inventory requirement, including specific reduction strategies (e.g., section 182(b)(3) and (4) (regarding gasoline vapor recovery and motor vehicle inspection and maintenance

[13] 68 FR 32833. See also ''2002 Base Year Emission Inventory SIP Planning: 8-hr. Ozone, PM2.5 and Regional Haze Programs,'' U.S. EPA, pg. 1 (November 18, 2002).

[14] See 57 FR 13553. After the 1990 CAA Amendments were enacted, 1990 was the base year for 1-hour ozone NAAQS attainment planning purposes. See 57 FR 13502. The EPA encouraged States to allow sources to use pre-enactment banked emissions reductions credits for offsetting purposes. States have been allowed to do so if the restored credits meet all other offset creditability criteria, and States consider such credits as part of the attainment emissions inventory when developing their post-enactment attainment demonstration.

[15] For a discussion of emission inventories for the 8-hour ozone standard, see our emission inventory guidance, ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations—Final,'' at *http://www.epa.gov/ttn/chief/eidocs/eiguid/index.html.* For a discussion of emission projections used in attainment demonstrations, see Emission Inventory Improvement Program, Volume X, Emission Projections, December 1999, available at *http://www.epa.gov/ttn/chief/eiip/techreport/.*

programs)) and ''milestones'' that measure progress toward attainment from the base year emissions inventory or subsequent revised inventories (see section 182(b)(1)). Where the emission reduction credits pre-date the base year, State and local agencies must include the credits from the shutdown/curtailment in the projected emissions inventory used to develop the attainment demonstration. Subpart 4 sets forth specific reduction strategies and milestones for attainment of the PM_{10} standards. Additionally, there are now several adverse consequences where States fail to meet the planning or emissions reductions requirements of the CAA. For example, the CAA contains mandatory increased new source offset sanctions at a 2:1 ratio where the Administrator finds that a State failed to submit a required attainment demonstration (see section 179). In areas that are subject to subpart 2 and subpart 4, failure to attain the air quality standard by the attainment deadline results in the area being bumped up to a higher classification (see sections 181(b)(2) and 188(b)(2)). Additional regulatory requirements are imposed as a result of the higher classification (see, e.g., section 182(c), (d), and (e), and section 189(b)). These statutory changes justify shifting the focus of the prior regulations from individual offset transactions between a specific new source and shutdown source and towards a systemic approach. Considering the changes to the 1990 CAA Amendments, we now believe that continuing the prohibition on the use of shutdown/curtailment credits generated in a nonattainment area that is without an approved attainment demonstration is not warranted. We believe that use of emission reduction credits from shutdowns/curtailments will be consistent with RFP towards attainment under CAA section 173, even in the absence of an approved attainment demonstration, if the shutdown or curtailment occurs after the last day of the base year for the SIP planning process or is included in the projected emissions inventory used to develop the attainment demonstration. From an air quality planning perspective, emissions from the shutdown source actually impacted the measurements of air quality used in determining the nonattainment status of an area. Therefore, emissions reductions from such source shutdowns/curtailments are actual emissions reductions, and their use as emission offsets at a ratio of 1:1 or greater is consistent with RFP towards improved air quality as set forth in CAA section 173(a)(1)(A) provided they are included in the baseline emissions inventory.

3. Reconsideration of Emission Reduction Credits Final Rule Language and Request for Public Comments

In its January 30, 2006, petition for reconsideration, NRDC requested that EPA reconsider provisions in the final Phase 2 Rule that pertain to ERC. NRDC argued that EPA failed to present portions of the rule's ''shutdown-curtailment offset provisions'' and accompanying rationales to the public for comment. As noted above, the EPA is of the opinion that the basis for the ERC provisions of the final rule were fully explained in the November 29, 2005 rulemaking and in earlier actions leading to that rulemaking. The November 29, 2005 preamble included a lengthy description of preceding actions in which our rationale was developed. Furthermore, the November 29, 2005 preamble detailed our response to comments pertaining to the proposal. The particular comments that triggered the change in wording from usage of the term ''most recent emissions inventory'' to the term ''projected emissions inventory used to develop the attainment demonstration'' directly resulted from public comments we received in response to the July 23, 1996 proposal. The commenters voiced concerns that emission inventory updates would periodically eliminate emissions that could be used as emission reduction credits even though those emissions had been included in the projected inventory to be used for establishing attainment progress. Such was not our intent and we changed the language specific to the inventory in question in the interest of making a clarification. Petitioners assert in their request for reconsideration that our clarifying amendments to the ERC provisions of the final rule were not a logical outgrowth of the ERC provisions we proposed. In contrast, we saw our language change in the final rule as a technical clarification and not as a change to the nature or scope of our proposal.

Nonetheless, we do see value in presenting the final rule language for public comment as requested by the petitioners. It was and is our position that the changes reflected in the final rule were made in a procedurally correct manner and that the public comments reflected in the final rule were factually and logically compelling. Nevertheless, we encourage and welcome additional input. At proposal, we presented two options, one of which was adopted following our consideration of the public comments. We thus propose for reconsideration and seek public comment on the ERC provisions in the final Phase 2 Rule set forth at 40 CFR 51.165(a)(3)(ii)(C)(1) and (2), and Appendix S paragraph IV.C.3.

C. Applicability of Appendix S, Section VI

1. Final Changes to Applicability of Appendix S, Section VI

Section VI allows new sources locating in an area designated as nonattainment to be exempt from the requirements of Section IV.A. of Appendix S if the date for attainment has not yet passed. Section VI provides a management tool to provide a limited degree of flexibility in situations where a new source would not interfere with an area's ability to meet an attainment deadline. The final Phase 2 Rule made a procedural change to limit the applicability of appendix S, section VI to only those instances in which the Administrator has specifically approved doing so. Although we did not include the regulatory language to accomplish this goal in the June 2, 2003 proposal, we did clearly state our intention of doing so. As we noted at 68 FR 32848, section VI as worded without any amendment could apply in any nonattainment area where the dates for attainment have not passed even if the source meets all applicable SIP emission limitations and would not interfere with the area's ability to meet its attainment date. As codified prior to the amendment in the Final Phase 2 Rule, section VI contained no provision conditioning its applicability on approval by the Administrator. We noted at proposal, however, that States generally would not be able to show that a nonattainment area would continue to meet its attainment date if it does not apply LAER or offsets to major new sources and major modifications in the absence of safeguards (68 FR 32848).

Further, we stated in the preamble to the Phase 2 Rule that we continued to believe, as we stated in the proposal, that States should not interpret section VI as allowing a blanket exemption from LAER and offsets for all major new sources and major modifications in a given area before attainment dates have passed for that area. At proposal, we also offered for comment two broad programmatic proposals to modify the then-existing section VI for the purpose of providing greater flexibility. Overall, commenters considered the programmatic options to be impracticable. However most commenters did express support for the flexibility provided by section VI. For

this reason, we retained the original eligibility conditions for determining when section VI applies, but added the procedural requirement that the Administrator determine that the two previously existing conditions of Section VI are satisfied, and that the Administrator provide public notice of that determination. Thus, in the final rule we retained the previously existing requirements of Section VI, and added a further requirement that the Administrator independently determine and provide public notice that those requirements have been met. This requirement will achieve the proposal's purpose of assuring that States do not interpret section VI to provide a broad exemption to all major new sources and major modifications in any nonattainment area for which the attainment date has not passed.

2. Legal Basis for Changes to Applicability of Appendix S and the Transitional NSR Program

For the purposes of today's reconsideration, we will not expand our prior expressions of the legal basis for section VI of Appendix S. The legal basis for Appendix S, including section VI, was discussed in detail in section V.B.3.b. of the preamble to the final Phase 2 Rule. We have historically recognized that the SIP development period provided for in section 172(b) leaves a gap in part D major NSR permitting and have determined that this gap is to be filled with an interim major NSR program that is substantially similar to the requirements of part D, including the LAER and offset requirements from part D, subject to a limited exemption where the attainment deadline will be met (57 FR 18070, 18076). This interim NSR program has been implemented to date through Appendix S.

The section VI exemption, as limited by the final Phase 2 Rule, is consistent with the section 110(a)(2)(C) requirement that preconstruction permitting is implemented ''as necessary to assure that the [NAAQS] are achieved.'' While the Phase 2 Rule did not adopt the eligibility criteria that were proposed to ensure satisfaction of the original section VI conditions, we did add the proposed requirement that the Administrator determine that sources exempted from LAER and offsets under section VI will meet those conditions, in particular, noninterference with the attainment deadline. Section VI also is consistent with the exercise of our gap filling authority under section 301, as informed by the legislative history. That is, Appendix S reflects Congressional intent that standards equivalent to part D govern the issuance of NSR permits, subject to a limited degree of flexibility under conditions where attainment of the NAAQS by the attainment deadline is assured.

3. Reconsideration of Appendix S, Section VI Final Rule Language and Request for Public Comments

In its January 30, 2006, petition, NRDC requested that EPA reconsider provisions in the final Phase 2 Rule that pertain to Appendix S, section VI. NRDC argued that EPA failed to provide the public with an opportunity to comment on the language of Appendix S, Section VI that was included in the final rule. As is the case with respect to the ERC provisions, EPA believes that our rationale was fully explained in the November 29, 2005 rulemaking and in earlier actions leading to that rulemaking. The preamble to the final rule included a lengthy description of preceding actions in which our rationale was developed. Further, the preamble to the final rule detailed our response to comments pertaining to the proposal. In our June 2, 2003 notice we proposed two possible programs for the implementation of the provisions contained in Section VI. Commenters recommended against the proposed approaches and we responded by dropping both proposed programs at promulgation. As noted above, what we did in the final rule was add one provision to the already existing language of Appendix S, section VI to limit use of Section VI to only those instances publicly approved of by the Administrator. Although we did not include in the June 2, 2003 proposal the regulatory language added to the final rule at Appendix S, Section VI.C., we did clearly state our intention as to the change to be made. From our perspective, we made the smallest change possible and achieved closure of a gap in section VI. Thus, we disagree with the petitioner's assertion that the final rule language is not a logical outgrowth of the proposal. As well, we disagree with the petitioner's assertion that the final rule constitutes an open-ended scheme to evade the strictures of Part D. If anything, the prior rule language could have been construed as open-ended. The sole intention of our language change was to close what we perceived to be a loophole allowing just the type of outcome to which the petitioners object. Congress required just such closure through the provisions of the original section 129 as included in the August 7, 1977 amendments to the Act. At that time, Congress made clear its opinion that it would be the role of the Administrator to determine whether waiver of the appendix S provisions in question might be appropriate.

The change made to Section VI in the final rule providing that the Administrator must determine whether the conditions of Section VI have been satisfied provides a positive safeguard to prevent just the kinds of unchecked application of its provisions as envisioned by the petitioners. We continue to see section VI as a gap-filler that goes away as of the attainment date. It was and is our position that the changes reflected in the final rule were made in a procedurally correct manner and that the public comments reflected in the final rule were factually and logically compelling. Nonetheless, we see value in presenting for public comment the changes made to Section VI of Appendix S in the final Phase 2 Rule. Therefore, we seek comment on subsection C. of Section VI of Appendix S as added in the final Phase 2 rule as requested by the petitioners.

Following today's action, we anticipate two possible outcomes. First, should we not receive compelling arguments to the contrary, the provision promulgated on November 29, 2005, and proposed today in section VI.C. would remain as promulgated. That is, the language proposed herein is actually already codified in the Code of Federal Regulations and we would make no further changes. The second possible outcome of our reconsideration of this provision could be that commenters might make compelling arguments that it was inappropriate for us to add to the final Phase 2 Rule the requirement of Section VI.C. that the Administrator determine that requirements A and B of Section VI have been satisfied and to provide notice of such determination. Should that occur, our final rule would consist of amendatory language to revert the text of section VI to that which existed prior to November 29, 2005. That is, we would retract section VI.C. and remove the specification for the Administrator to be the determinant of when section VI might be applied. We invite comment on these two options. We currently believe that the correct approach is the approach we took in the final Phase 2 Rule. While section 129 has been amended to address matters largely unrelated to those addressed in 1977, Congress did previously legislate a course parallel to that which we have thus far chosen to pursue.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' This action is significant because it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this reconsideration notice are addressed along with those covering the Phase 1 Rule (April 30, 2004; 69 FR 23951) and the Phase 2 Rule (November 29, 2005; 70 FR 71612) which was submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* [EPA ICR # 2236.01.] The information collection requirements are not enforceable until OMB approves them other than to the extent required by statute.

This action announces EPA's decision to reconsider and take additional comment on several provisions of the Phase 2 Rule, namely the RACT provisions and selected NSR provisions. This action does not establish any new information collection burden on States beyond what was required in the Phase 2 Rule.

The EPA has projected cost and hour burden for the statutory SIP development obligation for the Phase 2 Rule, and prepared an Information Collection Request (ICR). Assessments of some of the administrative cost categories identified as a part of the SIP for an 8-hour standard are already conducted as a result of other provisions of the CAA and associated ICRs (*e.g.* emission inventory preparation, air quality monitoring program, conformity assessments, NSR, inspection and maintenance program).

The burden estimates in the ICR for the Phase 2 rule are incremental to what is required under other provisions of the CAA and what would be required under a 1-hour standard. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When the ICR for the Phase 2 rule is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule. However, the failure to have an approved ICR for this rule does not affect the statutory obligation for the States to submit SIPs as required under part D of the CAA.

The information collection requirements associated with NSR permitting for ozone are covered by EPA's request to renew the approval of the ICR for the NSR program, ICR 1230.17, which was approved by OMB on January 25, 2005. The information collection requirements associated with NSR permitting were previously covered by ICR 1230.10 and 1230.11. The OMB previously approved the information collection requirements contained in the existing NSR regulations at 40 CFR parts 51 and 52 under the provisions of the Paperwork Reduction Act, and assigned OMB control number 2060–0003. A copy of the approved ICR may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's notice of reconsideration on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the Phase 1 and Phase 2 Rules, we concluded that those actions did not have a significant economic impact on a substantial number of small entities. For those same reasons, I certify that this action will not have a significant economic impact on a substantial number of small entities. This notice of reconsideration will not impose any requirements on small entities. We continue to be interested in the potential impacts of our proposed rules on small entities and welcome comments on issues related to such impacts.

Concerning the NSR portion of this notice of reconsideration, a Regulatory Flexibility Act Screening Analysis (RFASA) was developed as part of a 1994 draft Regulatory Impact Analysis (RIA) and incorporated into the September 1995 ICR renewal. This analysis showed that the changes to the NSR program due to the 1990 CAA Amendments would not have an adverse impact on small entities. This analysis encompassed the entire universe of applicable major sources that were likely to also be small businesses (approximately 50 ''small business'' major sources). Because the administrative burden of the NSR program is the primary source of the NSR program's regulatory costs, the analysis estimated a negligible ''cost to sales'' (regulatory cost divided by the business category mean revenue) ratio for this source group. The incorporation of the major source thresholds and offset ratios from the 1990 CAA Amendments in section 51.165 and appendix S for the purpose of implementing NSR for the 8-hour standard does not change this conclusion. Under section 110(a)(2)(C), all States must implement a preconstruction permitting program ''as necessary to assure that the [NAAQS] are achieved,'' regardless of changes to today's regulations. Thus, small businesses continue to be subject to regulations for construction and modification of stationary sources, whether under State and local agency minor NSR programs, SIPs to implement section 51.165, or appendix S, to ensure that the 8-hour standard is achieved.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this notice of reconsideration does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. In promulgating the Phase 1 and Phase 2 Rules, we concluded that they were not subject to the requirements of sections 202 and 205 of the UMRA. For those same reasons, this notice of reconsideration and request for comment is not subject to the UMRA.

The EPA has determined that this notice of reconsideration contains no regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This notice of reconsideration requests comment on three aspects of the Phase 2 Rule. For the same reasons stated in the Phase 1 and Phase 2 Rules, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This notice of reconsideration does not have ''Tribal implications'' as specified in Executive Order 13175.

The purpose of this notice of reconsideration is to announce our decision to reconsider and request comment on specific aspects of the Phase 2 Rule. The CAA provides for States and Tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. The Tribal Authority Rule (TAR) gives Tribes the opportunity to develop and implement CAA programs such as the 8-hour ozone NAAQS, but it leaves to the discretion of the Tribes whether to develop these programs and which programs, or appropriate elements of a program, they will adopt.

For the same reasons stated in the Phase 1 and Phase 2 Rules, this action does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time. If a Tribe does implement such a plan, it would not impose substantial direct costs upon it. Furthermore, this action does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this action does nothing to modify that relationship. Because this action does not have Tribal implications, Executive Order 13175 does not apply.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This notice of reconsideration addresses several provisions in the Phase 2 Rule that the Agency was requested to reconsider and requests comment on those provisions. The action is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the 8-hour ozone NAAQS on children. The results of this evaluation are contained in 40 CFR part 50, National Ambient Air Quality Standards for Ozone, Final Rule (July 18, 1997; 62 FR 38855–38896, specifically, 62 FR 38860 and 62 FR 38865).

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The notice of reconsideration announces our decision to reconsider and requests comment on several aspects of the Phase 2 Rule, for which EPA did perform an analysis of the energy impacts under Executive Order 13211.[16]

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

The EPA will encourage the States and Tribes to consider the use of such standards, where appropriate, in the development of the implementation plans.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionate high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA concluded that the Phase 2 Rule does not raise any environmental justice issues (See 70 FR at 71695, col. 2; (November 29, 2005)); for the same reasons, since this action announces our decision to reconsider and requests comment on several aspects of the Phase 2 rule, this reconsideration notice does not raise any environmental justice issues. The health and environmental risks associated with ozone were considered in the establishment of the 8-hour, 0.08 ppm ozone NAAQS (62 FR 38856 (July 18, 1997)). The level is designed to be protective with an adequate margin of safety. The Phase 2 Rule provides a framework for improving environmental quality and reducing health risks for areas that may be designated nonattainment.

List of Subjects in 40 CFR Part 51

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: December 11, 2006.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart I—[Amended]

2. Section 51.165 is amended by revising paragraph (a)(3)(ii)(C) to read as follows:

§ 51.165 Permit requirements.

(a) * * *

(3) * * *

(ii) * * *

(C) *Emission reduction credits from shutdowns and curtailments.* (*1*) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if they meet the requirements in paragraphs (a)(3)(ii)(C)(*1*)(*i*) through (*ii*) of this section.

(*i*) Such reductions are surplus, permanent, quantifiable, and federally enforceable.

(*ii*) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this paragraph, a reviewing authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

(*2*) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in paragraph (a)(3)(ii)(C)*(1)(ii)* of this section may be generally credited only if:

(*i*) The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

(*ii*) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of paragraph (a)(3)(ii)(C)*(1)(i)* of this section.

* * * * *

Appendix S to Part 51—[Amended]

3. Appendix S to part 51 is amended by revising paragraphs IV.C.3 and VI to read as follows:

Appendix S to Part 51—Emission Offset Interpretative Ruling

* * * * *

IV. * * *

C. * * *

3. Emission Reduction Credits from Shutdowns and Curtailments.

(i) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours may be generally credited for offsets if they meet the requirements in paragraphs IV.C.3.i.1. through 2 of this section.

(1) Such reductions are surplus, permanent, quantifiable, and federally enforceable.

(2) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this paragraph, a reviewing authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

(ii) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours and that do not meet the requirements in paragraphs IV.C.3.i.1. through 2 of this section may be generally credited only if:

(1) The shutdown or curtailment occurred on or after the date the new source permit application is filed; or

[16] Technical Appendix: Potential Impacts of Implementation of the 8-Hour Ozone NAAQS; Technical Support Document. July 21, 2005. Docket Document EPA–HQ–OAR–2003–0079–0860.

(2) The applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the emissions reductions achieved by the shutdown or curtailment met the requirements of paragraphs IV.C.3.i.1. through 2 of this section.

* * * * *

VI. Policy Where Attainment Dates Have Not Passed

In some cases, the dates for attainment of primary standards specified in the SIP under section 110 have not yet passed due to a delay in the promulgation of a plan under this section of the Act. In addition the Act provides more flexibility with respect to the dates for attainment of secondary NAAQS than for primary standards. Rather than setting specific deadlines, section 110 requires secondary NAAQS to be achieved within a ''reasonable time''. Therefore, in some cases, the date for attainment of secondary standards specified in the SIP under section 110 may also not yet have passed. In such cases, a new source locating in an area designated in 40 CFR 81.300 *et seq.* as nonattainment (or, where section III of this Ruling is applicable, a new source that would cause or contribute to a NAAQS violation) may be exempt from the Conditions of section IV.A if the conditions in paragraphs VI.A through C are met.

A. The new source meets the applicable SIP emission limitations.

B. The new source will not interfere with the attainment date specified in the SIP under section 110 of the Act.

C. The Administrator has determined that conditions A and B of this section are satisfied and such determination is published in the **Federal Register**.

[FR Doc. E6–21379 Filed 12–18–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–CA–0013, FRL–8257–7]

Revisions to the California State Implementation Plan, Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Kern County Air Pollution Control District (KCAPCD) portion of the California State Implementation Plan (SIP). The KCAPCD revisions concern permitting requirements. We are proposing to approve local rules that administer regulations under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by January 18, 2007.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2005–CA–0013, by one of the following methods:

- Federal eRulemaking Portal: *www.regulations.gov*. Follow the online instructions.
- E-mail: *R9airpermits@epa.gov*.
- Mail or deliver: Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Manny Aquitania, Permits Office (AIR-3), U.S. Environmental Protection Agency, Region IX, (415) 972–3977, *aquitania.manny@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are proposing to approve and Table 2 lists the rule we are proposing to disapprove with the date that they were amended by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES PROPOSED FOR FULL APPROVAL

Local agency	Rule No.	Rule title	Amended	Submitted
KCAPCD	201	Permits Required	05/02/96	07/23/96
KCAPCD	202.1	Experimental Research Operations.	05/02/96	07/23/96
KCAPCD	209.1	Permit Conditions	05/02/96	07/23/96
KCAPCD	210.2	Standards for Permits to Operate	05/02/96	07/23/96
KCAPCD	210.5	Visibility Protection	05/02/96	07/23/96

TABLE 2.—SUBMITTED RULE PROPOSED FOR FULL DISAPPROVAL

Local agency	Rule No.	Rule title	Amended	Submitted
KCAPCD	203	Transfer	05/02/96	07/23/96

On October 30, 1996, the submittal of Rules 201, 202.1, 203, 209.1, 210.2, and 210.5 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved Rules 201 and 202.1 into the SIP on July 6, 1982 (47 FR 29233). We approved Rule 203 into the SIP on September 22, 1972 (37 FR 19812). We approved Rule 210.2 into the SIP on August 21, 1981 (46 FR 42460). There are no versions of Rules 209.1 and 210.5 in the SIP.

C. What is the purpose of the submitted rule revisions?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants.

The purposes of the new rules are as follows:

- Rule 209.1 adds a prohibition to operate equipment contrary to conditions in the Permit to Operate (PTO) issued in accordance with the provisions of Rule 209 in order to comply with the standards of Rules 208 and 208.1.
- Rule 210.5 adds a requirement that the Air Pollution Control Officer (APCO) not issue an Authority to Construct (ATC) unless the analysis required by this rule demonstrates that an adverse impact on visibility in Federal Class I Areas will not occur for any new major stationary source or major modification which would have the potential to emit nitrogen oxides, sulfur dioxide or particulate matter in significant amounts and is required to utilize BACT/LAER for such pollutants.

The purposes of revisions relative to the SIP rules are as follows:

- Rule 201 adds a provision that the ATC will serve as the temporary PTO after notifying the APCO of the intent to start-up new or modified equipment and adds a provision that the application for a PTO will serve as the temporary PTO for existing equipment.
- Rule 202.1 is reformatted for clarity.
- Rule 203 replaces the prohibition from transferring a permit with the allowance to transfer a permit from one person to another or from one location to another, providing a new application is filed and approved by the APCO.
- Rule 210.2 deletes the severability provision.

The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193).

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,* EPA (May 25, 1988). (The Blue Book)
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies,* EPA Region IX (August 21, 2001). (The Little Bluebook)

B. Do the rules meet the evaluation criteria?

We believe Rules 201, 202.1, 209.1, 210.2, and 210.5 are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations.

A provision in Rule 203 which does not meet the evaluation criteria is summarized below and discussed further in the TSD.

C. What is the deficiency in Rule 203?

This provision conflicts with section 110 and part D of the CAA and prevents full approval of the SIP revision:

- The revision to Rule 203 to allow transfer of a permit from one location to another is prohibited, because permitting requirements may be different at different locations. A New Source Review must be performed upon changing location. See 40 CFR part 51, sections 165–166.

D. EPA Recommendation to further improve a rule

The TSD describes an additional revision to Rule 201 that does not affect EPA's current action but is recommended for the next time the local agency modifies the rule.

E. Public comment and final action

As authorized in section 110(k)(3) of the CAA, we are proposing full approval of the submitted KCAPCD Rules 201, 202.1, 209.1, 210.2, and 210.5.

As authorized in sections 110(k)(3) of the CAA, we are proposing a full disapproval of the submitted KCAPCD Rule 203. If finalized, this action would retain the present SIP-approved rule in the SIP. Sanctions would not be imposed as described in CAA section 179 and 40 CFR 52.30–52.32, because the present SIP-approved rule fulfills CAA requirements.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State

relationship, under the Clean Air Act preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 10(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 28, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. E6–21497 Filed 12–18–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7701]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

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

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

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

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Bartow County, Georgia and Incorporated Areas				
Raccoon Creek	Approximately 19,930 feet upstream of the confluence with Etowah River.	None	+705	Bartow County ((Unincorporated Areas).
	Approximately 22,900 feet upstream of the confluence with Etowah River.	None	+708	

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

ADDRESSES

Bartow County (Unincorporated Areas)

Maps are available for inspection at the Community Map Repository, 135 West Cherokee Avenue, Suite 124, Cartersville, Georgia 30120.

Send comments to Mr. Clarence Brown, Presiding Commissioner, Bartow County, 135 West Cherokee Avenue, Suite 251, Cartersville, Georgia 30120.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective [1]	Modified	
Carroll County, Georgia and Incorporated Areas				
Beulah Creek	At the confluence with Little Tallapoosa River	+986	+988	City of Carrollton.
	At Columbia Drive	+986	+988	
Buffalo Creek	At Strickland Road	+1042	+1043	City of Carrollton.
Tributary 1	Approximately 900 feet upstream of Strickland Road	+1042	+1043	
Chandler's Spring Creek	At the confluence with Little Tallapoosa River	+989	+992	City of Carrollton.
	Just upstream of William Street	+989	+992	
Curtis Creek	At the confluence with Little Tallapoosa River	+991	+994	City of Carrollton.
	At Lake Carroll Dam	+991	+994	
Little Tallapoosa River	Approximately 2,275 feet upstream of confluence of Buck Creek.	+977	+978	City of Carrollton.
	Approximately 2,800 feet upstream of Northside Drive	+992	+995	
Little Tallapoosa River Tributary.	At the confluence with Little Tallapoosa River	+990	+993	City of Carrollton.
	Approximately 2,870 feet upstream of confluence with Little Tallapoosa River.	+992	+993	
Sweetwater Creek	At Carroll/Douglas County boundary	None	+979	Carroll County.
	Approximately 1,510 feet upstream of the Carroll/Douglas county boundary.	None	+982	(Unincorporated Areas).
Tanyard Branch	At confluence with Little Tallapoosa River	+989	+992	City of Carrollton.
	Approximately 135 feet upstream of River Drive	+991	+992	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
[1] The existing elevation data included on the effective FIRM is printed in the elevation datum of the National Geodetic Vertical Datum of 1929 (NGVD29). In order to convert this printed elevation data from the NGVD29 datum to the NAVD88 datum, please add 0.2 feet.

ADDRESSES

Carroll County (Unincorporated Areas)

Maps are available for inspection at the Community Map Repository, Carroll County Engineering Department, 315 Bradley Street, Carrollton, Georgia 30117.

Send comments to The Honorable Robert Barr, Chairman, Carroll County Board of Commissioners, 315 Bradley Street, Georgia, 30117.

City of Carrollton

Maps are available for inspection at the Community Map Repository, Carroll County Engineering Department, 315 Bradley Street, Carrollton, Georgia 30117.

Send comments to The Honorable Weigh Garner, Mayor, City of Carrollton, 315 Bradley Street, Georgia, 30117.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Forsyth County, Georgia and Incorporated Areas				
Hurricane Creek	At the confluence with Settingdown Creek	+969	+970	Forsyth County (Unincorporated Areas).
	Approximately 1,010 feet upstream of the confluence with Settingdown Creek.	+969	+970	
James Creek	At the confluence with Chattahoochee River	+917	+918	Forsyth County (Unincorporated Areas).
	Approximately 2,400 feet upstream of the confluence with Chattahoochee River.	+917	+918	
Tributary G	At the confluence with Settingdown Creek	+1,141	+1,140	Forsyth County (Unincorporated Areas).
	Approximately 100 feet upstream of the confluence with Settingdown Creek.	+1,141	+1,140	
Tributary J	At the confluence with Settingdown Creek	+1,157	+1,156	Forsyth County (Unincorporated Areas).
	Approximately 60 feet upstream of the confluence with Settingdown Creek.	+1,157	+1,156	

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

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

ADDRESSES

Forsyth County (Unincorporated Areas)

Maps are available for inspection at 110 East Main Street, Suite 100, Cumming, Georgia 30040.
Send comments to Mr. Jack Conway, Commission Chairman, Forsyth County, 110 East Main Street, Suite 210, Cumming, Georgia 30040.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Whitfield County, Georgia and Incorporated Areas				
Poplar Springs Creek	Approximately 660 feet downstream of Poplar Springs Road.	None	+747	Whitfield County (Incorporated Areas).
	Approximately 1,270 feet upstream of Reed Pond Road Northwest.	None	+771	

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

ADDRESSES

Whitfield County (Unincorporated Areas)

Maps are available for inspection at 1407 Burleyson Drive, Dalton, Georgia 30720.
Send comments to Brian D. Anderson, Sr., Commission Chairman, Board of Commissioners, Whitfield County, 301 West Crawford Street, Dalton, Georgia 30720.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Choctaw County, Mississippi, and Incorporated Areas				
Yockanookany River	At Highway 407	None	+454	Town of Weir.
	Approximately 400 feet upstream of South Union Road.	None	+513	Choctaw County (Unincorporated Areas).
Yockanookany River Tributary 2.	At Kansas City Southern Railroad Bridge	None	+516	Town of Ackerman Choctaw County.
	Approximately 120 feet upstream of McKnight Road ..	None	+534	(Unincorporated Areas).
Yockanookany River Tributary 3.	At West Main Street	None	+510	Town of Ackerman
	Approximately 90 feet upstream of State Highway 12	None	+538	Choctaw County (Unincorporated Areas).
Yockanookany River Tributary 4.	Approximately 70 feet downstream of Commerce Street.	None	+521	Town of Ackerman.
	Approximately 320 feet upstream of College Street	None	+534	

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

ADDRESSES

Town of Ackerman

Maps are available for inspection at Town Hall, 45 East Main Street, Ackerman, MS 39735.
Send comments to The Honorable Bruce Burney, Mayor, 45 East Main Street, Ackerman, MS 39735.

Choctaw County (Unincorporated Areas)

Maps are available for inspection at County Courthouse, 22 East Quinn Street, Ackerman, MS 39735.
Send comments to Mr. Thomas Higgins, Board President, Choctaw County Board of Supervisors, 22 East Quinn Street, Ackerman, MS 39735.

Town of Weir

Maps are available for inspection at Town Hall, 217 Front Street, Weir, MS 39772.
Send comments to The Honorable Lee James, Mayor, Town Hall, 217 Front Street, Weir, MS 39772.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Northumberland County, Pennsylvania, and Incorporated Areas				
Boile Run	Approximately 690 feet upstream of State Road 147	*433	+432	Township of Lower Augusta.
	Approximately 905 feet downstream of State Road 147.	*431	+432	
Dalmatia Creek	Approximately at 90 feet downstream of State Road 147.	*416	+416	Township of Lower Mahanoy.
	Approximately at 900 feet upstream of State Road 147.	*417	+416	
Limestone Run	Approximately at 1110 feet downstream of Filbert Street.	*468	+468	Borough of Milton, Township of Turbot.
	Approximately at 1600 feet upstream of Township Route 594.	*520	+519	
Mahanoy Creek	Approximately 2120 feet downstream of State Road 147.	*426	+427	Township of Jackson.
	Approximately 2900 feet upstream of State Road 147	*427	+427	
Mahantango Creek	Approximately 1000 feet downstream of State Road 147.	*404	+400	Township of Lower Mahanoy.
	Approximately at 3000 feet upstream of State Road 147.	*404	+404	
Muddy Run	Approximately at 3120 feet downstream of Legislative Route 49102.	*472	+472	Township of Turbot.
	Approximately at 50 feet downstream of Township Route 572.	*472	+472	
Shamokin Creek	Approximately 2500 feet downstream of State Road 61.	*587	+583	Township of Ralpho, Township of Shamokin.
	Approximately 2250 feet upstream of Irish Valley Road.	*617	+617	
Susquehanna River	Approximately 18.6 miles downstream of Route 61, at Northumberland/Dauphin County line.	*404	+400	Borough of Herndon, Borough of Northumberland,
	Approximately 3.9 miles upstream of Route 54, at Northumberland/Montour County line.	*464	+468	Borough of Riverside, City of Sunbury, Township of Lower Augusta, Township of Lower Mahanoy, Township of Point, Township of Rush, Township of Upper Augusta.
Tributary No. 1 to Limestone Run.	Approximately 2055 feet downstream of State Road 254.	*481	+476	Township of Turbot.
	Approximately 250 feet downstream of State Road 254.	*481	+476	

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

ADDRESSES

Borough of Herndon
Maps are available for inspection at Herndon Borough Municipal Building, P.O. Box 385, Herndon, PA 17830
Send comments to The Honorable Richard Sweppenhiser, Mayor, North Main Street, P.O. Box 385, Herndon, PA 17830
Borough of Milton
Maps are available for inspection at Milton Borough Office, 2nd Filbert Street, Milton, Milton, PA 17847.
Send comments to The Honorable Charles Beck, Jr, Borough Manager, 2nd Filbert Street, Milton, PA 17847.
Borough of Northumberland
Maps are available for inspection at Northumberland Borough Building, 221 Second Street, Northumberland, PA 17857.
Send comments to The Honorable Brian M. Wolf, Chairman of Borough Council, 221 Second Street, Northumberland, PA 17857.
Borough of Riverside
Maps are available for inspection at Riverside Borough Building, 301 Dewart Street, Riverside, PA 17868.
Send comments to The Honorable Peter T. Fleming, President of Borough Council, P.O. Box 307, Riverside, PA 17868.
City of Sunbury
Maps are available for inspection at Sunbury City Code Administration Office, 225 Market Street,Sunbury, PA 17801.
Send comments to The Honorable Jess Woodring, Mayor, 225 Market Street, Sunbury, PA 17801.
Township of Jackson
Maps are available for inspection at Jackson Township Municipal Building, RR 2 Box 605, Herndon, PA 17830.
Send comments to The Honorable LaVerne Forman, Chairman of Board of Supervisors, RR 2 Box 605, Herndon, PA 17830.
Township of Lower Augusta
Maps are available for inspection at Lower Augusta Township Building, Rd #3, Box 28, Sunbury, PA 17801.
Send comments to The Honorable Talmage Johnson, Chairman of Board of Supervisors, Rd #3, Box 28, Sunbury, PA 17801.

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

Township of Lower Mahanoy
Maps are available for inspection at Lower Mahanoy Township Hall, Rd 1, Box 38, Dalmatia, PA 17017.
Send comments to The Honorable Larry L. Adams, Chairman of Board of Supervisors, Rd 1, Box 11, Dalmatia, PA 17017.
Township of Point
Maps are available for inspection at Point Township Municipal Building, 759 Ridge Road, Northumberland, PA 17857.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Roane County, Tennessee and Incorporated Areas				
Clinch River	At confluence with Tennessee River	None	+746	City of Kingston, Roane County (Unincorporated Areas)
	At confluence with Emory River	None	+746	
Clinch River	At confluence with Brashear Creek	None	+747	City of Oak Ridge, Roane County (Unincorporated Areas).
	At Roane County-Knox County Boundary	None	+796	

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

ADDRESSES

Roane County (Unincorporated Areas)
Maps are available for inspection at: Roane County Mayor's Office, 200 Race Street, Kingston, TN 37763.
Send comments to the Honorable Ken Yager, Mayor Roane County, 200 Race Street, Kingston, TN 37763.
City of Kingston
Maps are available for inspection at: City of Kingston Mayor's Office, 125 W. Cumberland Street, Kingston, TN 37763.
Send comments to the Honorable Diane McKeetham, Mayor City of Kingston, 125 W. Cumberland Street, Kingston, TN 37763.
City of Oak Ridge
Maps are available for inspection at: Community Development Department, 200 South Tulane Avenue, Oak Ridge, TN 37830.
Send comments to the Honorable David Bradshaw, Mayor City of Oak Ridge, 200 South Tulane Avenue, Oak Ridge, TN 37830.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
White County, Tennessee and Incorporated Areas				
Calfkiller River	At Wagner Street	None	+867	City of Sparta.
	At West Bronson Street	None	+963	
Town Creek B	At Highway 111	None	+896	White County (Unincorporated Areas).
	At Highway 70/North	None	+906	

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

ADDRESSES

White County (Unincorporated Areas)
Maps are available for inspection at White County Executive Office, Room 205, Courthouse, 1 West Bockmen Way, Sparta, TN 38583.
Send comments to: The Honorable Herd Sullivan, Mayor White County, White County Courthouse, Room 205, Sparta, TN 38583.
City of Sparta
Maps are available for inspection at White County Executive Office, Room 205, Courthouse, 1 West Bockmen Way, Sparta, TN 38583.
Send comments to: The Honorable Tommy Pedigo, Mayor City of Sparta, 6 Liberty Square, Sparta, TN 38583.

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

Dated: December 11, 2006.

David I. Maurstad,

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

[FR Doc. E6–21577 Filed 12–18–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT37

Endangered and Threatened Wildlife and Plants; Proposed Rule to Remove the Virginia Northern Flying Squirrel (*Glaucomys sabrinus fuscus*) From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973 (Act), as amended, we, the U.S. Fish and Wildlife Service (Service, us, our, or we), propose to remove the West Virginia northern flying squirrel (WVNFS) (*Glaucomys sabrinus fuscus*) from the Federal List of Endangered and Threatened Wildlife, due to recovery. This action is based on a review of the best available scientific and commercial data, which indicates that the subspecies is no longer endangered or threatened with extinction, or likely to become so within the foreseeable future. Recovery actions have resulted in a reduction in the threats which has led to: (1) A significant increase in the number of known WVNFS capture sites; (2) an increase in the number of individual squirrels; (3) multiple generation reproduction; (4) the proven resiliency of the squirrels; and (5) the vast improvement and continued expansion of suitable habitat.

DATES: We will consider comments on this proposed delisting if they are received by February 20, 2007. Public hearing requests must be received by February 2, 2007.

ADDRESSES: If you wish to comment on this proposed delisting, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Assistant Chief, Division of Endangered and Threatened Species, U.S. Fish and Wildlife Service, Northeast Regional Office, 300 Westgate Center Drive, Hadley, MA 01035.

2. You may hand-deliver written comments to our Northeast Regional Office, at the above address.

3. You may fax your comments to 413–253–8482.

4. You may use the Federal Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Diane Lynch at the above address (telephone: 413–253–8628) or the Field Office Supervisor, West Virginia Field Office, 694 Beverly Pike, Elkins, WV 26241 (telephone: 304–636–6586, extension 15).

Public Comments Solicited

We intend for any final action resulting from this proposal to be as accurate as possible. Therefore, we solicit data, comments, or suggestions from the public, other concerned government agencies, the scientific community, industry, Tribes, or any other interested party concerning this proposed rule. We particularly seek comments concerning: (1) Biological, commercial, trade, or other relevant data concerning any threat (or lack thereof) to the WVNFS; (2) additional information on the range, distribution, and population size of the WVNFS and its habitat; (3) the location of any additional populations of the WVNFS; and (4) data on population trends. Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is a threatened or endangered species shall be made ''solely on the basis of the best scientific and commercial data available.''

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their name and/or home address, 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 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. Comments and other information received, as well as supporting documentation used to write this rule, will be available for public inspection, by appointment, during normal business hours at our Northeast Regional Office (see **ADDRESSES**). In making a final decision on this proposal, we will take into consideration the comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal.

SUPPLEMENTARY INFORMATION:

Background

The northern flying squirrel, *Glaucomys sabrinus*, is comprised of 25 subspecies, including the Virginia northern flying squirrel, *G. s. fuscus*. Miller (1936, p. 143) first described *G. s. fuscus*, based on specimens collected in the Appalachian Mountains of eastern West Virginia. The Virginia northern flying squirrel was listed as endangered under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) on July 1, 1985 (Service 1985 (50 FR 26999, p. 27002)). However, it was subsequently determined that a more suitable common name for *G. s. fuscus* is the West Virginia northern flying squirrel (WVNFS), due to the majority of the range of the subspecies occurring in West Virginia, and will be referred to as such throughout the rest of this document. Information about the WVNFS' life history can be found in the final listing rule (50 FR 26999), the Appalachian Northern Flying Squirrels Recovery Plan (Service 1990, pp. 1–11), and the recent 5-year review (Service 2006b, pp. 6–10).

Previous Federal Actions

Additional information regarding previous Federal action for the WVNFS can be obtained by consulting the subspecies' regulatory profile found at: *http://ecos.fws.gov/species_profile/servlet/gov.doi.species_profile.servlets.SpeciesProfile?spcode=A09R.*

Recovery Planning

Recovery plans are not regulatory documents and are instead intended to provide guidance to the Service, States,

and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved. There are many paths to accomplishing recovery of a species and recovery may be achieved without all criteria being fully met. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished. In that instance, the Service may judge that, over all, the threats have been minimized sufficiently, and the species is robust enough, to reclassify the species from endangered to threatened or perhaps delist the species. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Overall, recovery of species is a dynamic process requiring adaptive management, and judging the degree of recovery of a species is also an adaptive management process that may, or may not, fully follow the guidance provided in a recovery plan.

When the 1990 final recovery plan was approved, the recovery criteria as they apply to the WVNFS were deemed objective, measurable, and adequate (Service 1990, p. 19). The recovery criteria did not change with a 2001 recovery plan amendment (Service 2001, pp. 1–6). However, the 2001 amendment included an update to Appendix A, Guidelines for Habitat Identification and Management for the WVNFS. Implementation of the amended Appendix A Guidelines by the Monongahela National Forest (MNF) effectively abated the main threat to the squirrel (i.e., habitat loss from timber management) throughout the majority of its range, by eliminating adverse impacts on all suitable habitat on the MNF without having to prove WVNFS presence (Service 2001, pp. 1–6; Service 2006b, pp. 3–4).

With the exception of the 2001 amendment to Appendix A, the recovery plan is no longer actively used to guide recovery of the WVNFS because it is outdated (Service 2006b, pp. 4–6). The recovery criteria do not specifically address the five threat factors used for listing, reclassifying, or delisting a species (Service 2006b, pp. 5–6). Consequently, the recovery plan does not provide an explicit reference point for determining the appropriate legal status of the WVNFS based either on alleviating the specific factors that resulted in its initial listing as an endangered species or on addressing new risk factors that may have emerged since listing. Additionally, the current known range of the WVNFS (Service 2006b, pp. 7–10) is much more widespread than the Geographic Recovery Areas designated in the recovery plan (Service 1990, p. 16). Thus, these focus areas for recovery, which do not have formal or regulatory distinction, are outdated. Therefore, our analysis of the threats to the WVNFS was based largely on the recently completed 5-year review (Service 2006b, pp. 1–20). This review is available at *http://www.fws.gov/northeast/pdf/flysqrev.pdf*.

Recovery efforts have provided increased attention and focus on the WVNFS and the habitat upon which it depends. Numerous conservation actions have been implemented since 1985 by land stewards, biologists, and conservation groups. These include research and recovery actions specified in the 1990 recovery plan and 2001 recovery plan update for the WVNFS; minimization and mitigation measures specified in two Habitat Conservation Plans (HCPs) at Snowshoe Mountain, specifically the protection of approximately 200 acres of WVNFS habitat in perpetuity (BHE 2003, pp. 34–42, Appendix F; BHE 2005, pp. 49–55); red spruce plantings; and conservation provisions in the 1986 MNF Land and Resource Management Plan (U.S. Department of Agriculture (USDA) Forest Service (Forest Service) 1986, pp. X–1 – X–3), 2004 Forest Plan Amendment (USDA Forest Service 2004, pp. 84, 84a, 84c, 87, 234–234b), and Forest Plan Revision (USDA Forest Service 2006 pp. 12, 19–20, 27). Of particular note are the habitat protection initiatives that have occurred on both public and private lands, the development of a habitat model and research on red spruce habitat restoration, the establishment of Canaan Valley National Wildlife Refuge (NWR), and the growing interest in spruce ecosystem restoration.

For example, we continue to work with interested land management and conservation entities to secure long-term commitments to continue conservation efforts already initiated to protect, manage, and monitor the habitat upon which the WVNFS depends. Although not one of the bases for the proposed WVNFS delisting, the Service is developing a long-term Memorandum of Understanding (MOU) with several Federal and non-federal entities, including the MNF, Canaan Valley NWR, The Nature Conservancy, and the West Virginia Department of Natural Resources (WVDNR). This MOU demonstrates a long-term commitment to continue protecting, managing for, and monitoring the red spruce-northern hardwood ecosystem, WVNFS, and other species. Furthermore, non-Federal land managers in several key areas (Kumbrabow State Forest, MeadWestvaco Ecosytem Research Forest, Snowshoe Mountain, Blackwater Canyon, and Canaan Valley) have expressed an interest to further red spruce conservation, regardless of the regulatory status of the WVNFS (Service 2006b, pp. 13–14).

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. We may determine a species to be an endangered or threatened species because of one or more of the five factors described in section 4(a)(1) of the Act, and we must consider these same five factors in delisting a species. We may delist a species according to § 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened (as is the case with the WVNFS); and/or (3) the original scientific data used at the time the species was classified were in error. The five factors listed under section 4(a)(1) of the Act and their application to the WVNFS are as follows:

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

WVNFS Distribution

At the time of listing (1985), 10 WVNFS individuals were known from Randolph and Pocahontas Counties, WV, and Highland County, VA (Service 2006b, p. 8). It was thought that vast stretches of unsuitable habitat separated the four known population centers and that the WVNFS still existed but that it was very rare, and perhaps no longer present in much of its former range (50 FR 26999, p. 26999). The final listing rule qualitatively described historic habitat losses and suggested that, ''[I]n these last occupied zones, the squirrels [*G. s. fuscus* and *G. s. coloratus*] and their habitat may be coming under increasing pressure from human

disturbances such as logging and development'' (50 FR 26999, p. 27000).

The current known range of WVNFS follows the spine of the high Allegheny Plateau in a northeast to southwest alignment. Helmick Run (Grant County, WV) marks the northeast periphery and Briery Knob (Greenbrier County, WV) the southwest periphery, covering seven counties in West Virginia and Highland County, Virginia (Service 2006b, p. 25). There is a total of 107 WVNFS capture sites, 105 of which are in West Virginia and 2 in Highland County, Virginia (Service 2006b, pp. 8, 25; WVDNR 2005, pp. 1–105). These capture sites are dispersed across seven general areas of relict habitat in the Allegheny Highlands region (Service 2006b, pp. 9, 26).

As of 2005, there had been 1,141 captures (including 78 recaptures) distributed throughout the 107 capture sites (Service 2006b, p. 7; WVDNR 2005, pp. 1–105). Sixty percent of these sites document WVNFS occurrence through time (WVDNR 2005, pp. 1–16, 18–20, 22–24, 26, 28–33, 35–36, 39–49, 52–53, 59–60, 62–64, 66–71, 73–75, 77–82, 84–87, 89, 92–93, 95–96, 98–102, 104–105). WVNFS are nocturnal, leaving the nest to forage at night and returning during the day. Nest box monitoring results are contingent upon WVNFS occupying the box on the day of the survey (Service 2006, p. 7). Therefore, considering that the nest box monitoring program has had only a 2 percent average success rate of squirrel occupancy per box checked (Service 2006b, p. 7), the presence of long-term nest box monitoring data provides strong evidence of the WVNFS' continued presence throughout its range over the last couple of decades (WVDNR 2005, pp. 1–16, 18–20, 22–24, 26, 28–33, 35–36, 39–49, 52–53, 59–60, 62–64, 66–71, 73–75, 77–82, 84–87, 89, 92–93, 95–96, 98–102, 104–105).

We now know that the WVNFS continues to occupy the areas identified in the 1985 final listing rule as well as numerous additional sites dispersed throughout its historical range, suggesting that its current range roughly approximates the extent of its historical range. Studies have confirmed the ability of the WVNFS to adjust its foraging and denning behavior (*i.e.,* the ability to nest in a wide variety of trees) to persist in and around relict red spruce-northern hardwood forest patches (Menzel *et al.* 2004, pp. 360, 363–364; Menzel *et al.* 2006a, pp. 1–3, 6, 7; Menzel *et al.* 2006b, p. 208; Ford *et al.* 2004, p. 430).

Habitat Quantity and Quality

Prior to European settlement, there were in excess of 500,000 acres (some sources suggest 600,000+ acres) of old-growth red spruce-northern hardwood forests, the preferred habitat of the WVNFS, in the Allegheny Highlands. These forests (occupying ridges, slopes, and drainages) in West Virginia extended from the vicinity of Mount Storm (Grant County) in the north to Cold Knob (Greenbrier County) in the south, east to the Allegheny Front (Pendleton County), and west to Webster and Nicholas Counties. These red spruce-northern hardwood forests were more contiguous across the Allegheny Highlands than are the well-known ''sky-islands'' of the Southern Appalachians, which support *G. s. coloratus* (Service 1990, pp. 16–17; USDA Forest Service Northeastern Research Station 2006, unpublished data, pp. 2–3).

Logging activity and associated widespread fires at the turn of the 20th century decimated the red spruce-northern hardwood forests, resulting in younger forests with less red spruce, and in many areas, a mixed mesophytic (moderately moist environment), oak-dominated forest (Menzel *et al.* 2006a, p. 6; Rollins 2005, pp. 12–13; Schuler *et al.* 2002, pp. 88–89). Consequently, this resulted in less, and poorer quality, WVNFS habitat because younger forests with fewer red spruce provided reduced foraging and sheltering opportunities (Service 2006b, p. 6). Also, the presence of oak and its associated mast (*i.e.,* acorns), provided a competitive advantage of food resources for the more aggressive southern flying squirrel (*Glaucomys volans*). The WVNFS' rarity was understood to be a consequence of its specialized use of a precipitously declining habitat type (Service 2006b, p. 11).

Currently, it is estimated that there are approximately 242,000 acres of WVNFS habitat (USDA Forest Service Northeastern Research Station 2006, unpublished data, p. 4). This estimate is based in part on the results of several habitat models, and includes all ''optimal'' habitat as well as ''likely'' habitat located in close proximity to red spruce-northern hardwood forests. ''Likely'' and ''optimal'' are terms and definitions imparted by the Menzel model, with ''likely'' areas having a greater than 50 percent chance of being occupied by the WVNFS, and ''optimal'' areas having a greater than 75 percent probability of being occupied (Menzel 2003, pp. 84–85, 87–89; Menzel *et al.* 2006b, pp. 15–16). The models allow us to estimate the amount of potential and high quality habitat in the Allegheny Highlands (Menzel *et al.* 2006a, p. 7), prioritize areas for restoration and recovery (Menzel *et al.* 2006a, p. 7), assess anthropogenic (manmade) and geologic fragmentation of the spruce forest, and analyze stewardship of the suitable habitat (Menzel *et al.* 2006b, p. 15).

The forested areas used by the WVNFS across most of its range have continued to mature in the 20 years since listing. For example, about half of the rangewide area modeled as optimal habitat are red-spruce northern hardwood forest stands on the MNF that are over 75 years old (Menzel *et al.* 2006b, p. 4; Service 2006b, pp. 10–11; USDA Forest Service Northeastern Research Station 2006, unpublished data, p. 2). Even though current habitat conditions are not as favorable for the WVNFS as historic conditions, current conditions are much improved compared to that at the time of listing. With the exception of localized habitat impacts, forest succession has resulted in older forest stands with improved forest structure, reflecting a continuing, positive rangewide trend (Service 2006b, pp. 11–14, 19–20). With regard to forest composition, the amount and extent of red spruce also appears to be gradually increasing, as suggested by Rollins (2005, pp. 39–51).

We analyzed impacts the balsam and hemlock woolly adelgids, insect parasites accidentally introduced from Europe (Service 1990, p. 13), may be having on the WVNFS' habitat (Service 2006b, p. 17). The balsam woolly adelgid infects balsam fir (*Abies balsamea*) trees, causing damage or mortality to the host trees (Service 1990, p. 13). However, we believe the effect of the balsam woolly adelgid on WVNFS habitat is discountable because balsam fir is limited to a minor component of the WVNFS habitat. Red spruce occurs in or near stands of balsam fir, providing the WVNFS with alternative and higher value habitat where damage from the balsam woolly adelgid may have occurred. In addition, the impact of the balsam woolly adelgid on the small component of balsam fir within WVNFS habitat has already occurred (Service 2006b, p 17).

The hemlock woolly adeglid has been in the United States since 1924. The insect damages eastern hemlock (*Tsuga canadensis*) trees by damaging new growth, which can cause defoliation and mortality (Service 2006b, p. 17). Only seven percent of the WVNFS capture sites are dominated by Eastern hemlock instead of red spruce (Service 2006b, p. 17). Loss of Eastern hemlock, due to the hemlock woolly adelgid, may reduce the

chances of WVNFS dispersal between patches and within metapopulations, potentially having a very local, isolating impact in a limited number of situations. While hemlock woolly adelgid may remove the montane conifer component at less than 10 percent of the known capture sites, most, if not all, of these areas are in close proximity to red spruce-northern hardwood forests, significantly reducing the occasions where loss of Eastern hemlock will be detrimental to the WVNFS (Service 2006b, p. 17). Additionally, the West Virginia Department of Agriculture has an active detection program for hemlock woolly adelgid and a treatment program that will remain in place regardless of the listing status of the WVNFS. Therefore, even though the hemlock woolly adelgid may impact a minor component of the squirrel's habitat, we consider it to pose a negligible degree of risk to the WVNFS, because of the limited role of hemlock in the species' survival, and presence of red spruce in the majority of the areas (Service 2006b, p. 17).

The potential impact of beech bark disease was also analyzed. Beech bark disease is caused by the beech scale insect (*Cryptococcus fagisuga*), followed by one of two fungi (*Nectria coccinea* var. *faginata* or *N. galligena*). The scale stresses and weakens the American beech tree (*Fagus grandifolia*) and the fungi then causes either localized lesions or decay and death of the entire tree (Service 2006b, pp. 17–18). Although American beech trees are common to the spruce-northern hardwood forests of the Allegheny Highlands, in WVNFS habitat they usually occur in combination with spruce and other hardwoods, particularly birch and maple. Therefore, despite having a devastating impact on the American beech component of the red spruce-northern hardwood forest, beech bark disease is not thought to render WVNFS habitat unsuitable (Service 2006b, p. 18). There is actually a potential short-term benefit to the WVNFS due to the creation of new nest cavities in the holes of dead and decaying beech. Foraging habitat for the WVNFS may also improve with increases in large woody debris on the forest floor from the dead beech trees, which could promote the growth of underground fungi, one of the WVNFS' primary food sources (Carey *et al.* 1999, p. 54; Pyare and Longland 2001, p. 1008; Rosenberg and Anthony 1992, p. 161; Waters *et al.* 2000, p. 85). Additionally, the removal of beech nuts is thought to be more detrimental to the southern flying squirrel because it is a high energy food source for that species, and, therefore, would counter any small amount of direct competition between the WVNFS and the southern flying squirrel. Therefore, while beech bark disease affects a minor component of WVNFS habitat rangewide, we consider it to pose an overall low-to-moderate degree of risk for WVNFS, and this risk may be offset by the potential benefits of creation of new nest cavities, increase in a primary food source, and potential harm to the food supply of the southern flying squirrel (Service 2006b, p. 18).

Land Use Planning

Available information indicates that the threat posed by past habitat loss has been largely abated across most of the WVNFS' range. Implementation of the 2001 recovery plan amendment (Service 2001, p. 4) by the MNF and the 2004 amendment to the MNF Land and Resource Management Plan (USDA Forest Service 2004, pp. 84a–84c, 87, 234–234b) significantly removed the threat of habitat loss (via logging) across much of the WVNFS' range. The recovery plan amendment recommended that suitable WVNFS habitat be considered during consultation with Federal agencies. The Forest Service reinforced this recommendation through an amendment to the MNF Land and Resource Management Plan, that limited vegetation management in all ''suitable habitat'' (as determined collaboratively by the Forest, Service, and WVDNR) to only certain activities: Research covered under an Endangered Species Act section 10 permit; actions to improve or maintain WVNFS populations after research has demonstrated the beneficial effects of the proposed management; or when project-level assessment results in no adverse effects. This conservation strategy has been carried forward into the MNF's recent Forest Plan Revision (USDA Forest Service 2005, pp. II–20, II–24, III–9–III–16; USDA Forest Service 2006, pp. 12, 19–20, 27). The former primary cause of habitat loss (detrimental logging practices) has been abated on the MNF, and proactive conservation throughout much of the WVNFS' range has and will continue to eliminate impacts from past logging practices, and focus on restoration of this ecosystem. For example, tens of thousands of red spruce trees have been planted over the last 4 years and more is being done to protect and restore this ecosystem (West Virginia Highlands Conservancy 2006, p.10).

There is no evidence of any new sources of habitat loss throughout the current range of the WVNFS. According to analyses using the Menzel model, over 60% of areas modeled as likely habitat are now considered secured by public ownership and/or managed for the protection of the WVNFS (Menzel *et al.* 2006b, p. 4). These areas include Canaan Valley NWR (created in 1994), Blackwater Falls and Canaan Valley State parks, Handley Wildlife Management Area, Kumbrabow State Forest, and the MNF (Service 2006b, pp. 12–14).

Activities that have contributed to habitat loss and degradation since the time of listing have been localized and/or have occurred on the periphery of the WVNFS' range (Service 2006b, pp. 11, 14, 20). These activities include limited highway development, recreational development, mining and gas exploration, timber management, and wind farm development. With regard to activities that are reasonably foreseeable to occur, some low level of local impacts are likely to continue into the future; however, there is no indication that the activities would ever be likely to occur over a landscape level, or at such a magnitude as to pose a threat to the continued existence of WVNFS (Service 2006b, pp. 11, 14, 19–20). For example, in addition to the majority of WVNFS habitat being publicly owned and managed, future development throughout the range of the WVNFS is expected to be minimal. The entire range of the WVNFS is within the Allegheny Mountains Valley Physiographic Region, an area of steep terrain and low human population density and growth. In 2005, the proportion of land use classified as low density and high density development within this physiographic region in West Virginia was 0.4% and 0.1%, respectively (WVDNR 2006, p. 10). During 2000, population densities in the counties in West Virginia in which the WVNFS occurs were among the lowest in the State, ranging from 9.7–40.4 persons per square mile (WVDNR 2006, p. 17); and with the exception of Randolph County (0.3% increase), the 10-year population trend (1990–2000) in all of these counties decreased (WVDNR 2006, p. 18).

Summary of Factor A: Although the quantity and quality of WVNFS habitat is reduced from historical levels, we now know that the WVNFS is more resilient in its habitat use than formerly thought (probably because of its mobility and plasticity in nest tree selection), and that habitat trends are moving in a positive direction in terms of forest regeneration and conservation. Therefore, the present or threatened destruction, modification, or curtailment of its habitat or range is no

longer considered a threat to the WVNFS.

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

The final listing rule concluded that the WVNFS was not known to be jeopardized by human utilization but noted that flying squirrels are highly desirable as pets to some persons, and collecting for such purposes is at least a potential threat to the already rare WVNFS (50 FR 26999, p. 27000). The WVNFS has been captured only for scientific purposes through nest box and live trap methods, and not for market collecting or commercial use. Capture for scientific purposes has been very limited, and has not proven to be detrimental to the continued existence of the WVNFS.

In the 21 years since listing, the Service has not received any evidence that commercial use in the pet trade or recreational use of the WVNFS is a threat. The WVNFS is a thinly dispersed, nocturnal mammal that is very difficult to catch. For example, Menzel captured the WVNFS at a rate of 0.227 captures per100 trap nights (Menzel 2003, p. 65), and the WVDNR's nest box monitoring program has had only a 2 percent average success rate of squirrel occupancy per box checked (Service 2006b, p. 7). Additionally, due to its nocturnal nature, this squirrel has not been widely hunted.

Summary of Factor B: Overutilization for any purpose is not currently considered a threat, and is not anticipated to emerge as a threat in the future, given the difficulties in collecting the WVNFS (*i.e.*, its nocturnal and secretive habits, and the remoteness of its habitat (Service 2006b, p. 14)).

C. Disease or Predation

The final listing rule made no mention of disease as a threat to the WVNFS, and we are not aware of any evidence since the time of listing that suggests the health of WVNFS individuals is threatened by disease. Of the more than 1,100 individual squirrels captured since 1985, none have shown signs of disease (Service 2006b, p. 15).

The final listing rule predicted that increasing human recreational use of northern flying squirrel habitat might result in predation on the WVNFS by pets, especially cats (50 FR 26999, p. 27000). While natural predators of the WVNFS may include weasel, fox, mink, owl, hawks, bobcat, skunk, raccoon, snakes, and fisher, we are not aware of any scientific or circumstantial evidence since the time of listing to support pets preying upon WVNFS (Service 2006a, p. 15), or to suggest that natural predation limits populations of WVNFS. As analyzed in our biological opinion for the Camp Wilderness HCP (Service 2003, pp. 12, 23), there are no documented deaths of northern flying squirrels, particularly the WVNFS, as a result of impacts of human recreational use or occupancy in, or near, its habitat, and pets are not predicted to be a substantial threat in the future (Service 2003, pp. 12, 23–25). Since the majority of WVNFS habitat is found on the MNF, human encroachment into WVNFS habitat is uncommon and localized (*e.g.*, Canaan Valley and Snowshoe Mountain) (Service 2003, pp. 12, 23–25; Service 2006a, p. 15; Service 2006b, pp. 15, 20), and is therefore precluded from becoming a threat in the future to the WVNFS.

Summary of Factor C: Disease and predation are not currently considered a threat to the WVNFS and are not considered to become a threat in the foreseeable future.

D. Inadequacy of Existing Regulatory Mechanisms

The final listing rule stated that this factor was not known to be applicable (50 FR 26999, p. 27000). Prior to its listing in 1985, there were no known existing regulatory mechanisms protecting the WVNFS.

State Laws

The State of West Virginia does not currently have any State laws protecting endangered species. However, for the reasons stated in the discussions of Factors A, B, C and E, there are no current threats to the species as a whole that require additional regulation. Therefore, the lack of an endangered species State law in West Virginia is not expected to negatively impact the WVNFS.

In the Commonwealth of Virginia, the WVNFS has been listed as endangered under the Commonwealth's endangered species act since its Federal listing in 1985. This Commonwealth law, which is administered by the Virginia Department of Game and Inland Fisheries, prohibits take of Commonwealth-listed species and is applicable to the WVNFS regardless of the squirrel's status under the federal Endangered Species Act. The WVNFS will remain listed under the Virginia law if it is removed from the Federal List of Threatened and Endangered Wildlife (VDGIF 2006, p 2). Lack of current threats, along with the Commonwealth's endangered species act, ensures the WVNFS' persistence in Virginia into the foreseeable future.

Federal Laws

The MNF and the George Washington National Forest (GWNF) each developed forest management plans that contain provisions to protect, manage, restore, and monitor the WVNFS and its habitat (USDA Forest Service 2006, pp. 12, 19–20, 27; USDA Forest Service 1997, pp. 3–4, 3–23, 3–28, 3–110). These provisions, contained in both Forests' current plan revisions, will be retained by the Forests, irrespective of the WVNFS' Federal listing status. Additionally, the National Forest Management Act and other Forest Service implementing guidance and regulations, state that national forests should be managed to preserve and enhance the diversity of plant and animal communities, and will continue to apply if the WVNFS is delisted. According to the Forest Service Manual, if a species is removed from the Federal List of Threatened and Endangered Wildlife, that species would be placed on a list of sensitive species for 5 years, during which time the Forest Service would evaluate whether any of their proposed actions would result in a trend toward Federal relisting (USDA Forest Service 2001, p. 3).

Overall, improving habitat conditions, the WVNFS' resiliency, and lack of rangewide threats indicate that the long-term survival of the WVNFS can be sustained without the protections of the Act. In addition, the binding standards of the MNF's Forest Plan will remain in effect after delisting, providing an existing regulatory mechanism for addressing the historical threat of loss of forest habitat.

Summary of Factor D: Given the MNF's Forest Plan's standards that apply to a majority of the range and the resiliency and lack of rangewide threats to the species, the inadequacy of regulatory mechanisms is not now, or for the foreseeable future, considered a threat to the WVNFS.

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

Competition With Southern Flying Squirrel

The final listing rule concluded that the WVNFS was threatened by competition with the southern flying squirrel for habitat and by the spread of a parasite from the southern flying squirrel to the WVNFS (50 FR 26999, p. 27000). However, evidence collected since the time of listing indicates that the occurrence and potential severity of the southern flying squirrel's impacts are limited. The sympatric occurrence of the two subspecies has been

documented for decades at 23 of the 107 WVNFS capture sites, most notably at Stuart Knob (Randolph County, WV) since the 1950s (Service 2006b, p. 16). These occurrences span multiple generations of WVNFS (WVDNR 2005, pp. 1–105), indicating that over-competition by the southern flying squirrel for den sites does not appear to be affecting population persistence of the WVNFS. In addition, any competition between the two subspecies may be somewhat ameliorated by the spread of beech bark disease, which results in the reduced availability of beech nuts, an important food source for the southern flying squirrel.

The final listing rule cited evidence from a captive study in the 1960s that a nematode parasite, possibly carried by the southern flying squirrel, might be lethal to the WVNFS (50 FR 26999, p. 26999). The rule stated that while the southern flying squirrels appeared healthy, all the northern flying squirrels weakened and died within 3 months, and this mortality was associated with heavy infestations of the nematode parasite. All the southern flying squirrels also carried the parasite, but they remained in apparent good health and continued to breed (50 FR 26999, p. 27001). Based on review of the original dissertation, the cause of the northern flying squirrel mortality was never completely understood (Weigl 1968, pp. 129–150). Weigl *et al.* (1999, pp. 74–75) hypothesized that survival and maturation rates of the parasite are limited by below-freezing temperatures that occur within the range of the WVNFS, but were not replicated in the 1960s captive study. The conditions created in the captive study apparently do not closely relate to naturally occurring conditions, and observations of WVNFS individuals captured in the last 20 years (including areas also occupied by the southern flying squirrel) have revealed no signs of sickness, debilitation, or death due to parasitic infestation.

Other Natural or Manmade Threats

The 1985 final listing rule did not address additional threats under Factor E. However, the delisting criterion within the 1990 recovery plan addressed potential threats, such as forest pests (see Factor A), acid rain, and climate change, to the existence of the high elevation forests on which the squirrels (*G. s. fuscus* and *G. s. coloratus*) depend (Service 1990, p. 19). Although the delisting criterion in the recovery plan is out of date and not based on the five threat factors (as previously described), these potential threats were included in the overall analysis of the status of the WVNFS in the 5-year review (Service 2006b, pp. 4–6).

Acid precipitation (more appropriately referred to as acid deposition) and climate change have been cited as potentially damaging forest ecosystems, especially the spruce-fir forests in portions of the Appalachian Mountains (NAPAP 2005, p. 41). Although empirical data are lacking regarding specific effects on the WVNFS, the long-term potential exists for anthropogenic acid deposition and climate change to diminish the extent and quality of the boreal-like spruce forests that have survived on the high ridges and plateaus, by pushing them farther up the slopes, and, if warming continues, reducing and eventually eliminating habitat at higher elevations. However, there has been no evidence of acid deposition or climate change reducing the extent of red spruce-northern hardwood forests in the Allegheny Highlands since the WVNFS' listing in 1985 (Rollins 2005, pp. 39–51; Service 2006b, p. 10), and it is not possible to predict measurable impacts on WVNFS habitat through the foreseeable future. Thus, the effects of acid deposition and climate change on *G. s. fuscus* and its habitat are not predictable, and it is beyond our capacity to eliminate such threats through interventions at the species level. Land managers can, however, develop contingency plans to deal with these concerns through mitigation and remediation measures. The MNF Forest Plan Revision calls for monitoring and management responses to any potential effects of acid deposition that may emerge in the future, and the GWJF Forest Plan makes a commitment to retain the integrity of high-elevation forests. Other entities have also expressed an interest in perpetuating a healthy red spruce ecosystem in the Allegheny Highlands (Service 2006b, pp. 18–19).

Summary of Factor E: Overall, our analysis of the other natural and manmade factors, either alone or in combination, indicates that the WVNFS is not in danger of extinction throughout all or a significant portion of its range, or likely to become endangered within the foreseeable future.

Summary of Findings

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats faced by the WVNFS, and conclude that the species has recovered, and is not threatened with extinction or likely to become endangered within the foreseeable future. Due to forest management practices and rangewide proactive conservation activities, a substantial amount of WVNFS habitat is now considered secure and improving in quality. Relative to the information available at the time of listing, recovery actions have resulted in a reduction of threats that have led to a (1) a significant increase in the number of known WVNFS capture sites; (2) an increase in the number of individual squirrels; (3) multiple generation reproduction; (4) the proven resiliency of the squirrels; and (5) the vast improvement and continued expansion of suitable habitat.

The biological principles under which we evaluate the rangewide population status of the WVNFS relative to its long-term conservation are representation, redundancy, and resiliency. At the time of listing, the WVNFS was thought to be an extremely rare and declining taxon that had disappeared from most of its historical range. We now know that occupancy of available habitat has increased and is much more widespread than formerly thought, and that the geographic extent of the WVNFS' range approximates historical range boundaries. Although the red spruce-northern hardwood forests have not rebounded to pre-logging conditions, we have learned that the WVNFS can utilize sub-optimal habitat adjacent to these forests that constitutes the most essential landscape-level component of the WVNFS' habitat. From this, we can infer that there is more habitat connectivity than previously thought, although there remains geographic separation (and likely has been since the end of the Pleistocene era) between some of the habitat areas supporting population centers. Thus, there is adequate representation (i.e., occupancy of representative habitats formerly occupied by the squirrel across its range) and redundancy (i.e., distribution of populations in a pattern that offsets unforeseen losses across a portion of the WVNFS' range) of the WVNFS.

Also, despite the difficulties inherent in conducting population studies for the WVNFS, it has proven to be resilient. The WVNFS has been shown to be more mobile and flexible in its habitat use than previously thought. Specifically, survey and monitoring efforts at 107 sites over the past 21 years have shown that it is persistent at multiple locations for multiple generations, and there is no evidence of extirpation of a local population. As previously described, the current and future trend for habitat quantity and quality is expected to be favorable because of the gradual recovery of the red spruce-northern hardwood ecosystem and the lack of rangewide threats to WVNFS habitat. As

habitat availability increases into the foreseeable future, the carrying capacity of secured and protected habitat should allow for persistence of viable populations of the WVNFS.

In summary, the threats to the WVNFS have either been eliminated or largely abated. The current available information shows that the WVNFS is persisting throughout its historic range, with areas of known occupancy much more widespread than at the time of listing. Therefore, the WVNF does not meet the definition of endangered or threatened, and should be removed from the List of Endangered and Threatened Wildlife, due to recovery.

Effects of This Rule

This rule, if made final, would revise 50 CFR 17.11(h) to remove the WVNFS from the List of Endangered and Threatened Wildlife, due to recovery. Because no critical habitat was ever designated for this species, this rule would not affect 50 CFR 17.95. The prohibitions and conservation measures provided by the Act, particularly section 7 and section 9, would no longer apply to the WVNFS.

Removal of the WVNFS does not supersede any State regulations. Additionally, for the 60 percent of the WVNFS habitat on the MNF, and the small area of habitat located within the GWNF, the activities impacting the WVNFS and its habitat must comply with appropriate Forest Service regulations.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires the Secretary of the Interior, in cooperation with the States, to implement a system to monitor for not less than 5 years the status of all species that have recovered and been delisted. The purpose of this post-delisting monitoring (PDM) is to verify that a species delisted, due to recovery, remains secure from risk of extinction after it no longer has the protections of the Act. We are to make prompt use of the emergency listing authorities under section 4(b)(7) of the Act to prevent a significant risk to the well being of any recovered species. Section 4(g) of the Act explicitly requires cooperation with the States in development and implementation of PDM programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation, post-delisting.

The management practices of, and commitments by, primarily the MNF, on whose land the majority of habitat occurs, should afford adequate protection to the WVNFS into the foreseeable future upon delisting. In addition to the previously described conservation measures, the Forest Service (MNF and GWNF) would maintain protection of the WVNFS by considering it a sensitive species for a minimum of 5 years after delisting (USDA Forest Service 2006, p. 18). Sensitive species designation ensures that the Forest Service would continue to monitor the status of the WVNFS, and to conduct management activities on Forest Service lands in a manner that strives to ensure that such actions do not contribute to a trend toward federal listing. In addition, the Forest Service and WVDNR have conducted nest box monitoring for the WVNFS in excess of 20 years and will continue to do so for the foreseeable future, regardless of whether the WVNFS is delisted.

Because of these past efforts, a PDM plan is being drafted in a cooperative effort with the Service, the MNF and the WVDNR, and other appropriate land managers, with technical assistance from USDA's Northeastern Research Station, to guide the collection and evaluation of pertinent information over the monitoring period. In the near future, we will publish in the **Federal Register** a notice of availability of the proposed PDM plan, and solicit public comment on that proposed plan.

Post-Delisting Monitoring Plan Overview

Development of the PDM plan, required under section 4 of the Act, will be facilitated by the MNF's Forest Plan Revision monitoring (USDA Forest Service 2005, pp. IV–1 – IV–12) and the monitoring specified in the West Virginia Conservation Action Plan (WVDNR 2006, pp. 861–867, 959–969, 1046–1049). The West Virginia Conservation Action Plan is a result of a charge from Congress to each State and territory to develop a comprehensive plan for fish and wildlife conservation. Both of these management plans include requisite monitoring of the WVNFS and its habitat (red spruce-northern hardwood forests) because of the importance placed on the red spruce ecosystem. Under these two plans and separate agreements, the Forest Service, WVDNR, and other entities, will continue to conduct nest box monitoring as well as monitoring of habitat conditions and residual threats at representative sites within the seven areas of relict habitat. For example, through a third party, Snowshoe Mountain, Inc., has expressed an interest in continuing nest box monitoring on their property, particularly in their approximately 200-acre conservation area already established as part of their HCPs. The Service will effectively monitor the implementation of commitments by entities, particularly the MNF, to conserve red spruce-northern hardwood forests for the first 5 years following delisting. During this time, the Forest Plan Revision, and other commitments of the MNF and other entities will be reviewed annually by the Service. Additionally, as part of the Forest Service monitoring for sensitive species and/or management indicator species, and the WVDNR monitoring as part of their Action Plan, the Service, WVDNR, and Forest Service will monitor the WVNFS and its relationship to habitat affected by active and passive management.

The PDM plan is being designed to monitor the threats to the species by detecting changes in the status of the WVNFS population and its habitat through continued nest box monitoring and monitoring of the quality and quantity of WVNFS habitat throughout its range. Thresholds that would trigger an extension of monitoring or a status review will be presented in the Service's draft post-delisting monitoring plan.

Clarity of the Rule

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to the following: (1) Is the discussion in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (grouping and order of sections, use of headings, etc.) aid or reduce its clarity? and (4) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to the Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Peer Review

In accordance with our policy published on July 1, 1994 (50 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists for peer review of this proposed rule. The purpose of such review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses.

We will send peer reviewers copies of this proposed rule immediately following publication in the **Federal Register.** We will invite peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed delisting. We will summarize the opinions of these reviewers in the final decision document, and we will consider their input as part of our process of making a final decision on the proposal.

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned Office of Management and Budget (OMB) control number 1018–0094, which expires on September 30, 2007. 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

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the West Virginia Field Office (see **FOR FURTHER INFORMATION CONTACT** above).

Author

The primary author of this proposed rule is Diane Lynch, Endangered Species Specialist, with technical assistance from Shane Jones, former Endangered Species Biologist and species lead for the WVNFS in our West Virginia Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we propose to 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.

§ 17.11 [Amended]

2. Amend § 17.11(h) by removing the entry ''Squirrel, Virginia northern flying'' under ''MAMMALS'' from the List of Endangered and Threatened Wildlife.

Dated: December 6, 2006.

Marshall Jones,

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

[FR Doc. E6–21530 Filed 12–18–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 71, No. 243

Tuesday, December 19, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV–06–311]

United States Standards for Grades of Cultivated Ginseng

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is establishing voluntary United States Standards for Grades of Cultivated Ginseng. AMS received a request from an industry group representing cultivated ginseng growers to develop a standard that will provide the industry with a common language and uniform basis for trading, thus promoting the orderly and efficient marketing of cultivated ginseng.

DATES: *Effective Date:* January 18, 2007.

FOR FURTHER INFORMATION CONTACT: Cheri L. Emery, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661, South Building, Stop 0240, Washington, DC 20250–0240, (202) 720–2185, fax (202) 720–8871, or e-mail *Cheri.Emery@usda.gov.*

The United States Standards for Grades of Cultivated Ginseng are available either from the above address or by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Fruit and Vegetable Programs.

AMS established voluntary United States Standards for Grades of Cultivated Ginseng using the procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36).

Background

AMS received a request from an industry group representing cultivated ginseng growers to develop a standard that will provide a common language for trade and a means of measuring value in the marketing of cultivated ginseng. Based on information gathered and comments rendered by the industry, AMS developed a proposed U.S. Standards for Grades of Cultivated Ginseng. The proposed standards contained the following grades, as well as a range of numerical values for each grade: U.S. Premium, U.S. Select, U.S. Medium and U.S. Standard. In addition, proposed basic requirements for all grades, size, sample size, color, wrinkle and a definitions section would be established.

On June 28, 2006, AMS published a notice in the **Federal Register** (71 FR 36753), soliciting comments on the proposed United States Standards for Grades of Cultivated Ginseng.

In response to the notice, comments were received from two industry groups. One comment from an industry group was in favor of the standards as proposed. Another comment was also in favor of the proposed standards. However, they suggested that the section concerning Sample and Sample Size should be changed, and the words ''at least'' be added to the sample size to allow for any needed adjustments by the inspector while performing inspections. AMS agrees with this comment, because adjustments in the sample size may be necessary when performing the inspection. Consequently, AMS has added the wording ''minimum'' to the section.

The comments are available by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/fv/fpbdocketlist.htm.*

The adoption of the U.S. grade standards will provide the cultivated ginseng industry with U.S. grade standards similar to those extensively in use by the fresh produce industry to assist in orderly marketing of other commodities.

The official grade of a lot of cultivated ginseng covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

The United States Standards for Grades of Cultivated Ginseng will be effective 30 days after publication of this notice in the **Federal Register.**

Authority: 7 U.S.C. 1621–1627.

Dated: December 13, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–21568 Filed 12–18–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV–06–378]

Fruit and Vegetable Industry Advisory Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The purpose of this notice is to notify all interested parties that the Agricultural Marketing Service (AMS) will hold a Fruit and Vegetable Industry Advisory Committee (Committee) meeting that is open to the public. The U.S. Department of Agriculture (USDA) established the Committee to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary of Agriculture on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. This notice sets forth the schedule and location for the meeting.

DATES: Tuesday, January 23, 2007, from 8 a.m. to 5 p.m., and Wednesday, January 24, 2007, from 8 a.m. to 12 noon.

ADDRESSES: The Committee meeting will be held at the Holiday Inn Central, 1501 Rhode Island Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew Hatch, Designated Federal Official, USDA, AMS, Fruit and Vegetable Programs. Telephone: (202) 690–0182. Facsimile: (202) 720–0016. E-mail: *andrew.hatch@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App. II), the Secretary of Agriculture established the Committee in August 2001 to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. The Committee was re-chartered in July 2003 and again in June 2005 with new members appointed by USDA from industry nominations.

AMS Deputy Administrator for Fruit and Vegetable Programs, Robert C. Keeney, serves as the Committee's Executive Secretary. Representatives from USDA mission areas and other government agencies affecting the fruit and vegetable industry will be called upon to participate in the Committee's meetings as determined by the Committee Chairperson. AMS is giving notice of the Committee meeting to the public so that they may attend and present their recommendations. Reference the date and address section of this announcement for the time and place of the meeting.

Topics of discussion at the advisory committee meeting will include: Invasive pests and disease initiatives; an update on U.S. produce industry labor and immigration issues; Perishable Agricultural Commodities Act (PACA) program budget and fees; and food safety initiatives.

Those parties that would like to speak at the meeting should register on or before January 15, 2007. To register as a speaker, please e-mail your name, affiliation, business address, e-mail address, and phone number to Mr. Andrew Hatch at: *andrew.hatch@usda.gov* or facsimile to (202) 720–0016. Speakers who have registered in advance will be given priority. Groups and individuals may submit comments for the Committee's consideration to the same e-mail address. The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting.

The Secretary of Agriculture selected a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. Equal opportunity practices were considered in all appointments to the Committee in accordance with USDA policies.

If you require special accommodations, such as a sign language interpreter, please use either contact name listed above.

Dated: December 13, 2006.

Lloyd Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–21567 Filed 12–18–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0166]

Environmental Impact Statement; Genetically Engineered Fruit Fly and Pink Bollworm

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement and proposed scope of study.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement relative to the proposed use of genetically engineered fruit flies and pink bollworm in certain plant pest control programs. This notice identifies potential issues and alternatives that will be studied in the environmental impact statement, requests public comment to further delineate the scope of the issues and alternatives, and provides notice of public meetings.

DATES: We will consider all comments that we receive on or before February 20, 2007. We will also consider comments made at public meetings to be held in Washington, DC, on January 17, 2007; in Ontario, CA, on January 23, 2007; in Tempe, AZ, on January 25, 2007; in Weslaco, TX, on January 30, 2007; and in Tampa, FL, on February 1, 2007. Each meeting will be held from 9 a.m. to 12 p.m., local time.

ADDRESSES: You may submit comments by either of the following methods: Federal eRulemaking Portal: Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0166 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0166, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0166.

Public Meetings: For the locations of the public meetings regarding this notice, see the Supplementary Information section of this notice.

Reading Room: You may read any comments that we receive in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Bergsten, Biological Scientist, Environmental Services, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1238; (301) 734–4883.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is considering using genetically engineered fruit flies (Diptera: Tephritidae) and pink bollworm (*Pectinophora gossypiella*) in our ongoing plant pest control programs for fruit flies and pink bollworm. Currently, these programs use a sterile insect technique that involves mass-rearing plant pests in a special facility, sterilizing the insects by irradiation, and releasing the insects to mate with wild plant pests. The release of sterile insects reduces the pest population through

associated decreases in the potential reproduction rate. Genetically engineered fruit flies and pink bollworm could augment the sterile insect technique by producing only male insects, insects with a genetic identification marker, insects that compete more effectively for mates, and/or insects that produce no viable offspring.

Under the provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), agencies must examine the potential environmental effects of proposed Federal actions and alternatives. We intend to prepare an environmental impact statement (EIS) relative to the proposed use of genetically engineered fruit flies and pink bollworm in the plant pest control programs for fruit flies and pink bollworm. The EIS will examine the range of potential effects that the proposed applications could pose to the human environment.

This notice identifies potential issues and alternatives that we will study in the EIS and requests public comment to further delineate the issues and the scope of the alternatives.

We have identified three broad alternatives for study in the EIS.

Take no action. This alternative contemplates no change to the plant pest control programs that use sterile insect technique. It represents a baseline against which proposed revisions may be compared.

Expansion of existing plant pest control programs. This alternative contemplates improving the current plant pest control programs by expanding rearing operations, irradiation treatment capacity, classical genetic selection methods for separation of insect sexes, and the plant pest species used in these programs.

Integrate genetically engineered insects into existing plant pest control programs. This alternative contemplates integrating genetically engineered fruit flies and pink bollworm into the current plant pest control programs.

We welcome comments on these alternatives and on other issues or alternatives that should be examined in the EIS. In addition, we invite responses to the following questions:

Are there any new or greater risks or apparent benefits associated with the strategy of using genetic engineering instead of classical genetic techniques to develop new insect strains to improve ongoing APHIS plant pest control programs? If so, please explain.

The proposed EIS focuses on the development and use of genetic engineering to improve specific APHIS plant pest control programs. Are there any unique risks that APHIS should consider in detail for genetic engineering of pink bollworm and fruit fly species?

What are the potential risks of non-target effects associated with this technology?

All comments will be considered fully in developing a final scope of study. When the draft EIS is completed, a notice announcing its availability and an invitation to comment on it will be published in the **Federal Register.**

Public Meetings

We are advising the public that we are hosting five public meetings on this notice of intent to prepare an EIS. The public meetings will be held as follows:

Wednesday, January 17, 2007, in the USDA Jamie L. Whitten Building, Room 107–A, 1400 Independence Avenue SW., Washington, DC.

Tuesday, January 23, 2007, in the Marriott Hotel, 2200 East Holt Boulevard, Ontario, CA.

Thursday, January 25, 2007, in the Holiday Inn, 915 East Apache Boulevard, Tempe, AZ.

Tuesday, January 30, 2007, in the Kika de la Garza Subtropical Agricultural Research Center, 2413 East Highway 83, Bldg. 213, Bill Wilson Conference Room, Weslaco, TX.

Thursday, February 1, 2007, in the Embassy Suites Hotel Tampa-Airport/Westshore, 555 North Westshore Boulevard, Tampa, FL.

All of the public meetings will be held from 9 a.m. to noon, local time.

A representative of the Animal and Plant Health Inspection Service will preside at the public meetings. Any interested person may appear and be heard in person, by attorney, or by other representative. Written statements may be submitted and will be made part of the meeting record.

Registration for each meeting will take place 30 minutes prior to the scheduled start of the meeting. Persons who wish to speak at a meeting will be asked to sign in with their name and organization to establish a record for the meeting. We ask that anyone who reads a statement provide two copies to the presiding officer at the meeting.

The presiding officer may limit the time for each presentation so that all interested persons appearing at each meeting have an opportunity to participate. Each meeting may be terminated at any time if all persons desiring to speak and that are present in the meeting room have been heard.

Done in Washington, DC, this 13th day of December 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–21612 Filed 12–18–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Amendment 2 of the Cotton Storage Agreement

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice announces Amendment 2 to the Commodity Credit Corporation's (CCC's) Cotton Storage Agreement. This amendment alters the agreement that regulates the storage of CCC interest and commercial cotton in warehouses throughout the United States.

DATES: *Effective Date:* December 19, 2006.

FOR FURTHER INFORMATION CONTACT: Timothy R. Murray, Cotton Program Manager, Warehouse and Inventory Division, Farm Service Agency, USDA, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553. Telephone: (202) 720–6125. E-mail: *tim.murray@usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on August 30, 2006 (71 FR 51422) amended the regulations at 7 CFR 1423.11 regarding delivery and shipping standards for CCC-approved cotton warehouses. Amendment 2 to the CCC Cotton Storage Agreement updates Part III, S., Delivery and Shipping Standard, to reflect the changes in 7 CFR 1423.11. The new Section S redefines the minimum weekly delivery and shipping standard to 4.5 percent of the CSA-approved storage capacity or the maximum number of bales on hand at any time during the crop year. A new mandatory reporting requirement is also included. This provision applies to all cotton shipped from the warehouse. Questions regarding Amendment 2, or any other aspects of the CCC Cotton Storage Agreement, should be addressed to Paul Rodriguez at the Kansas City Commodity Office (816) 929–6662 or e-mail *Paul.Rodriguez@kcc.usda.gov.*

Amendment 2 can be found at *http://www.fsa.usda.gov/daco/cotton.htm.*

Signed at Washington, DC, December 6, 2006.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–21571 Filed 12–18–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

National Park Service

Fish and Wildlife Service

Bureau of Land Management

Bureau of Reclamation

Notice of Availability—America the Beautiful—The National Parks and Federal Recreational Lands Pass, Federal Lands Recreation Enhancement Act, Public Law 108–447, Div. J, Title VII

AGENCY: USDA Forest Service; U.S. Department of the Interior, National Park Service, Fish and Wildlife Service, Bureau of Land Management, and Bureau of Reclamation, Office of the Secretary, Interior.

ACTION: Notice of Availability—America the Beautiful—The National Parks and Federal Recreational Lands Pass.

SUMMARY: Section 5 paragraph 3 of the Federal Lands Recreation Enhancement Act (REA) of December 2004 (16 U.S.C. 6804(a)(3)) requires that the Secretaries of Interior and Agriculture publish a notice in the **Federal Register** when the ''America the Beautiful—the National Parks and Federal Recreational Lands Pass'' is first established and available for purchase.

The new pass program was created in response to requirements of the REA. The new pass replaces the Golden Eagle, Golden Age, and the Golden Access Passports, as well as the National Parks Pass, which currently support recreation opportunities on public lands managed by the United States Forest Service, National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, and the Bureau of Reclamation.

Sales of the new pass are scheduled to begin in January 2007. The new pass will be sold at Federal recreation sites that charge entrance and standard amenity fees. The pass will also be available through links on government Web sites including creation.gov and through select third-party vendors.

FOR FURTHER INFORMATION CONTACT: For more information on the availability, price, and use of the new pass, after January 1, 2007 please visit *http://www.recreation.gov* or call 1–888–AskUSGS (1–888–275–8747), option 1.

Dated: November 22, 2006.

Thomas Weimer,

U.S. Department of the Interior, Assistant Secretary—Policy, Management and Budget.

Dated: December 12, 2006.

Dave Tenney,

U.S. Department of Agriculture, Deputy Under Secretary for Forestry, Natural Resources and Environment.

[FR Doc. 06–9767 Filed 12–18–06; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–822

Helical Spring Lock Washers from the People's Republic of China: Notice of Court Decision Not In Harmony with Final Results of Administrative Review; Correction

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

SUPPLEMENTARY INFORMATION: This notice corrects the case number previously published in the **Federal Register** on November 30, 2006 (Helical Spring Lock Washers from the People's Republic of China: Notice of Court Decision Not In Harmony with Final Results of Administrative Review, 71 FR 69204). On page 69204, we used the incorrect case number to reference this case. The correct case number is ''A–570–822.''

Dated: December 12, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–21609 Filed 12–18–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–847)

Persulfates from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: December 19, 2006.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Marin Weaver Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: at (202) 482–0650 and (202) 482–2336, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2006, the Department of Commerce (''the Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on persulfates from the People's Republic of China (''PRC''). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 71 FR 37890 (July 3, 2006). On July 31, 2006, FMC Corporation (''FMC'') requested that the Department conduct an administrative review of Shanghai AJ Import and Export Corporation (''Shanghai AJ''). No other parties requested a review. The Department published a notice of the initiation of the antidumping duty administrative review of persulfates from the PRC for the period July 1, 2005, through June 30, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006). On November 21, 2006, FMC withdrew its request for an administrative review.

Rescission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. FMC withdrew its request before the 90–day

deadline. Therefore, we are rescinding this review of the antidumping duty order on persulfates from the PRC covering the period July 1, 2005, through June 30, 2006. The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection within 15 days of publication of this rescission.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, 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)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: December 12, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–21628 Filed 12–18–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–601

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2004–2005 Administrative Review and Partial Rescission of Review

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

SUMMARY: The Department of Commerce (''the Department'') published its preliminary results of administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (''TRBs''), from the People's Republic of China (''PRC'') on July 14, 2006. The period of review (''POR'') is June 1, 2004, through May 31, 2005. We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made changes to our margin calculations. Therefore, the final results differ from the preliminary results. The final dumping margins for this review are listed in the ''Final Results of Review'' section below.

EFFECTIVE DATE: December 19, 2006.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0414.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2006, the Department published its preliminary results. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results of 2003–2004 Antidumping Administrative Review, and Notice of Intent to Rescind in Part*, 71 FR 40069 (July 14, 2006) (''*Preliminary Results*''). On August 11, 2006, The Timken Company (*i.e.*, Petitioner) submitted a case brief. On August 18, 2006, China National Machinery Import & Export Corporation (''CMC'') submitted a rebuttal brief.

On November 16, 2006, the Department published a notice extending the time limit for the final results of review until December 11, 2006. *See Notice of Extension of Final Results of the 2003–2004 Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished from the People's Republic of China*, 71 FR 66750 (November 16, 2006). We have conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213.

Scope of Order

Merchandise covered by this order is TRBs from the PRC; flange, take–up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the *Harmonized Tariff Schedule of the United States* (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Rescission of Review

In our preliminary results, we stated we preliminarily rescinded the review with respect to Chin Jun Industrial Ltd. (''Chin Jun''), Peer Bearing Company—Changshan (''CPZ''), Weihai Machinery Holding (Group) Company, Ltd. (''Weihai Machinery''), and Zhejiang Machinery Import & Export Corp (''ZMC'') in accordance with 19 CFR 351.213(d)(1). Chin Jun, CPZ, and ZMC had all reported that they had either no sales or no exports to the United States during the POR and we had no evidence of shipments to the United States from these companies during the POR. *See Preliminary Results*, 71 FR at 40071. Additionally, in our preliminary results, for Weihai Machinery, we stated that the customs inquiry provided no evidence that Weihai Machinery had any shipments of subject merchandise during the POR and information on the record indicated that Weihai Machinery had no shipments and may be out of business, but indicated that we would continue to pursue this issue for the final results.

On July 13, 2006, the Department received confirmation from the Weihai Administration for Industry and Commerce that Weihai Machinery terminated operations on or before December 16, 2003. *See Memo to the file: Weihai Machinery Industry Supply Co., Ltd.: Cancellation of Company Registration*, dated November 29, 2006. Accordingly, we are rescinding this review with respect to Weihai Machinery. In addition, since we have received no new information since the preliminary results that contradicts the decision made in the preliminary results with respect to Chin Jun, CPZ or ZMC, we are rescinding the administrative review with respect to these companies as well.

Analysis of Comments Received

All issues raised in the post–preliminary comments by parties in this review are addressed in the memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the Final Results of the 18th Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China,'' dated December 11, 2006 (''*Issues and Decision Memorandum*''), which is hereby adopted by this notice. A list of the issues which parties raised and to which we responded in the *Issues and*

Decision Memorandum is attached to this notice as an appendix. The *Issues and Decision Memorandum* is a public document which is on file in the Central Records Unit (''CRU'') in room B–099 in the main Department building, and is accessible on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the memorandum are identical in content.

Surrogate Country

In the *Preliminary Results*, we stated that we treat the PRC as a non–market economy (''NME'') country, and therefore, we calculated normal value in accordance with section 773(c) of the Act which applies to NME countries. Also, we stated that we had selected India as the appropriate surrogate country to use in this review for the following reasons: (1) It is a significant producer of comparable merchandise; and (2) provides contemporaneous publicly available data to value the factors of production, pursuant to section 773(c)(4) of the Act. *See Preliminary Results*. For the final results, we made no changes to our findings with respect to the selection of a surrogate country.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is free of *de jure* and *de facto* control over its export decisions, so as to be entitled to a separate rate.

In the *Preliminary Results*, we found that CMC demonstrated its eligibility for separate–rate status. For the final results, we continue to find that the evidence placed on the record of this administrative review by CMC demonstrates an absence of government control, both in law and in fact, with respect to its exports of the merchandise under review and thus determine CMC is eligible for separate–rate status.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for CMC. See Issues and Decision Memorandum at Comments 2 and 3.

• For these final results, we have changed the surrogate value ratio calculations derived from each of the two surrogate companies. For ratios derived from SKF India Limited, we have excluded the line item ''consumption of traded goods'' from the denominator of the factory overhead ratio. However, we continue to include the line item ''consumption of traded goods'' in the denominator of the selling, general, and administrative expenses (''SG&A''), profit and interest ratios. For ratios derived from Timken India Limited, we have added the line item ''purchase of products for resale'' to the denominators of the SG&A, profit, and interest ratios.

• For the profit ratio derived from Timken India Limited, we corrected a clerical error to use the value from ''profit before tax'' in this calculation.

Final Results of Review

We determine that the following dumping margins exist for the period June 1, 2004, through May 31, 2005:

TRBs FROM THE PRC

Producer/Manufacturer/Exporter	Weighted–Average Margin (Percent)
China National Machinery Import & Export Corporation	0.00

Assessment Rates

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (''CBP'') 15 days after the date of publication of these final results of administrative review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of TRBs from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) For CMC, the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above that have a separate rate, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 60.95 percent, the current PRC–wide rate; and (4) the cash deposit rate for all non–PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

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.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 77(i)(1) of the Act.

Dated: December 11, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Outdated TRBs tariff classification

Comment 2: Remove ''consumption of Traded Goods'' from surrogate financial ratio

Comment 3: Ministerial error on Timken India Limited's ''profit before tax''

[FR Doc. E6–21632 Filed 12–18–06; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Preliminary Results of Countervailing Duty Changed Circumstances Review

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

SUMMARY: In response to a March 22, 2006, request by Hyundai Steel Company (Hyundai), claiming to be the successor–in-interest to INI Steel Company (INI), the Department of Commerce (the Department) initiated a changed circumstances review of the countervailing duty (CVD) order on stainless steel sheet and strip in coils (SSSS) from the Republic of Korea (Korea). *See Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Initiation of Countervailing Duty Changed Circumstances Review*, 71 FR 37541 (June 30, 2006) (*Initiation Notice*). We invited interested parties to comment on our *Initiation Notice*. We received no comments.

Based on the information submitted by Hyundai, we preliminarily determine that: (1) Hyundai is the successor–in-interest to INI, formerly Inchon Iron and Steel Co., Ltd. (Inchon); and (2) upon publication of the final results of this review, INI's current CVD cash deposit rate shall be applied to entries of subject merchandise made by Hyundai. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 19, 2006.

FOR FURTHER INFORMATION CONTACT: Darla Brown or Preeti Tolani, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2849 or (202) 482–0395, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1999, the Department published in the **Federal Register** the CVD order on SSSS from Korea. *See Amendment to Final Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils From France, Italy, and the Republic of South Korea*, 64 FR 42923 (August 6, 1999). The Department has completed three administrative reviews of this CVD order[1] and is currently conducting a fourth review.[2] In September 2001 and June 2002, respectively, the Department initiated and published the preliminary results of a changed circumstances review to determine whether INI was entitled to Inchon's cash deposit rate.[3] In the Second Review the Department determined to assign Inchon's cash deposit rate to INI, thereby eliminating the need to complete the changed circumstances review.[4] The Department has also published notice of continuation of this order upon completion of the first five–year (sunset) review.[5]

Hyundai asserts that INI changed its corporate name to Hyundai effective March 10, 2006. On March 22, 2006, Hyundai requested that the Department confirm that Hyundai is entitled to INI's cash deposit rate for the CVD order. Simultaneously, Hyundai requested a changed circumstances review of the antidumping duty (AD) order on SSSS from Korea for the purpose of determining whether Hyundai is the successor–in-interest to INI and is entitled to INI's exclusion from the AD order. On April 11, 20, and 27, 2006, Hyundai submitted additional information in response to three requests from the Department for additional information. In response to Hyundai's request regarding the AD order, on May 12, 2006, the Department initiated a changed circumstances review and preliminarily determined that Hyundai is the successor–in-interest to INI and merchandise from Hyundai should be excluded from the AD order.[6]

Scope of the Order

The products covered by this order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[7], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2)

[1] *See Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 67 FR 1964 (January 15, 2002), as amended, *Stainless Steel Sheet and Strip in Coils from Korea: Amended Final Results of Countervailing Duty Administrative Review*, 67 FR 8229 (February 22 2002); *Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 68 FR 13267 (March 19, 2003), and accompanying Issues and Decision Memorandum (Second Review); and *Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004), as amended, *Amended Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Korea*, 69 FR 7419 (February 17, 2004).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005) (initiation of review of Dai Yang Metal Co., Ltd.).

[3] *See Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Notice of Initiation of Changed Circumstances Countervailing Duty Administrative Review*, 66 FR 49639 (September 28, 2001), and *Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Notice of Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review*, 67 FR 38257 (June 3, 2002).

[4] *See Second Review* Decision Memorandum at section ''C: Name Changes.''

[5] *See Continuation of Antidumping Duty Orders on Stainless Steel Sheet and Strip in Coils from Germany, Italy, Japan, the Republic of Korea, Mexico, and Taiwan, and Countervailing Duty Orders on Stainless Steel Sheet and Strip in Coils from Italy and the Republic of Korea*, 70 FR 44886 (August 4, 2005).

[6] *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 71 FR 27680 (May 12, 2006) (*AD Changed Circumstances Preliminary Results*).

[7] Due to changes to the HTSUS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

sheet and strip that is cut to length, (3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

The Department has determined that certain additional specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is excluded from the scope of this order. Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[8]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[9]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[10]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[11] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.

Preliminary Results of Changed Circumstances Review

In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 19 CFR

[8] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[9] ''Gilphy 36'' is a trademark of Imphy, S.A.

[10] ''Durphynox 17'' is a trademark of Imphy, S.A.

[11] This list of uses is illustrative and provided for descriptive purposes only.

351.221, the Department initiated this changed circumstances review of the CVD order to determine whether Hyundai is the successor–in-interest to INI. In the context of changed circumstances reviews of an AD order involving, **E.G.**, a change in a company's name, structure or ownership, the Department relies on its successor–in-interest analysis to determine whether the newly named or structured company remains essentially the same as the predecessor company. *See, e.g., Notice of Final Results of Antidumping Duty Changed Circumstances Review; Certain Forged Stainless Steel Flanges From India*, 71 FR 31156 (June 1, 2006), **CITING INDUSTRIAL PHOSPHORIC ACID FROM ISRAEL; FINAL RESULTS OF ANTIDUMPING DUTY CHANGED CIRCUMSTANCES REVIEW**, 59 FR 6944, 6945 (February 14, 1994). If the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the successor company operates as the same business entity as its predecessor, the Department will assign the successor the existing cash deposit rate of its predecessor.

For similar changed circumstances in a CVD order, the appropriate focus of the analysis for determining the cash deposit rate for a successor company is usually whether the successor company operates as the same business entity as its predecessor. For such determinations in the context of a CVD order, however, such an analysis may not always be sufficient, in itself, to determine whether it is appropriate to assign the predecessor's CVD cash deposit rate to the successor where the circumstances indicate that a change relevant to the subsidy analysis may have occurred. We do not find, however, that there are any such circumstances in the instant review, such as a privatization or sale of a company, that would warrant going beyond the Department's standard successor–in-interest analysis. In the instant proceeding, we are only examining a change in the name of the company. Further, Hyundai has presented evidence establishing that its change in corporate name from INI to Hyundai did not affect the company's operations such that they are materially different to those of its predecessor. *See* Hyundai's March 22, 2006, submission at Exhibits 2 though 4; *see also* Hyundai's April 11, 2006, submission at page 3 and Exhibit 7. The evidence indicates that Hyundai has essentially the same corporate structure and operations as INI.

Therefore, based on the record evidence, and consistent with the Department's findings in the *AD Changed Circumstances Preliminary Results*, we preliminarily determine that the current cash deposit rate applicable to INI shall be applicable to entries of subject merchandise made by Hyundai, entered on or after the publication date of the final results of this changed circumstances review. Thus, if these preliminary results are adopted in the final results of this changed circumstances review, we will instruct U.S. Customs and Border Protection to collect a cash deposit at the rate of 0.54 percent *ad valorem* on all entries of SSSS produced and exported by Hyundai on or after the publication of the final results of this review. This cash deposit rate shall remain in effect until publication of the final results of the next administrative review in which Hyundai participates.

In addition, the Department intends to further consider the issue of whether alternative or additional successorship criteria would be appropriate in the CVD context, and therefore, the Department anticipates releasing a separate **Federal Register** notice shortly hereafter inviting parties to submit public comments on the issue.

Public Comment

Interested parties are invited to comment on these preliminary results. Any written comments may be submitted no later than 14 days after date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, are due five days after the case brief deadline. Case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.309. In accordance with 19 CFR 351.216(e), the Department will publish the final results of the changed circumstances review including the results of its analysis of any issues raised in any such comments within 270 days after the date on which the changed circumstances review was initiated.

This notice is in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.221.

Dated: December 12, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–21634 Filed 12–18–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final injury determination made by the U.S. International Trade Commission, in the matter of Magnesium from Canada, Secretariat File No. USA–CDA–00–1904–09.

SUMMARY: Pursuant to the Order of the Binational Panel dated October 6, 2006, affirming the final remand determination described above, the panel review was completed on November 17, 2006.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On October 6, 2006, the Binational Panel issued an order which affirmed the final determination of the United States International Trade Commission (ITC) concerning Magnesium from Canada Injury Determination. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules,* the Panel Review was completed and the panelists discharged from their duties effective November 17, 2006.

Dated: December 14, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–21620 Filed 12–18–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On November 27, 2006, the Northwest Fruit Exporters filed a First Request for Panel Review with the Mexican Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final revocation of the antidumping investigation, respecting

the Importation of Various Red Delicious Table Apples, Its Variations, and Golden Delicious Apples Originating From The United States of America, Classified In Tariff item 08.08.10.01 This determination was published in the *Diario Oficial de la Federacion,* on November 2, 2006. The NAFTA Secretariat has assigned Case Number MEX–USA–2006–1904–02 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent bi-national panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Mexican Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on November 27, 2006, requesting panel review of the final determination described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is December 27, 2006);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is January 22, 2007); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: December 12, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–21542 Filed 12–18–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 061128312–6312–01]

Precision Measurement Grants Program; Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the Precision Measurement Grants Program is soliciting applications for financial assistance for FY 2007. The Precision Measurement Grants Program is seeking proposals for significant research in the field of fundamental measurement or the determination of fundamental constants.

DATES: Abbreviated proposals must be received at the address listed below no later than 5 p.m. Eastern Standard Time on February 2, 2007. Proposals received after this deadline will be returned with no further consideration. Finalists will be selected by approximately March 23, 2007, and will be requested to submit full proposals to NIST. All full proposals, paper and electronic, must be received no later than 5 p.m. Eastern Daylight Time on May 4, 2006.

ADDRESSES: Abbreviated proposals and paper applications must be submitted to: Dr. Peter J. Mohr; Manager, NIST Precision Measurement Grants Program; National Institute of Standards and Technology; 100 Bureau Drive, Stop 8420; Gaithersburg, MD 20899–8420; E-mail: *mohr@nist.gov*. Electronic final proposals should be uploaded to Grants.gov.

FOR FURTHER INFORMATION CONTACT: For complete information about this program and instructions for applying by paper or electronically, read the Federal Funding Opportunity (FFO) Notice at *http://www.grants.gov*. A paper copy of the FFO may be obtained by calling (301) 975–6328. Technical questions should be addressed to: Dr. Peter J. Mohr at the address listed in the Addresses section above, or at Tel: (301) 975–3217; E-mail: *mohr@nist.gov*.; Web site: *http://physics.nist.gov/pmg*. Grants Administration questions should be addressed to: Grants and Agreements Management Division; National Institute of Standards and Technology; 100 Bureau Drive, Stop 1650; Gaithersburg, MD 20899–1650; Tel: (301) 975–6328. For assistance with using Grants.gov contact *support@grants.gov*.

SUPPLEMENTARY INFORMATION: *Catalog of Federal Domestic Assistance Name and Number:* Measurement and Engineering Research and Standards—11.609.

Program Description: The National Institute of Standards and Technology (NIST) announces that the *Precision Measurement Grants Program* is soliciting applications for financial assistance for FY 2007. The *Precision Measurement Grants Program* is seeking proposals for significant research in the field of fundamental measurement or the determination of fundamental constants. As part of its research program, since 1970 NIST has awarded Precision Measurement Grants primarily to universities and colleges so that faculty may conduct significant research in the field of fundamental measurement or the determination of fundamental constants. NIST sponsors these grants and cooperative agreements primarily to encourage basic, measurement-related research in universities and colleges and other research laboratories and to foster contacts between NIST scientists and those faculty members of academic institutions and other researchers who are actively engaged in such work. The Precision Measurement Grants are also intended to make it possible for researchers to pursue new ideas for which other sources of support may be difficult to find. There is some latitude in research topics that will be considered under the *Precision Measurement Grants Program*. The key requirement is that the proposed project is consistent with NIST's ongoing work in the field of basic measurement science.

Funding Availability: Applicants should propose multi-year projects for up to three years at no more than $50,000 per year. NIST anticipates spending $100,000 this year for two new grants at $50,000 each for the first year of the research projects. NIST may award both, one, or neither of these new awards. Second and third year funding will be at the discretion of NIST, based on satisfactory performance, continuing

relevance to program objectives, and the availability of funds.

Funding for the program listed in this notice is contingent upon the availability of Fiscal Year 2007 appropriations. NIST issues this notice subject to the appropriations made available under the current continuing resolution, H.R. 5631, ''Continuing Appropriations Resolution, 2007,'' Public Law 109–289, as amended by H.J. Res. 100, Public Law 109–369. NIST anticipates making awards for the program listed in this notice provided that funding for the program is continued beyond December 8, 2006, the expiration of the current continuing resolution.

Statutory Authority: The authority for the *Precision Measurement Grants Program* is as follows: As authorized by 15 U.S.C. 272 (b) and (c), NIST conducts directly, and supports through grants, a basic and applied research program in the general area of fundamental measurement and the determination of fundamental constants of nature.

Eligibility: Eligible applicants are institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local and Indian tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; international organizations; and Federal agencies with appropriate legal authority.

Review and Selection Process: All abbreviated proposals and full applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated objectives for each program. Incomplete or non-responsive abbreviated proposals and full applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive abbreviated proposal and full application for three years for record keeping purposes. The remaining copies will be destroyed.

To simplify the proposal writing and evaluation process, the following selection procedure will be used:

All applicants must submit an abbreviated proposal (original and two signed copies), containing a description of the proposed project, including sufficient information to address the evaluation criteria, with a total length of no more than five (5) double spaced pages, to the mailing address given above in the **ADDRESSES** section. These proposals will be screened to determine whether they address the requirements outlined in this notice. Proposals that do not meet those requirements will not be considered further. Eight independent, objective individuals, at least half of whom are NIST employees, and who are knowledgeable about the scientific areas that the program addresses will conduct a technical review of each abbreviated proposal, based on the evaluation criteria described in the Evaluation Criteria section of this notice. Each reviewer will rank all complete proposals. The proposals will then be ranked based on the average of the reviewers' rankings. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but the ranking will be determined on an individual basis, not as a consensus.

The Chief of the Atomic Physics Division of the Physics Laboratory, the selecting official, will then select approximately four to eight finalists. In selecting finalists, the selecting official will take into consideration the results of the reviewers' evaluations, including rank, and relevance to the program objectives described above in the Program Description section. Applicants not selected as finalists will be notified in writing.

Finalists will then be asked in writing to submit full proposals in accordance with the requirements set forth in the Content and Form of Application Submission section of the FFO notice. The same independent reviewers that reviewed the abbreviated proposals will then evaluate the full proposals based on the same evaluation criteria, and the proposals will be ranked as previously described. In selecting proposals that will be recommended for funding, the selecting official will take into consideration the results of the reviewers' evaluations, including rank and relevance to the program objectives described in the Program Description section of this notice.

The final approval of selected applications and award of grants will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible.

Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award.

The decision of the Grants Officer is final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: The evaluation criteria to be used in evaluating the abbreviated application proposals and full proposals are:

1. The importance of the proposed research—Does it have the potential of answering some currently pressing question or of opening up a whole new area of activity?

2. The relationship of the proposed research to NIST's ongoing work—Will it support one of NIST's current efforts to develop a new or improved fundamental measurement method or physical standard, test the basic laws of physics, or provide an improved value for a fundamental constant?

3. The feasibility of the research and the potential impact of the grant—Is it likely that significant progress can be made in a three year time period with the funds and personnel available and that the funding will enable work that would otherwise not be done with existing or potential funding?

4. The qualifications of the applicant—Does the educational and employment background and the quality of the research, based on recent publications, of the applicant indicate that there is a high probability that the proposed research will be carried out successfully?

Each of these factors is given equal weight in the evaluation process.

Cost Share Requirements: The Precision Measurement Grants Program does not require any matching funds.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) is applicable to this notice. On the form SF–424, the applicant's 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be entered in the Applicant Identifier block (68 FR 38402).

Collaborations with NIST Employees: All applications should include a description of any work proposed to be performed by an entity other than the applicant, and the cost of such work should ordinarily be included in the budget.

If an applicant proposes collaboration with NIST, the statement of work should include a statement of this intention, a description of the collaboration, and prominently identify the NIST employee(s) involved, if known. Any collaboration by a NIST

employee must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the approval of the proposed collaboration. Any unapproved collaboration will be stricken from the proposal prior to the merit review.

Use of NIST Intellectual Property: If the applicant anticipates using any NIST-owned intellectual property to carry out the work proposed, the applicant should identify such intellectual property. This information will be used to ensure that no NIST employee involved in the development of the intellectual property will participate in the review process for that competition. In addition, if the applicant intends to use NIST-owned intellectual property, the applicant must comply with all statutes and regulations governing the licensing of Federal government patents and inventions, described at 35 U.S.C. 200–212, 37 CFR part 401, 15 CFR 14.36, and in section B.20 of the Department of Commerce Pre-Award Notification Requirements published on December 30, 2004 (69 FR 78389). Questions about these requirements may be directed to the Counsel for NIST, 301–975–2803.

Any use of NIST-owned intellectual property by a proposer is at the sole discretion of NIST and will be negotiated on a case-by-case basis if a project is deemed meritorious. The applicant should indicate within the statement of work whether it already has a license to use such intellectual property or whether it intends to seek one.

If any inventions made in whole or in part by a NIST employee arise in the course of an award made pursuant to this notice, the United States government may retain its ownership rights in any such invention. Licensing or other disposition of NIST's rights in such inventions will be determined solely by NIST, and include the possibility of NIST putting the intellectual property into the public domain.

Collaborations Making Use of Federal Facilities: All applications should include a description of any work proposed to be performed using Federal Facilities. If an applicant proposes use of NIST facilities, the statement of work should include a statement of this intention and a description of the facilities. Any use of NIST facilities must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the availability of the facilities and approval of the proposed usage. Any unapproved facility use will be stricken from the proposal prior to the merit review. Examples of some facilities that may be available for collaborations are listed on the NIST Technology Services Web site, *http://ts.nist.gov/*.

Initial Screening of all Applications: All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated program objectives. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Research Projects Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects: Any proposal that includes research involving human subjects, human tissue, data or recordings involving human subjects must meet the requirements of the Common Rule for the Protection of Human Subjects, codified for the Department of Commerce at 15 CFR part 27. In addition, any proposal that includes research on these topics must be in compliance with any statutory requirements imposed upon the Department of Health and Human Services (DHHS) and other Federal agencies regarding these topics, all regulatory policies and guidance adopted by DHHS, FDA, and other Federal agencies on these topics, and all Presidential statements of policy on these topics.

NIST will accept the submission of human subjects protocols that have been approved by Institutional Review Boards (IRBs) possessing a current registration filed with DHHS and to be performed by institutions possessing a current, valid Federal-wide Assurance (FWA) from DHHS. NIST will not issue a single project assurance (SPA) for any human subjects protocol proposed to NIST.

On August 9, 2001, the President announced his decision to allow Federal funds to be used for research on existing human embryonic stem cell lines as long as prior to his announcement (1) The derivation process (which commences with the removal of the inner cell mass from the blastocyst) had already been initiated and (2) the embryo from which the stem cell line was derived no longer had the possibility of development as a human being. NIST will follow guidance issued by the National Institutes of Health at *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/stemcell.pdf* for funding such research.

Research Projects Involving Vertebrate Animals: Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's ''Guide for the Care and Use of Laboratory Animals'' which can be obtained from National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20055. In addition, such proposals must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), 9 CFR parts 1, 2, and 3, and if appropriate, 21 CFR part 58. These regulations do not apply to proposed research using pre-existing images of animals or to research plans that do not include live animals that are being cared for, euthanized, or used by the project participants to accomplish research goals, teaching, or testing. These regulations also do not apply to obtaining animal materials from commercial processors of animal products or to animal cell lines or tissues from tissue banks.

Limitation of Liability: Funding for the program listed in this notice is contingent upon the availability of Fiscal Year 2007 appropriations. NIST issues this notice subject to the appropriations made available under the current continuing resolution, H.R. 5631, ''Continuing Appropriations Resolution, 2007,'' Public Law 109–289, as amended by H.J. Res. 100, Public Law 109–369 and H.J. Res. 102, Public Law 109–383. NIST anticipates making awards for the program listed in this notice provided that funding for the program is continued beyond February 15, 2007, the expiration of the current continuing resolution. In no event will NIST or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of

this announcement does not oblige the agency to award any specific project or to obligate any available funds. Funding of any award under any program announced in this notice is subject to the availability of funds.

Executive Order 12866: This funding notice was determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Executive Order 12372: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Administrative Procedure Act/ Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553 (a)). Because notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: December 13, 2006.

James E. Hill,

Acting Deputy Director, NIST.

[FR Doc. E6–21605 Filed 12–18–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of a Public Meeting of the Interim Meeting of National Conference on Weights and Measures in January 2007

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Interim Meetings of the 92nd National Conference on Weights and Measures (NCWM) will be held January 21 to 24, 2007, in Jacksonville, Florida. The majority of the meetings are open to the public but registration is required. The NCWM is an organization of weights and measures officials of the states, counties, and cities of the United States, Federal Agencies, and private sector representatives. These meetings bring together government officials and representatives of business, industry, trade associations, and consumer organizations on subjects related to the field of weights and measures technology, administration, and enforcement. Pursuant to (15 U.S.C. 272(b)(6)), the National Institute of Standards and Technology (NIST) supports the NCWM as one of the means it uses to solicit comments and recommendations on revising or updating a variety of publications related to legal metrology. NIST participates to promote uniformity among the States in laws, regulations, methods, and testing equipment that comprise the regulatory control of commercial weighing and measuring devices and other practices used in trade and commerce. Publication of this Notice on the NCWM's behalf is undertaken as a public service; NIST does not endorse, approve, or recommend any of the proposals contained in this notice or in the publications of the NCWM mentioned below. Please see NCWM Publication 15 which contains detailed meeting agendas and schedules, registration forms and hotel reservation information at *http://www.ncwm.net.*

DATES: January 21–24, 2007.

ADDRESSES: The Omni Jacksonville, Jacksonville, Florida.

SUPPLEMENTARY INFORMATION: The following are brief descriptions of some of the significant agenda items that will be considered along with other issues at the NCWM Interim Meeting. Comments will be taken on these and other issues during several public comment sessions. At this stage, the items are proposals. This meeting also includes work sessions in which the Committees may also accept comments and where they will finalize recommendations for NCWM consideration and possible adoption at its Annual Meeting to be held July 8 to 12, 2007, at the Snowbird Resort in Salt Lake City, Utah. The Committees may withdraw or carry over items that need additional development.

The Specifications and Tolerances Committee will consider proposed amendments to NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices (NIST Handbook 44).'' Those items address weighing and measuring devices used in commercial measurement applications, that is, devices that are normally used to buy from or sell to the general public or used for determining the quantity of product sold among businesses. Issues on the agenda of the NCWM Laws and Regulations Committee relate to proposals to amend NIST Handbook 130, ''Uniform Laws and Regulations in the area of legal metrology and engine fuel quality and NIST Handbook 133 ''Checking the Net Contents of Packaged Goods.'' This notice contains information about significant items on the NCWM Committee agendas, and several issues are not presented in this notice. As a result, the following items are not consecutively numbered.

NCWM Specifications and Tolerances Committee

The following items are proposals to amend NIST Handbook 44:

General Code

Item 310–3. Multiple Weighing and Measuring Elements with a Single Provision for Sealing: this item would require new commercial weighing and measuring devices with multiple weighing or measuring elements to be equipped with one of several means to indicate when changes are made to individual elements that affect metrological parameters.

Scales Code

Item 320–1. Zero Indication; Requirements for Markings or Indications for Other than Digital Zero Indications: This proposal would clarify the requirement's original intent for marking zero indications on scales and point-of-sale systems when there is no load on the load receiving element of a scale and where zero is represented by other than a digital zero (*e.g.*, scrolling messages, dashes etc.)

Item 320–5. Tare Rounding on a Multiple Range Scale: This proposal would modify indication and rounding requirements for scales which change the value of the scale division at different weight loads. The requirement will prescribe how a multi-range scale may operate to round and indicate the weight of packaging material which must not be included in the net weight of the commodity bought or sold over the device.

Item 320–9. Definitions for Tare Mechanism, Gross Weight Value, Net Weight, Net Weight Value, Tare, and Tare Weight Value: This proposal is one of several that would adopt new or modify existing definitions for terms for weight values (net, tare, and gross) indicated by a scale during a weighing transaction to reduce the possibility of misinterpretation or misapplication of requirements in either type evaluation or field applications of commercial weighing devices.

Liquid-Measuring Devices

Item 330–1. Value of Smallest Unit of Measure for Meters with Flow-Rates up to or more than 750 liters (200 gallons)

per-minute and Stationary Jet Refueling Systems with maximum Flow Rates of 375 liters (100 gallons) per-minute or more: This proposal would provide an exemption and prescribe the conditions in which the handbook would allow 5 liter (1 gallon) increments to be used to indicate the quantity of fuel delivered by the specific devices covered by this proposal.

Item 330–2. Display of Quantity and Total Price in Aviation Refueling Applications: This is a proposal to revise requirements related to the display of delivered quantity and total price for the stationary liquid measuring devices (typically those used at small or midsized airports) to fuel small aircraft.

Vehicle-Tank Meters

Item 331–1. Temperature Compensation: This is a proposal to add provisions to Handbook 44 to allow vehicle-mounted measuring devices to be equipped with the automatic means to deliver product with the volume compensated to a reference temperature. (See also Item 232–1 below under the Laws and Regulations Committee).

NCWM Laws and Regulations Committee

The following item is a proposal to amend NIST Handbook 130:

Method of Sale of Commodities Regulation

Item 232–1. Temperature Compensation for Petroleum Products: Several proposals will be considered that would allow temperature compensation to take place on a voluntary basis or limit compensation to metering systems with certain flow capacities or specific sales applications. Most of the proposals allow compensation to occur only if certain conditions are met by the seller.

Item 232–2. Biodiesel and Fuel Ethanol Labeling: This item requires the identification and labeling of biodiesel fuels and blends at retail service stations.

FOR FURTHER INFORMATION CONTACT: Carol Hockert, Chief, NIST, Weights and Measures Division, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. Telephone (301) 975–5507, or e-mail: *Carol.Hockert@nist.gov.*

Dated: December 13, 2006.

James E. Hill,

Acting Deputy Director.

[FR Doc. E6–21607 Filed 12–18–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121106B]

Endangered Species; File No. 1581

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that the National Marine Fisheries Service, Pacific Islands Fisheries Science Center (Responsible Official—Samuel Pooley, Principal Investigator—George Balazs), 2570 Dole Street, Honolulu, HI 96822 has been issued a permit to take green (*Chelonia mydas*) and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Patrick Opay (301)713–2289.

SUPPLEMENTARY INFORMATION: On September 27, 2006 notice was published in the **Federal Register** (71 FR 56478) that a request for a scientific research permit to take green and hawksbill sea turtles had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Researchers will annually capture up to 600 green and 10 hawksbill sea turtles by hand, scoop net, entanglement net, and bullpen net. All green sea turtles will be measured, weighed, passive integrated transponder tagged, and flipper tagged. A subset of green sea turtles will have their shell etched with an identification mark, be blood sampled, tissue sampled, lavaged, and have an electronic tag attached to them. Hawksbill sea turtles will be measured, weighed, passive integrated transponder tagged, flipper tagged, blood sampled, and tissue sampled. All animals will be released alive. The permit is issued for five years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of any endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 13, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–21608 Filed 12–18–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102406C]

Nominations for the Annual Sustainable Fisheries Leadership Awards for 2007; Extension of Nomination Deadline

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

ACTION: Notice; extension of nomination deadline.

SUMMARY: NOAA has established the Sustainable Fisheries Leadership Awards Program to recognize outstanding performances, achievements and leadership by industries, organizations and individuals who promote best stewardship practices for the sustainable use of living marine resources and ecosystems, and who have fostered change and inspired a stewardship ethic within their community. This notice extends the deadline for nominations for the second annual Sustainable Fisheries Leadership Awards from January 8 to January 31, 2007.

DATES: The due date for nomination forms and required supporting materials has been extended from January 8, 2007 (November 8, 2006; 71 FR 65471) to January 31, 2007.

ADDRESSES: Nominations should be sent electronically to the Fish for the Future Foundation, *nominations@fish4thefuturefoundation.org.* Nominations can also be mailed to Sustainable Fisheries Leadership Awards, c/o Fish for the Future Foundation, 3382 Gunston Road,

Alexandria, VA 22302, or faxed to (703) 379–5777. All information and official nomination forms can be accessed electronically at the NMFS Web site *http://www.nmfs.noaa.gov/awards/* or the Fish for the Future Foundation Web site *http://www.fish4thefuture foundation.org* or by calling (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Michele Shea, Fish for the Future Foundation, (703) 379–6101, *Michele.Shea@fish4thefuture foundation.org* or Laurel Bryant, NMFS, (301) 713–2379 x171, *laurel.bryant@noaa.gov*

SUPPLEMENTARY INFORMATION: NMFS published a notice in the **Federal Register** on November 8, 2006 (71 FR 65471) that provided background information as it relates to this nomination process. The background information is not repeated in this document. Today's notice extends the nomination deadline from January 8 to January 31, 2007.

Dated: December 12, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E6–21613 Filed 12–18–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083106B]

Small Takes of Marine Mammals Incidental to Specified Activities; Low-Energy Seismic Surveys in the South Pacific Ocean

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting an oceanographic survey in the South Pacific Ocean (SPO) has been issued to the Scripps Institution of Oceanography (SIO).

DATES: Effective from December 12, 2006, through December 11, 2007.

ADDRESSES: The authorization and application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here. The application is also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2289, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On July 24, 2006, NMFS received an application from SIO for the taking, by harassment, of several species of marine mammals (see Marine Mammals Affected by this Activity later in this document) incidental to conducting a low-energy marine seismic survey program during December 2006 and January 2007 in the SPO. SIO plans to conduct a seismic survey at several sites in the SPO (as illustrated in Figure 1 in SIO's application) as part of the Integrated Ocean Drilling Program (IODP).

The purpose of the research program is to conduct a piston/ gravity coring, magnetic, and seismic survey program at 12 sites in the SPO. The seismic surveys will involve one vessel. The source vessel, the *R/V Roger Revelle*, will deploy a pair of low-energy Generator-Injector (GI) airguns as an energy source (each with a discharge volume of 45 in^3), plus a 800–m (1476–ft) long, 48–channel, towed hydrophone streamer. The *Revelle* is scheduled to depart from Apia, Samoa, on or about December 7, 2006, and to arrive at Dunedin, New Zealand, on or about January 17, 2007. The program will consist of approximately 1930 km (1042 nm) of surveys, including turns. The surveys will be conducted entirely in international waters. The GI guns will be operated on a small grid for about 6–10 hours at each of 12 sites during approximately December 10, 2006, to January 13, 2007.

A description of the *Revelle*'s oceanographic research program is contained in SIO's application (see **ADDRESSES** for availability) and in NMFS' notice of receipt of SIO's IHA application (see 71 FR 56955 (September 28, 2006)) and is not repeated here. There have been no significant changes in SIO's oceanographic research program between the September 28, 2006 **Federal Register** notice and NMFS' decision to issue the IHA

Comments and Responses

A notice of receipt and request for 30–day public comment on the application and proposed authorization was published on September 28, 2006 (71 FR 56955). During the 30–day public comment period, NMFS received comments only from the Marine Mammal Commission (Commission).

Comment 1: The Commission recommends that NMFS issue the

requested authorization, provided the applicant is required to conduct all practicable monitoring and mitigation measures that reasonably can be expected to protect the potentially affected marine mammal species from serious injury. In that regard, the Commission notes that it submitted similar comments on this concern in letters dated December 18, 2005 and February 21, 2006 on SIO's activities in the southwestern Pacific Ocean (SWPO) and eastern tropical Pacific (ETP). As in those cases, since several species of beaked whales occur in the proposed survey area, and given the uncertainties concern the effects of sound on these and possibly other species, caution is warranted.

Response: NMFS responded to similar concerns from the Commission on January 30, 2006 (71 FR 3260), for SIO's ETP seismic survey and on February 6, 2006 (71 FR 6041), for SIO's SWPO survey. For this low-energy seismic survey, the radius of the zone of potential serious injury for cetaceans is approximately 40 m (131 ft). For the 2–GI airgun seismic activity, the radius of the zone of potential Level B harassment for cetaceans is approximately 400 m (1312 ft). Considering the small size of the 2 GI-gun array compared to other high-energy sources used by the military and industry; the small size of the potential impact zones; the speed of the vessel when towing the airgun (7 knots); the length of daylight at this time of the year in the South Pacific; and, the marine mammal avoidance measures that are implemented by the vessel for marine mammals on the vessel's track, it is very unlikely that any marine mammals would enter the safety zone undetected. If a marine mammal enters the small safety zone, operational shutdown will be implemented until the animal leaves the safety zone.

Comment 2: The Commission notes that NMFS and SIO believe that the proposed activities will result only in Level B harassment of cetaceans and pinnipeds. However, there is some possibility that the proposed study could result in injuries or deaths to beaked whales or other species of small cetaceans.

Response: NMFS is unaware of any documented injuries or mortalities caused by low-energy, low-frequency sound sources, such as the 2 GI gun array on beaked whales or other marine mammals. If the Commission has any information on this subject, NMFS would appreciate obtaining this additional information for its review of IHA applications for low-energy noise sources.

Comment 3: The Commission states that NMFS and/or the applicant should provide additional information concerning the likely effectiveness of the proposed monitoring program in detecting an injured or dead beaked whale or other small cetacean, should an injury or death occur. For example, would any such animals likely be sighted from a ship running transects through an area or retracing recently run transect lines?

Response: NMFS is unaware of any scientific studies to demonstrate efficacy of conducting marine mammal sightings from a moving vessel for incapacitated or dead marine mammals. However, SIO notes that the *Revelle* will spend approximately 24 hours at each of the 12 seabottom coring sites. As the inset to Figure 1 in SIO's application shows, the *Revelle* will run two parallel and one perpendicular seismic lines at each coring station. In addition, the *Revelle* will remain at the site for several hours while conducting its coring and magnetics work. Using big-eye binoculars, injured or dead mammals that are floating should be readily visible to MMOs during daylight hours.

Comment 4: The Commission believes NMFS should require that operations be suspended immediately if a dead or seriously injured marine mammal is found in the vicinity of the operations and the death or injury could have occurred incidental to the seismic survey. Any such suspension should remain in place until NMFS has reviewed the situation and determined that further deaths or serious injuries are unlikely to occur or has issued regulations authorizing such takes under section 101(a)(5)(A) of the MMPA.

Response: A standard condition in all seismic IHAs is for an emergency shut-down. The IHA states that ''If observations are made or credible reports are received that one or more marine mammals or sea turtles are within the area of this activity in an injured or mortal state, or are indicating acute distress, the seismic airguns will be immediately shut down and the Chief of the Permits, Conservation and Education Division, Office of Protected Resources or a staff member contacted. The airgun array will not be restarted until review and approval has been given by the Director, Office of Protected Resources or his designee.'' However, NMFS needs to make it clear that this requirement pertains only to recently deceased marine mammals (as determined by the lead MMO onboard the vessel) and not for long-dead ''floaters.≥

Marine Mammals Affected by the Activity

Forty species of cetacean (including 31 odontocete (dolphins and small- and large-toothed whales) species and nine mysticete (baleen whales) species) and five species of pinnipeds (seals and sea lions) could potentially occur in the proposed seismic survey area are believed by scientists to occur in the SPO in the proposed seismic survey area. Detailed information on these species is contained in the SIO application and the National Science Foundation (NSF) EA which are available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha*.

Table 2 in both the SIO application and NSF EA summarizes the habitat, occurrence, and regional population estimate for these species. Please see these documents and NMFS' September 28, 2006 (71 FR 56957) notice for additional information on potentially affected marine mammal species.

Potential Effects on Marine Mammals

As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson et al., 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically

important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Effects of Seismic Surveys on Marine Mammals

The SIO application and two previous SIO IHA notices (71 FR 6041, February 6, 2006, and 71 FR 14839, March 24, 2006) provide information on what is known about the effects on marine mammals of the types of seismic operations planned by SIO. The types of effects considered in these documents are (1) tolerance, (2) masking of natural sounds, (2) behavioral disturbance, (3) potential hearing impairment, and (4) other non-auditory physical effects. This information is incorporated herein. Please refer to these documents for information and analyses on potential impacts to marine mammals by seismic activities.

Summarizing from these analyses, given the relatively small size of the airguns planned for the present project, NMFS and SIO believe it is very unlikely that there would be any cases of temporary or permanent hearing impairment, or non-auditory physical effects. Also, behavioral disturbance is expected to be limited to distances less than 400 m (1312 ft) from the seismic source. This is the zone calculated for 160 dB or the onset of Level B (behavioral) harassment. As a result, acoustic effects are anticipated to be considerably less than would be the case with a large array of airguns.

Possible Effects of Mid-frequency Sonar Signals

A multi-beam bathymetric sonar and a sub-bottom profiler will be operated from the source vessel essentially continuously during much of the planned survey. Details about these sonars and potential effects on marine mammals (masking, behavioral response, hearing impairment and other physical effects) have been provided in the SIO application and by NMFS previously (see 71 FR 6041, February 6, 2006, and 71 FR 14839, March 24, 2006) and are not repeated here. This information is incorporated herein by citation. Please refer to these documents for information and analyses on potential impacts to marine mammals by these mid-frequency sonar activities.

Estimates of Take by Harassment for the SPO Seismic Survey

Although information contained in several documents cited and summarized in SIO's application indicates that injury to marine mammals from seismic sounds potentially occurs at sound pressure levels significantly higher than 180 and 190 dB, NMFS' current criteria for onset of Level A harassment of cetaceans and pinnipeds from impulse sound are, respectively, 180 and 190 re 1 microPa rms. The rms level of a seismic pulse is typically about 10 dB less than its peak level and about 16 dB less than its pk-pk level (Greene, 1997; McCauley *et al.*, 1998; 2000a). Given the small zone of impact due to the low-energy seismic sources and the mitigation and monitoring required under the IHA for this survey (see Mitigation and Monitoring later in this document), all anticipated effects involve, at most, a temporary change in behavior that may constitute Level B (behavioral) harassment, and no injury or mortality is likely. The mitigation measures will essentially eliminate the possibility of Level A harassment or mortality. As described later, SIO has calculated the ''best estimates'' for the numbers of animals that could be taken by Level B harassment during the proposed SPO seismic survey using data on marine mammal density (numbers per unit area) and estimates of the size of the affected area, as shown in the predicted RMS radii table (see Table 1 in 71 FR 56955 (September 28, 2006)).

The Level B harassment estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels at or higher than 160 dB, the criterion for the onset of Level B harassment, by operations with the 2 GI-gun array planned to be used for this project. The anticipated zones of influence of the multi-beam sonar and sub-bottom profiler are less than that for the airguns, so it is assumed that during simultaneous operations of these instruments that any marine mammals close enough to be affected by the multi-beam and sub-bottom profiler sonars would already be affected by the airguns. Therefore, no additional incidental takings are included for animals that might be affected by the multi-beam sonar. Also, given their characteristics (described in SIO's application and analyzed by NMFS in previous SIO authorizations), no Level B harassment takings are considered likely when the multibeam and sub-bottom profiler are operating but the airguns are silent.

SIO notes that it is difficult to make accurate, scientifically defensible, and observationally verifiable estimates of the number of individuals likely to be subject to low-level harassment by the noise from SIO's GI guns. There are many uncertainties in marine mammal distribution and seasonally varying abundance, and in local horizontal and vertical distribution; in marine mammal reactions to varying frequencies and levels of acoustic pulses; and in perceived sound levels at different horizontal and oblique ranges from the source.

The best estimate of the potential number of exposures to received levels equal to, or greater than, 160 dB re 1 microPa (rms) was calculated by SIO by multiplying the expected density of the species/stock; times the anticipated total line-kilometers of operations with the 2 GI guns (including turns and additional buffer line km to allow for repeating of lines due to equipment malfunction, bad weather, etc.), times the cross-track distances within which received sound levels are predicted to be 160 dB or greater.

For the 2 GI guns, that cross track distance is 2x the predicted 160–dB radii of 400 m (1312 ft) in water depths greater than 1000 m (3281 ft). Based on that method, SIO obtained the ''best'' and ''maximum'' estimates of the number of marine mammal exposures to airgun sounds 160 dB re 1 microPa (rms) and higher for each of the ecological provinces using the reported average and maximum densities from Tables 3 and 4 in SIO's application. The two estimates were then added to give total estimated exposures. The estimates show that very small numbers of the five endangered large whale species may be exposed to such noise levels (see Table 5 in SIO's application). SIO's best estimates for these species are one exposure each for the sperm whale, southern right whale, sei whale, and fin whale. The vast majority of the best estimate for exposures to seismic sounds 160 dB and higher would involve delphinids. Best estimates of the number of exposures of cetaceans, in

descending order, are bottlenose dolphin (292 exposures), rough-toothed and spotted dolphin (80 exposures each), and southern right whale dolphin (73 exposures). SIO believes that based on the empirical calibration data collected in the Gulf of Mexico for 2–GI guns in deep water, actual 160–dB distances in deep water are likely to be less than predicted (Tolstoy et al., 2004) and, therefore, the predicted numbers of marine mammals that might be exposed to sounds 160 dB or greater may be somewhat overestimated.

While data regarding distribution, seasonal abundance, and response of pinnipeds to seismic sonar is sparse, NMFS believes the *Revelle* is unlikely to encounter any of the four pinniped species that live, for at least part of the year, in SIO's proposed survey area because of the decreased likelihood of encountering them in the very deep water, the relatively small area proposed to be ensonified, and the likely effectiveness of the required mitigation measures in such a small area.

Table 2 (see 71 FR 56955 (September 28, 2006)) provides the best estimate of the numbers of each species that could be exposed to seismic sounds equal to, or greater than, 160 dB and the number of marine mammals requested to be taken by Level B harassment. A detailed description on the methodology used by SIO to arrive at the estimates of Level B harassment takes that are provided in Table 2 can be found in SIO's application for the SPO survey.

Conclusions

Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6–8 km (3.2–4.3 nm) and occasionally as far as 20–30 km (10.8–16.2 nm) from the source vessel. However, reactions at the longer distances appear to be atypical of most species and situations, particularly when feeding whales are involved. Few mysticetes are expected to be encountered during the proposed survey in the SPO (Table 2) and disturbance effects would be confined to shorter distances given the low-energy acoustic source to be used during this project. In addition, the estimated numbers presented in Table 2 are considered overestimates of actual numbers that may be harassed.

Odontocete reactions to seismic pulses, or at least the reactions of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking into account the small size and the relatively low sound output of the 2 GI-gun array to be used, and the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of a small area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of Level B harassment. Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are very low percentages of the affected populations.

Based on the 160–dB criterion, the best estimates of the numbers of individual cetaceans that may be exposed to sounds of 160 dB re 1 microPa (rms) or greater represent from 0 to approximately 0.07 percent of the regional SPO species populations (see Table 2 in 71 FR 56955 (September 28, 2006)). In the case of endangered balaenopterids, it is likely that no more than 1 humpback, sei, or fin whale will be exposed to seismic sounds 160 dB re 1 microPa (rms) or greater, based on estimated densities of those species in the survey region. Therefore, SIO has requested an authorization to expose up to 1 individuals of each of these species to seismic sounds of 160 dB or greater during the proposed survey given the possibility of encountering one or more groups. Best estimates of blue whales are that no individuals would be potentially exposed to seismic pulses with received levels 160 dB re 1 microPa (rms) or greater.

Higher numbers of delphinids may be affected by the proposed seismic surveys, but the population sizes of species likely to occur in the survey area are large, and the numbers potentially affected are small relative to population sizes. As a result, NMFS believes that the seismic survey proposed by SIO will result in only small numbers of cetaceans being harassed incidental to conducting that activity.

Mitigation measures such as controlled speed, course alteration, observers, ramp ups, and shut downs when marine mammals are seen within defined ranges should further reduce short-term reactions, and minimize any effects on hearing. In all cases, the effects are expected to be short-term, with no lasting adverse biological consequence. In light of the type of effects expected and the small percentages of affected stocks of cetaceans, the action is expected to have no more than a negligible impact on the affected species or stocks of cetaceans.

Effects on Pinnipeds

Five pinniped species may be encountered at the survey sites, but their distribution and numbers have not been documented in the proposed survey area. In all likelihood, these species will be in southern feeding areas during the period for this survey. However, to ensure that the SIO project remains in compliance with the MMPA in the event that a few pinnipeds are encountered, SIO has requested an authorization to expose up to 3–5 individuals of each of the five pinniped species to seismic sounds with rms levels 160 dB re 1 microPa or greater. Therefore, the proposed survey would have, at most, a short-term effect on their behavior and no long-term impacts on individual pinnipeds or their populations. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment. As is the case for cetaceans, the short-term exposures to sounds from the two GI-guns are not expected to result in any long-term consequences for the individuals or their populations and the activity is expected to have no more than a negligible impact on the affected species or stocks of pinnipeds.

Potential Effects on Habitat

The proposed seismic survey will not result in any permanent impact on habitats used by marine mammals, or to the food sources they utilize. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

One of the reasons for the adoption of airguns as the standard energy source for marine seismic surveys was that they (unlike the explosives used in the distant past) do not result in any appreciable fish kill. Various experimental studies showed that airgun discharges cause little or no fish kill, and that any injurious effects were generally limited to the water within a meter or so of an airgun. However, it has recently been found that injurious effects on captive fish, especially on fish hearing, may occur at somewhat greater distances than previously thought (McCauley *et al.*, 2000a,b, 2002; 2003). Even so, any injurious effects on fish would be limited to short distances from the source. Also, many of the fish that

might otherwise be within the injury-zone are likely to be displaced from this region prior to the approach of the airguns through avoidance reactions to the approaching seismic vessel or to the airgun sounds as received at distances beyond the injury radius.

Fish often react to sounds, especially strong and/or intermittent sounds of low frequency. Sound pulses at received levels of 160 dB re 1 μPa (peak) may cause subtle changes in behavior. Pulses at levels of 180 dB (peak) may cause noticeable changes in behavior (Chapman and Hawkins, 1969; Pearson *et al.*, 1992; Skalski *et al.*, 1992). It also appears that fish often habituate to repeated strong sounds rather rapidly, on time scales of minutes to an hour. However, the habituation does not endure, and resumption of the disturbing activity may again elicit disturbance responses from the same fish.

Fish near the airguns are likely to dive or exhibit some other kind of behavioral response. This might have short-term impacts on the ability of cetaceans to feed near the survey area. However, only a small fraction of the available habitat would be ensonified at any given time, and fish species would return to their pre-disturbance behavior once the seismic activity ceased. Thus, the proposed surveys would have little impact on the abilities of marine mammals to feed in the area where seismic work is planned. Fish that do not avoid the approaching airguns (probably a small number) may be subject to auditory or other injuries.

Zooplankton that are very close to the source may react to the airgun's shock wave. These animals have an exoskeleton and no air sacs; therefore, little or no mortality is expected. Many crustaceans can make sounds and some crustacea and other invertebrates have some type of sound receptor. However, the reactions of zooplankton to sound are not known. Some mysticetes feed on concentrations of zooplankton. A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused a concentration of zooplankton to scatter. Pressure changes of sufficient magnitude to cause this type of reaction would probably occur only very close to the source, so few zooplankton concentrations would be affected. Impacts on zooplankton behavior are predicted to be negligible, and this would translate into negligible impacts on feeding mysticetes.

Potential Effects on Subsistence Use of Marine Mammals

There is no known legal subsistence hunting for marine mammals in the SPO, so the proposed SIO activities will not have any impact on the availability of these species or stocks for subsistence users.

Required Mitigation

For the proposed seismic survey in the SPO, SIO will deploy 2 GI-airguns as an energy source, each with a discharge volume of 45 in^3. The energy from the airguns is directed mostly downward. The directional nature of the airguns to be used in this project is an important mitigating factor. This directionality will result in reduced sound levels at any given horizontal distance as compared with the levels expected at that distance if the source were omnidirectional with the stated nominal source level. Also, the small size of these airguns is an inherent and important mitigation measure that will reduce the potential for effects relative to those that might occur with large airgun arrays. This measure is in conformance with NMFS policy of encouraging seismic operators to use the lowest intensity airguns practicable to accomplish research objectives.

The following mitigation measures, as well as marine mammal visual monitoring (discussed later in this document), will be implemented for the subject seismic surveys: (1) Speed and course alteration (provided that they do not compromise operational safety requirements); (2)shut-down procedures; and (3) ramp-up procedures.

Speed and Course Alteration

If a marine mammal is detected outside its respective safety zone (180 dB for cetaceans, 190 dB for pinnipeds) and, based on its position and the relative motion, is likely to enter the safety zone, the vessel's speed and/or direct course will, when practicable and safe, be revised to avoid the mammal in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach the outer perimeter of safety zone.

Shut-down Procedures

Although power-down procedures are often standard operating practice for seismic surveys, power-down will not be used or authorized for this activity because powering down from two guns to one gun would make only a small difference in the 180- or 190–dB radius--probably not enough to allow continued one-gun operations if a marine mammal came within the safety radius for two guns.

If a marine mammal is detected outside the safety radius and is likely to enter the safety radius, and if the vessel's speed and/or course cannot be changed to avoid having the mammal enter the safety radius or an alternative ship speed or trackline is not effective in preventing entry into the safety zone, then the GI airguns must be shut down immediately. Likewise, if a mammal is already within the safety zone when first detected, the airguns must be shut down immediately.

Following a shut-down, airgun activity will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it: (1) is visually observed to have left the safety zone, or (2) has not been seen within the zone for 15 minutes in the case of small odontocetes and pinnipeds, or (3) has not been seen within the zone for a minimum of 30 minutes in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, beaked and bottlenose whales.

During airgun operations following a shut-down whose duration has exceeded these specified limits, the airgun array will be ramped-up gradually.

Ramp-up Procedure

A ramp-up procedure will be followed when the airguns begin operating after a period without airgun operations. The two GI guns will be added in sequence 5 minutes apart. During ramp-up procedures, the safety radius for the two GI guns will be maintained.

During the day, ramp-up cannot begin from a shut-down unless the entire 180–dB safety radius has been visible for at least 30 minutes prior to the ramp-up (i.e., no ramp-up can begin in heavy fog or high sea states).

During nighttime operations, if the entire safety radius is visible using vessel lights and night-vision devices (NVDs) (as may be the case in deep and intermediate waters), then start up of the airguns from a shut-down may occur, after completion of the 30–minute observation period.

Comments on past IHAs raised the issue of prohibiting nighttime operations as a practical mitigation measure. However, this is not practicable due to cost considerations and ship time schedules. If the *Revelle* was prohibited from operating during nighttime, each trip could require an additional several days to complete.

If a seismic survey vessel is limited to daylight seismic operations, efficiency would also be much reduced. For seismic operations in general, a

daylight-only requirement would be expected to result in one or more of the following outcomes: cancellation of potentially valuable seismic surveys; reduction in the total number of seismic cruises annually due to longer cruise durations; a need for additional vessels to conduct the seismic operations; or work conducted by non-U.S. operators or non-U.S. vessels when in waters not subject to U.S. law.

Marine Mammal Monitoring

SIO must have at least two experienced marine mammal observer on board the *Revelle*, that NMFS has approved in advance of the start of the SPO cruise. These observers will be on duty in shifts of no longer than 4 hours.

The visual observers will monitor marine mammals and sea turtles near the seismic source vessel during all daytime airgun operations, during any nighttime start-ups of the airguns, and at night whenever daytime monitoring resulted in one or more shut-down situations due to marine mammal presence. During daylight, vessel-based observers will watch for marine mammals and sea turtles near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after a shut-down.

Use of multiple observers will increase the likelihood that marine mammals near the source vessel are detected. *Revelle* bridge personnel will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night when the designated observers are on stand-by and not required to be on watch at all times.

The observer(s) will watch for marine mammals from the highest practical vantage point on the vessel, which is either the bridge or the flying bridge. The observer(s) will systematically scan the area around the vessel with Big Eyes binoculars, reticulated binoculars (e.g., 7 X 50 Fujinon) and with the naked eye during the daytime. Laser range-finding binoculars (Leica L.F. 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. The observers will be used to determine when a marine mammal or sea turtle is in or near the safety radii so that the required mitigation measures, such as course alteration and shut-down, can be implemented. If the GI-airguns are shut down, observers will maintain watch to determine when the animal is outside the safety radius.

Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this time and will call for the airguns to be powered-down or shut-down if marine mammals are observed in or about to enter the safety radii. However, a biological observer must be on call at night and available to assist the bridge watch if marine mammals are detected at any distance from the *Revelle*. If the 2 GI-airgun is ramped-up at night (see previous section), two marine mammal observers will monitor for marine mammals for 30 minutes prior to ramp-up and during the ramp-up using either deck lighting or NVDs that will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent).

Post-Survey Monitoring

The biological observers will be able to conduct monitoring of most recently-run transect lines as the *Revelle* returns along parallel and perpendicular transect tracks (see inset of Figure 1 in the SIO application). This will provide the biological observers with opportunities to look for injured or dead marine mammals (although no injuries or mortalities are expected during this research cruise).

Passive Acoustic Monitoring (PAM)

Because of the very small zone for potential Level A harassment, use the PAM system during this cruise is not warranted and, therefore, is not required.

Summary

Taking into consideration the additional costs of prohibiting nighttime operations and the likely impact of the activity (including all mitigation and monitoring), NMFS has determined that the required mitigation and monitoring ensures that the activity will have the least practicable impact on the affected species or stocks. Due to seismic sound propagation, marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns, thereby giving them an opportunity to avoid the approaching array; if ramp-up is required, two marine mammal observers will be required to monitor the safety radii using shipboard lighting or NVDs for at least 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; ramp-up may not begin unless the entire safety radii are visible.

Reporting

SIO will submit a draft report to NMFS within 90 days after the end of the cruise, which is currently predicted to occur during December, 2006 and January, 2007. The report, which will be posted by NMFS on its web-site, will describe the operations that were conducted and the marine mammals that were detected. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

During the recent SIO cruise to the Louisville Ridge (71 FR 6041, February 6, 2006), there were 5 sightings of marine mammals. All observed marine mammals were non-evasive of the research vessel and its activities. Only one sighting occurred while the seismic source was active. The animal's closest approach to the ship was greater than 2 km (1.08 nm), well outside the 40 m (131.2 ft) safety radius for the seismic source used on that cruise. For additional information please see the Louisville Ridge cruise report (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha*.

Endangered Species Act (ESA)

NMFS has issued a biological opinion regarding the effects of this action on ESA-listed species and critical habitat under the jurisdiction of NMFS. That biological opinion concluded that this action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. A copy of the Biological Opinion is available upon request (see **ADDRESSES**).

National Environmental Policy Act (NEPA)

The NSF made a Finding of No Significant Impact (FONSI) determination on November 3, 2005 (70 FR 68102, November 9, 2005), based on information contained within its EA (see 70 FR 39346, July 7, 2005, for public availability), that implementation of a low-energy seismic survey in the SPO is not a major Federal action having significant effects on the environment within the meaning of NEPA. The NSF determined, therefore, that an environmental impact statement would not be prepared.

NMFS noted that the NSF had prepared an EA for a previous SIO 2–GI airgun survey in the SPO and made this EA available upon request (70 FR 60287, October 17, 2005). In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20,

1999), NMFS reviewed the information contained in NSF's EA and determined that the NSF EA accurately and completely describes the proposed action alternative, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Accordingly, NMFS adopted the NSF EA under 40 CFR 1506.3 and made its own FONSI. The NMFS FONSI also took into consideration additional mitigation measures that are not in NSF's EA. Therefore, because the actions described in that EA are similar in context and intensity to the current seismic activity by SIO, it is not necessary for NMFS to issue a new EA, a supplemental EA or an environmental impact statement for the issuance of an IHA to SIO for this activity. A copy of the EA and previous FONSI for this activity is available upon request. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

Conclusions

NMFS has determined that the impact of conducting the seismic survey in the SPO may result, at worst, in a temporary modification in behavior of small numbers of certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

For reasons stated previously in this document, this determination is supported by: (1) the likelihood that, given advance notice through relatively slow ship speed and ramp-up, marine mammals are expected to move away from a noise source that is annoying before it becomes potentially injurious; (2) recent research that indicates that TTS is unlikely (at least in delphinids) until levels closer to 200–205 dB re 1 microPa are reached rather than 180 dB re 1 microPa; (3) the fact that 200–205 dB isopleths would be well within 100 m (328 ft) of the vessel even in shallow water; and (4) the likelihood that marine mammal detection in the safety zone by trained observers is close to 100 percent during daytime and remains high at night to the short distance from the seismic vessel. As a result, no take by injury or death is anticipated or authorized, and the potential for temporary or permanent hearing impairment is very low and would be avoided through the incorporation of the required mitigation measures mentioned in this document.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, the proposed seismic program will not interfere with any known legal subsistence hunts, since seismic operations will not take place in subsistence whaling and sealing areas and will not affect marine mammals used for subsistence purposes.

Authorization

On this date, NMFS issues an IHA to SIO to take marine mammals, by Level B harassment, incidental to conducting seismic surveys in the SPO for a 1–year period, provided the mitigation, monitoring, and reporting requirements are undertaken.

Dated: December 12, 2006.

Donna Wieting,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–21611 Filed 12–18–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Task Force on Mental Health Meeting

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs); DoD.

ACTION: Notice of meeting change.

SUMMARY: This notice updates the previous notice, ''Notice of Open Meeting'' published on December 6, 2006 (71 FR 70743). In accordance with section 10(a)(2) of Public Law 92–463, the Federal Advisory Committee Act, announcement is made of the following meeting.

Name of Committee: DoD Task Force on Mental Health, a Subcommittee of the Defense Health Board.

Dates: December 18, 2006 (Afternoon—Open Session), December 19, 2006 (Morning—Open Session), December 20, 2006 (Morning and Afternoon—Open Session).

Times: 1300–1500 hours (18 December), 0800–1100 hours (19 December), 0800–1700 hours (20 December).

Location: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA.

Agenda: The purpose of the meeting is to obtain, review, and evaluate information related to the Mental Health Task Force's congressionally-directed task of assessing the efficacy of mental health services provided to members of the Armed Forces by the Department of Defense. The Task Force members will receive briefings on topics related to mental health concerns among military service members and mental health care delivery. The Task Force will hold a ''Town Hall Meeting'' session to hear concerns from the Washington, DC metro area active Duty Military, National Guard and Reserve, and Veterans communities and conduct executive working sessions.

FOR FURTHER INFORMATION CONTACT: Colonel Roger Gibson, Executive Secretary, Defense Health Board, Skyline One, 5205 Leesburg Pike, Suite 810, Falls Church, VA 22041, (703) 681–3279, ext. 123.

SUPPLEMENTARY INFORMATION: The afternoon session on December 18, the morning session on December 19, and both morning and afternoon sessions on December 20, 2006 will be open to the public in accordance with Section 552b(b) of Title 5, U.S.C., specifically subparagraph (1) thereof an Title 5, U.S.C., appendix 1, subsection 10(d). Open sessions of the meeting will be limited by space accommodations. Any interested person may attend, appear before or file statements with the Board at the time and in the manner permitted by the Board.

Dated: December 13, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–9762 Filed 12–18–06; 8:45 am]

BILLING CODE 5001–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

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: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by January 24, 2007.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of

Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED 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 respondents, including through the use of information technology.

Dated: December 13, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Impact Evaluation of Upward Bound's Increased Focus on Higher-Risk Students—Baseline Data Collection Protocols.

Abstract: This evaluation will focus on the impacts of Upward Bound on students applying to enter the program as early as the summer of 2007. The current OMB package requests clearance for the instruments to be used in gathering information.

Additional Information: The Department is requesting emergency clearance to begin collection of parental and student consent forms, baseline information forms, and student selection forms. If the evaluation has to go through the normal clearance process, ED's notification to work with grantees on data collection could not begin until late March or early April 2007, where many grantees are completing their application periods. This schedule would likely mean that summer programs would need to be delayed or perhaps cancelled for new students, creating hostility toward the evaluation, undermining the validity of the evaluation and harming its ability to draw conclusions about the effectiveness of the redesigned Upward Bound program. Emergency processing would allow the Department to contact sampled grantees to be in the evaluation in late January or early February 2007, allowing more time for the evaluator to work with grantees selected for the evaluation (contingent on their receipt of funding for 2007), ensure that a sufficient number of eligible students are recruited to form a control group, and obtain the necessary consent and baseline student data required before random assignment can occur. The Department is requesting OMB approval by January 24, 2007.

Frequency: One time.

Affected Public:

Individuals or households; not-for-profit institutions

Reporting and Recordkeeping Hour Burden:

Responses: 7,290. Burden Hours: 3,900.

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 3242. 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 the Internet address *IC DocketMgr@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 *IC DocketMgr@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. E6–21601 Filed 12–18–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information Technology and Media Services for Individuals With Disabilities—Using Assistive Technology To Support Development and Learning of Infants and Toddlers With Disabilities, Birth Through Two; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327X

Dates: Applications Available: December 19, 2006.

Deadline for Transmittal of Applications: February 2, 2007.

Deadline for Intergovernmental Review: April 3, 2007.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); public charter schools that are LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Estimated Available Funds: The Administration has requested $31,063,000 for the Technology and Media Services for Individuals With Disabilities program for FY 2007, of which we intend to use an estimated $435,000 for the Using Assistive Technology To Support Development and Learning of Infants and Toddlers With Disabilities, Birth Through Two competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $435,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Technology and Media Services for Individuals With Disabilities program is to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology, (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities, and (3) provide support for captioning and video description that is appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 674 and 681(d) of the Individuals With Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2007 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals With Disabilities—Using Assistive Technology To Support Development and Learning of Infants and Toddlers With Disabilities, Birth through Two

Background

A growing body of research supports the use of assistive technology (AT), including AT devices and AT services as defined in section 602 (1) and (2) of IDEA, for infants and toddlers with disabilities. The early research in this area shows that AT has the potential to increase the ability of infants and toddlers with disabilities to interact with others and to participate in family routines and to increase their functional skills in such areas as mobility and communication. However, a recent national survey of service providers revealed that only 18.1 percent of early intervention service providers believed that all of the infants and toddlers with disabilities they serve who need AT actually receive it. Further, the survey revealed that only approximately four percent of infants and toddlers with disabilities have AT listed in their Individualized Family Service Plan (IFSP) (Wilcox, Bacon, and Campbell, 2004 [1]). These findings may suggest a lack of awareness or knowledge of AT on the part of early intervention service providers and families. While recent research has shed new light on AT devices, services, and contexts in which AT is appropriately used, a review of 27 studies on the use of AT with young children, published within the past 25 years, found that none of the reports discussed how to help children use readily available or low-tech items. In addition, the limited number of publications on evidence-based AT teaching practices seems to emphasize high-tech devices (Dugan, Millborne, Campbell, and Wilcox [2]). This suggests there is a need to raise awareness among early intervention service providers and families and to assist them in implementing and evaluating AT practices involving a range of low-tech to high-tech devices to improve the development and learning of infants and toddlers with disabilities.

Priority:

This priority supports one cooperative agreement to identify and support the implementation of a range of evidence-based and promising AT practices in early intervention programs with a diverse group of infants and toddlers with disabilities, and their families, service providers, and caregivers, and to develop strategies to scale-up promising AT practices. For purposes of this priority, the term ''infants and toddlers with disabilities'' means individuals from birth through age two who need early intervention services because they (1) are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or (2) have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. In selecting AT practices and in assisting service providers and families in implementing AT practices, the project must—

(a) Identify existing evidence-based and promising practices that integrate AT in early intervention programs to improve the development and learning of infants and toddlers with disabilities. These may include validated practices with high levels of research support as well as promising practices that have some research base but may require additional validation. In selecting standards for identifying evidence-based and promising practices, the project must use a methodology that is consistent with evidence standards established by the What Works Clearinghouse (WWC) for its review of causal research, found at *http://www.whatworks.ed.gov*;

(b) Develop and implement practices to support service providers and families in using a range of low-tech to high-tech AT devices, including readily available materials, in ways that can help families enhance the development and learning of their infants and toddlers with disabilities and promote their participation in activities in everyday settings. These strategies must incorporate provisions for the continued implementation of the practices after Federal support ends;

(c) Identify and recruit early intervention programs to implement the practices identified in accordance with paragraph (a) of this priority. In selecting early intervention programs, the project must consider the culture, language or family income of the infants and toddlers served by the programs, as well as the location (urban and rural settings or, the geographic region) and size of the program;

(d) Provide professional development and training based on the practices identified in accordance with paragraph (a) of this priority to motivate and build capacity of service providers and families to use AT with infants and toddlers with disabilities;

(e) Assist early intervention programs in evaluating the outcomes of the professional development provided in accordance with paragraph (d) of this priority, and the effects of selected AT practices on infant and toddler development;

(f) Promote, where appropriate, opportunities for AT re-use through such avenues as exchange programs, recycling programs, and refurbishment programs; and

(g) Prepare and disseminate information and products, as appropriate, for specific audiences, such as families, service providers, and caregivers.

The project funded under this priority also must—

(1) Meet with the Office of Special Education Programs (OSEP) Project Officer and other appropriate staff in Washington, DC, within the first two months of the project period to clarify project activities and develop a strategic plan for the implementation of the overall project;

(2) Communicate, collaborate, and form partnerships as appropriate, with such entities as: The National Early Childhood Technical Assistance Center (NECTAC), Parent Training and Information Centers (PTIs), Community Parent Resource Centers (CPRCs), the National and Regional Parent Technical

[1] Wilcox, M., Bacon, C., and Campbell, P. (2004). National Survey of Parents and Providers Using AT in Early Intervention, Research Brief Volume 1, Number 3. Tots n Tech Research Institute. Available from: *http://tnt.asu.edu*.

[2] Dugan, L., Millborne, S., Campbell, P., and Wilcox, M. (2004). Evidence Based Practice in Assistive Technology, Research Brief, Volume 1, Number 5. Tots n Tech Research Institute. Available from: *http://tnt.asu.edu*.

Assistance Centers (PTACs), the Regional Resource Centers (RRCs), the Center on Implementing Technology in Education (CITEd), and other OSEP-supported discretionary projects related to the use of AT with infants and toddlers with disabilities;

(3) Establish, maintain, and meet at least annually with an advisory committee consisting of representatives of families, service providers, caregivers, professional organizations and advocacy groups, researchers, and other appropriate groups to review and advise on the project's plans, products, and activities;

(4) Budget to attend a three-day Project Directors' meeting in Washington, DC during each year of the project period; a two-day meeting of technology researchers, manufacturers, developers, and publishers in Washington, DC; and a two-day early childhood meeting in Washington, DC; and

(5) If the project maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility.

Fourth and Fifth Years of Project:

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project.

(c) The degree to which the project is making a positive contribution—and its strategies are demonstrating the potential for disseminating significant knowledge to families, service providers, and caregivers—to using AT to improve outcomes for infants and toddlers with disabilities.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: The Administration has requested $31,063,000 for the Technology and Media Services for Individuals with Disabilities program for FY 2007, of which we intend to use an estimated $435,000 for the Using Assistive Technology to Support Development and Learning of Infants and Toddlers with Disabilities, Birth through Two competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $435,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; public charter schools that are LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. *Telephone (toll free)*: 1–877–433–7827. *FAX:* (301) 470–1244. *If you use a telecommunications device for the deaf (TDD), you may call (toll free):* 1–877–576–7734.

You may also contact ED Pubs at its Web site: http://www.ed.gov/pubs/edpubs.html or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.327X.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:* Applications Available: December 19, 2006. *Deadline for Transmittal of Applications:* February 2, 2007.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements. Deadline for Intergovernmental Review: April 3, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2007. Using Assistive Technology to Support Development and Learning of Infants and Toddlers with Disabilities, Birth through Two-CFDA Number 84.327X is one of the competitions included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Using Assistive Technology to Support Development and Learning of Infants and Toddlers with Disabilities, Birth through Two—CFDA Number 84.327X competition at: *http://www.grants.gov* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (*see http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance). If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit

your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327X), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.327X), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327X), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of SF 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed measures that will yield information on various aspects of the quality of the Technology and Media Services for Individuals with Disabilities program. These measures focus on the extent to which projects are of high quality, are relevant to the needs of children with disabilities, and contribute to improving the results for children with disabilities. Data on these measures will be collected from the projects funded under this competition.

Grantees also will be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

For Further Information Contact: Peggy Cvach or Jane Hauser, U.S. Department of Education, 400 Maryland Avenue, SW., rooms 4060 and 4067, respectively, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7314 and (202) 245–7373, respectively.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. *Telephone:* (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*

Dated: December 13, 2006.

John H. Hager,

Assistant Secretary for Special Education and, Rehabilitative Services.

[FR Doc. E6–21635 Filed 12–18–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–615–004]

California Independent System Operator Corporation; Notice of Proposal for Allocating Resource Adequacy Import Capacity

December 12, 2006.

On December 11, 2006, the California Independent System Operator Corporation (CAISO) made an informational filing regarding the methodology for allocating resource adequacy import capacity in the above-docketed proceeding. By this notice, the date for filing comments on the CAISO's proposal, or for raising any additional issues regarding the allocation of resource adequacy import capacity, is up to and including January 2, 2007. Comments on the CAISO's proposal and any additional issues raised will be discussed at a future technical conference.[1]

Magalie R. Salas,

Secretary.

[FR Doc. E6–21551 Filed 12–18–06; 8:45 am]

BILLING CODE 6717–01–P

[1] See Cal. Indep. Sys. Operator Corp., 116 FERC ¶ 61,274, at P 1226 (2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–51–001]

Distrigas of Massachusetts LLC; Notice of Compliance Filing

December 12, 2006.

Take notice that on December 8, 2006, Distrigas of Massachusetts LLC (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Twenty-Second Revised Sheet No. 94, to become effective as of 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. E6–21549 Filed 12–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–23–001]

East Tennessee Natural Gas, LLC; Notice of Compliance Filing

December 12, 2006.

Take notice that, on December 7, 2006, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date November 18, 2006:

Substitute Fifth Revised Sheet No. 300
Substitute First Revised Sheet No. 323
Substitute First Revised Sheet No. 324

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. E6–21555 Filed 12–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–195–000]

Locust Ridge Wind Farm, LLC; Notice of Issuance of Order

December 12, 2006.

Locust Ridge Wind Farm, LLC (Locust Ridge) 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. Locust Ridge also requested waivers of various Commission regulations. In particular, Locust Ridge requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Locust Ridge.

On December 12, 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 Locust Ridge 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 11, 2007.

Absent a request to be heard in opposition by the deadline above, Locust Ridge 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 Locust Ridge, 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 Locust Ridge'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. E6–21552 Filed 12–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.CP06–433–001]

Northern Natural Gas Company; Notice of Application

December 12, 2006.

Take notice that on December 6, 2006, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP06–433–001, an application pursuant to sections 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for authorization to amend the authorization requested in Docket No. CP06–433–000, filed August 29, 2006, in order to construct and operate two new town border station (TBS) facilities, with appurtenances, to be located in Clay and Sioux Counties in Iowa, in order to use the compression and resulting capacity created on Northern's West Leg pipeline segment of its Market Area facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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.

In its application, Northern asserts that with the installation of the proposed facilities, Northern will utilize an additional 12,100 Dth/day of capacity created by the Palmyra Northern Expansion facilities and that this peak day entitlement has been subscribed to by new customers. Northern is requesting approval for rolled-in rate treatment of the expansion costs. The facilities constitute part of the second discrete stand-alone project under the umbrella of the Northern Lights expansion project.[1] The estimated capital cost for the facilities proposed herein is $885,000.

Any questions regarding this application should be directed to Michael T. Loeffler, Director, Certificates and Government Affairs for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103 or Donna Martens, Senior Regulatory Analyst, at (402) 398–7138.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone

[1] Northern Lights is a multi-year commitment to expand Northern's Market Area capacity in response to its customer's future requirements through 2026. On June 23, 2006, Northern filed an application with the Commission under Docket No. CP06–403–000 requesting authorization to construct, modify and operate facilities for the first discrete stand-alone Northern Lights project.

will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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 at *http://www.ferc.gov*. The Commission strongly encourages intervenors to file electronically. 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.

Comment Date: January 2, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21550 Filed 12–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–102–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff and Filing of Non-Conforming Service Agreement

December 12, 2006.

Take notice that on December 8, 2006, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 374 to become effective January 8, 2007. Northwest also tendered for filing a restated Rate Schedule TF–1 nonconforming service agreement.

Northwest states that the purpose of this filing is to (1) submit a restated non-conforming Rate Schedule TF–1 service agreement for Commission acceptance for filing, and (2) list the subject agreement on the list of non-conforming service agreements in Northwest's tariff.

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. E6–21554 Filed 12–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR07–4–000]

PanEnergy Louisiana Intrastate, LLC; Notice of Petition for Rate Approval

December 12, 2006.

Take notice that on December 1, 2006, PanEnergy Louisiana Intrastate, LLC (PanEnergy) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations. PanEnergy requests approval of a maximum system-wide rate for both firm and interruptible transportation of natural gas of $0.2617 per MMBtu plus actual compressor fuel and lost-and-unaccounted-for gas provided under Section 311(a)(2) of the Natural Gas Policy Act of 1978.

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

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

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

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 22, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21553 Filed 12–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

December 12, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06–165–000.

Applicants: Pinnacle West Capital Corporation; Pinnacle West Marketing & Trading.

Description: Pinnacle West Capital Corp and Pinnacle West Marketing & Trading Co, LLC submits a response to inquiry on its proposed accounting entries pursuant to the Commission's 11/6/06 letter order.

Filed Date: 12/06/2006.

Accession Number: 20061212–0075.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 27, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER04–691–079.

Applicants: Midwest ISO.

Description: Midwest Independent Transmission System Operator, Inc. submits its Errata to the Compliance Filing made on 11/27/06.

Filed Date: 12/08/2006.

Accession Number: 20061212–0063.

Comment Date: 5 p.m. Eastern Time on Friday, December 29, 2006.

Docket Numbers: ER06–1177–002.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection LLC submits revisions to its OATT pursuant to the Commission's 11/9/06 order.

Filed Date: 12/08/2006.

Accession Number: 20061211–0069.

Comment Date: 5 p.m. Eastern Time on Friday, December 29, 2006.

Docket Numbers: ER06–1549–001.

Applicants: Duquesne Power and Light Company.

Description: Duquesne Light Company submits responses to the Commission Staff's questions in the 11/30/06 letter.

Filed Date: 12/08/2006.

Accession Number: 20061211–0058.

Comment Date: 5 p.m. Eastern Time on Friday, December 29, 2006.

Docket Numbers: ER07–52–001.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy submits a revised Attachment 1 which consist of the clean version of the Amended and Restated Electric Interconnection Agreement.

Filed Date: 12/08/2006.

Accession Number: 20061211–0070.

Comment Date: 5 p.m. Eastern Time on Friday, December 29, 2006.

Docket Numbers: ER07–307–000.

Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Company submits an amendment to a contract with the City of Nicholasville, Kentucky, Rate Schedule 307.

Filed Date: 12/08/2006.

Accession Number: 20061211–0063.

Comment Date: 5 p.m. Eastern Time on Friday, December 29, 2006.

Docket Numbers: ER07–308–000.

Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Company submits an amendment to a contract with Frankfort Electric and Water Board of Frankfort, KY aka City of Frankfort, FERC Rate Schedule 311.

Filed Date: 12/08/2006.

Accession Number: 20061211–0062.

Comment Date: 5 p.m. Eastern Time on Friday, December 29, 2006.

Docket Numbers: ER07–309–000.

Applicants: The Clark Fork and Blackfoot, L.L.C.

Description: The Clark Fork and Blackfoot, LLC submits a notice of cancellation of its market-based rate tariff, FERC Electric Tariff, First Revised Volume 1.

Filed Date: 12/08/2006.

Accession Number: 20061211–0061.

Comment Date: 5 p.m. Eastern Time on Friday, December 29, 2006.

Docket Numbers: ER07–310–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Co. submits a Notice of Cancellation of Rate Schedule 138, Netting Agreement with AYP Energy, Inc.

Filed Date: 12/08/2006.

Accession Number: 20061211–0060.

Comment Date: 5 p.m. Eastern Time on Friday, December 29, 2006.

Docket Numbers: ER07–311–000.

Applicants: Kentucky Utilities Company

Description: Kentucky Utilities Co submits an amendment to a contract with the City of Bardstown, Kentucky, Rate Schedule 302.

Filed Date: 12/08/2006.

Accession Number: 20061211–0059.

Comment Date: 5 p.m. Eastern Time on Friday, December 29, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–21606 Filed 12–18–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–409–000]

Calypso U.S. Pipeline, L.L.C.; Notice Of Availability of the Environmental Assessment for the Proposed Modifications to the Calypso Pipeline Project

December 12, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) and the Mineral Management Service (MMS) have prepared this Environmental Assessment (EA) to discuss the environmental impacts of the Modifications to the Calypso Pipeline Project proposed by Calypso U.S. Pipeline L.L.C. (Calypso) in the above referenced docket. The proposed project is located in Broward County, Florida; State Waters of Florida; and Federal Waters of the United States.

This EA has been prepared to comply with the requirements of the National Environmental Policy Act (NEPA), the Council of Environmental Quality (CEQ) regulations for implementing NEPA (Title 40, Code of Federal Regulations [CFR], sections 1500–1508), and the Commission's regulations (18 CFR part 380). The staff concludes that approval of this proposal would not constitute a major Federal action significantly affecting the quality of the human environment. The EA also evaluates alternatives to the proposal, including system alternatives; major route alternatives; and route variations.

The FERC prepared this EA to address the potential environmental impacts of the proposed modifications. The original project was addressed by the Final Environmental Impact Statement for the Tractebel Calypso Pipeline Project (FEIS) issued on January 23, 2004. The modified project would use the same methodologies for deepwater construction and onshore construction. However, the landfall portion of the pipeline would be installed in a 3.2-mile-long tunnel. The tunnel proposal eliminates the need for two HDD segments, and 2,132 feet of open cut trench in shallow marine waters, in addition to avoiding all impacts to John U. Lloyd State Park. The tunnel amendment would also incorporate minor route changes to accommodate the methodology. These minor route changes would result in a slight decrease in the length of the landfall portion and thus the overall project length.

Approximately 95 percent of the original project analyzed in the FEIS is relatively unchanged, with the exception of the 6-inch increase in pipeline diameter. The tunnel amendment would increase the pipeline diameter for the modified project from 24 inches to 30 inches and internally coat the pipeline to allow increased flow rates. Calypso does not propose to increase the certificated capacity (832,000 dekatherms/day). The maximum operating pressure (MOAP) would remain 2,200 pounds per square inch (psig). Calypso indicates that the pipeline would most likely be operated at approximately 1530 psig.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–21556 Filed 12–18–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8258–6]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a deadline suit filed by Sierra Club and Coosa River Basin Initiative (''Coosa River''): *Sierra Club* v. *EPA,* No. 1:06CV1523 (N.D. GA). On December 20, 2005 and January 3, 2006, Sierra Club, Coosa River, and the Georgia Public Interest Research Group petitioned EPA to object to certain Clean Air Act Title V permit amendments proposed by the Georgia Environmental Protection Division for steam generating plants at Georgia Power's (1) Bowen and Branch Steam-Electric Generating Plants, and (2) Hammond and Scherer Steam-Electric Generating Plants, all of which are in the State of Georgia. Subsequently, Sierra Club and Coosa River filed suit, alleging that the Administrator failed to perform his nondiscretionary duty to respond to the petitions within sixty days of the date they were filed. Under the terms of today's proposed consent decree, EPA has agreed to respond to the petitions by January 8, 2007, and Sierra Club and Coosa River have agreed that if EPA does so, and after parties negotiate attorneys' fees, they will move to dismiss their suit with prejudice.

DATES: Written comments on the proposed consent decree must be received by January 18, 2007.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2006–0972, online at *www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Howard J. Hoffman, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5582; fax number (202) 564–5603; e-mail address: *hoffman.howard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information about the Proposed Consent Decree

This proposed consent decree would resolve a deadline suit to require EPA to respond to two administrative petitions that EPA object to certain Title V permit

amendments proposed by the Georgia Environmental Protection Division for the Bowen and Branch plants as well as the Hammond and Scherer plants in the State of Georgia. Under the proposed decree, the parties would seek to stay the pending litigation, and Sierra Club and Coosa River would agree to dismiss the lawsuit if the Administrator responds to the petitions by January 8, 2007. The consent decree does not specify the type of response that the Administrator must make to the petitions. If the consent decree becomes final and the Administrator responds to the petitions by January 8, 2007, and after the parties negotiate attorneys' fees, Sierra Club and Coosa River will dismiss the case.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information about Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2006–0972) contains a copy of the consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, 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 Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov*. You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 12, 2006.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E6–21600 Filed 12–18–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2006–0978; FRL–8258–5]

Board of Scientific Counselors Human Health Mid-Cycle Subcommittee Meetings—January 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of two meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of two meetings of the Board of Scientific Counselors (BOSC) Human Health Mid-Cycle Subcommittee.

DATES: The first meeting (a teleconference call) will be held on Tuesday, January 9, 2007, from 1 p.m. to 3 p.m. The second meeting (face-to-face meeting) will be held on Wednesday, January 24, 2007, from 10 a.m. to 3 p.m. All times noted are eastern time. The meetings may adjourn early if all business is finished. Requests for the draft agendas or for making oral presentations at the meetings will be accepted up to 1 business day before each meeting.

ADDRESSES: The first meeting will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the teleconference meeting from Virginia Houk, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. The second meeting will be held at the Crowne Plaza Washington National Airport hotel, 1480 Crystal Drive, Arlington, Virginia 22202. Submit your comments,

identified by Docket ID No. EPA–HQ–ORD–2006–0978, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov*, Attention Docket ID No. EPA–HQ–ORD–2006–0978.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2006–0978.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Human Health Mid-Cycle Subcommittee Meeting—January 2007 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–ORD–2006–0978.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2006–0978.

Note: this is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–0978. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Virginia Houk, Mail Code B305–02, National Health and Environmental Effects Research Laboratory, Office of Research and Development, Environmental Protection Agency, 109 TW Alexander Drive, Research Triangle Park, NC 27711; via phone/voice mail at: (919) 541–2815; via fax at: (919) 685–3250; or via e-ail at: *houk.virginia@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meetings may contact Virginia Houk, the Designated Federal Officer, via any of the contact methods listed in the ''**FOR FURTHER INFORMATION CONTACT**'' section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the first meeting (teleconference) include, but are not limited to: the objectives of the review, an overview of the Human Health Research Program (HHRP), a summary of major changes in the HHRP since 2005, an update on the Human Health Multi-Year Plan, and research to evaluate the effectiveness of risk management decisions. Proposed agenda items for the second meeting (face-to-face) include, but are not limited to: the HHRP's response to recommendations from its 2005 BOSC review, the revised Human Health Multi-Year Plan, the development of performance metrics, and accountability and risk management decisions. The meetings are open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Virginia Houk at (919) 541–2815 or *houk.virginia@epa.gov.* To request accommodation of a disability, please contact Virginia Houk, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: December 13, 2006.

Jeff Morris,

Acting Director, Office of Science Policy.

[FR Doc. E6–21597 Filed 12–18–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collections to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

DATES: Comments must be submitted on or before January 18, 2007.

ADDRESSES: Interested parties are invited to submit written comments to Steve Hanft, Paperwork Clearance Officer, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–8788].

A copy of the comments may also be submitted to: OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steve Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

Title: Occasional Qualitative Surveys.

OMB Number: 3064–0127.

Frequency of Response: On occasion.

Affected Public: Financial institutions, their customers, and members of the public generally.

Estimated Number of Respondents: 8,500.

Estimated Time per Response: 1 hour.

Total Annual Burden: 8,500 hours.

General Description of Collection: This collection involves the occasional use of qualitative surveys to gather anecdotal information about regulatory burden, bank customer satisfaction, problems or successes in the bank supervisory process (both safety-and-soundness and consumer related), and similar concerns. In general, these surveys would not involve more than 500 respondents, would not require more than one hour per respondent, and would be completely voluntary. It is not contemplated that more than ten such surveys would be completed in any given year.

Request for Comment

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 13th day of December, 2006.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E6–21569 Filed 12–18–06; 8:45 am]

BILLING CODE 6714–01–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 January 3, 2007.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. The J.C. Gray Trust and Johnny C. Gray, as trustee, both of Artesia, New Mexico, and The T.L. Chandler Trust and Terry L. Chandler, as trustee, both of Carlsbad, New Mexico, to acquire additional voting shares of First Artesia Bancshares, Inc., Artesia, New Mexico, and indirectly acquire additional voting shares of The First National Bank, Artesia, New Mexico.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Stuart J. Shelk, Jr; Linda S. Shelk, Clark J. Shelk Trust UA; Anne Marie Shelk Trust UA; and John B. Shelk Trust UA, all of Powell Butte, Oregon; to acquire additional voting shares of Prineville Bancorporation, and thereby indirectly acquire additional voting shares of Community First Bank, both of Prineville, Oregon.

Board of Governors of the Federal Reserve System, December 13, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–21545 Filed 12–18–06; 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 12, 2007.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. First American Financial Holdings, Inc., Nashville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Planters Bank of Tennessee, Maury City, Tennessee.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Blue Valley Ban Corp., Overland Park, Kansas; to acquire 100 percent of the voting shares of Unison Bancorp, Inc., Lenexa, Kansas, and thereby indirectly acquire Western National Bank, Lenexa, Kansas.

Board of Governors of the Federal Reserve System, December 13, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–21546 Filed 12–18–06; 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 16, 2007.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Sandy Spring Bancorp, Inc., Olney, Maryland; to acquire 100 percent of the voting shares of Potomac Bank of Virginia, Fairfax, Virginia.

Board of Governors of the Federal Reserve System, December 14, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–21598 Filed 12–18–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 12, 2007.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Heartland Bancorp, Inc., Bloomington, Illinois; to acquire 100 percent of the voting shares of First Federal Bancshares, Colchester, Illinois, and thereby indirectly acquire First Federal Bank, Colchester, Illinois, and engage in operating a savings and loan association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, December 13, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–21547 Filed 12–18–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–0527]

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 404–639–4766 or 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

Human Exposure to Cyanobacterial (blue-green algal) Toxins in Drinking Water: Risk of Exposure to Microcystin from Public Water Systems (OMB No. 0920–0527)-Extension-National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Cyanobacteria (blue-green algae) can be found in terrestrial, fresh, brackish, or marine water environments. Some species of cyanobacteria produce toxins that may cause acute or chronic illnesses (including neurotoxicity, hepatotoxicity, and skin irritation) in humans and animals (including other mammals, fish, and birds). A number of human health effects, including gastroenteritis, respiratory effects, skin

irritations, allergic responses, and liver damage, are associated with the ingestion of or contact with water containing cyanobacterial blooms. Although the balance of evidence, in conjunction with data from laboratory animal research, suggests that cyanobacterial toxins are responsible for a range of human health effects, there have been few epidemiologic studies of this association.

CDC plans to recruit 100 people whose tap water comes from a source with a current cyanobaterial bloom (i.e., *M. aeruginosa*) and who report drinking unfiltered tap water. We also plan to recruit 100 people who report drinking unfiltered tap water but whose tap water source is groundwater that is not contaminated with cyanobacteria. This population will serve as our referent population for the analysis of microcystins in blood and for the clinical assays. We will administer a questionnaire and collect blood samples from all study participants. Blood samples will be analyzed using a newly developed molecular assay for levels of microcystins, the hepatotoxin produced by *Micocystis aeruginosa*. We also will analyze blood samples for levels of liver enzymes (a biological marker of hepatotoxicity) and for a number of clinical parameters including hepatitis infection (a potential confounder in our study). We will evaluate whether we can (1) Detect low levels of microcystins (<10 ng/ml of blood), in the blood of people who are exposed to very low levels of this toxin in their drinking water and (2) Utilize clinical endpoints such as blood liver enzyme levels as biomarkers of exposure and biological effect, and (3) Compare the analytical results for the exposed population with the results from the referent population.

CDC is working with a group of utility companies that are interested in the project and plan to discuss implementation logistics early in 2007. There are no costs to respondents except their time to participate in the survey.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total Burden (in hours)
Telephone Contact	300	1	10/60	50
Interview	200	1	1	200
Blood Samples Collection	200	1	20/60	67
Tap Water Sample Collection	200	1	30/60	100
Total				417

Dated: December 13, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–21584 Filed 12–18–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–367]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Partial Retraction

ACTION: Notice, partial retraction

SUMMARY: On Friday, November 24, 2006 (71 FR 67873), the Centers of Medicare & Medicaid Services (CMS) published a Notice document titled ''Agency Information Collection Activities; Proposed Collection; Comment Request''. That notice invited public comments on three separate information collections. Through the publication of this document, CMS is retracting the portion of that notice requesting public comment on the Information Collection Requirement titled ''Medicaid Drug Program Monthly Quarterly Drug Reporting Format'', form number CMS–367 (OMB # 0938–0578).

Dated: December 12, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 06–9786 Filed 12–15–06; 1:45 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Federal Tax Offset, Administrative Offset, and Passport Denial Program.

OMB No.: 0970–0161.

Description: The Tax Refund Offset and Administrative Offset Programs collect past-due child support by intercepting certain Federal payments, including Federal tax refunds, of parents who have been ordered to pay child support and who are behind in paying the debt. The program is a cooperative effort among the Department of Treasury's Financial Management Service (FMS), the Federal Office of Child Support Enforcement (OCSE), and State Child Support Enforcement (CSE) agencies. The Passport Denial program reports non-custodial parents who owe arrears above a threshold to the Department of State (DOS), which will then deny passports to these individuals. On an ongoing basis, CSE agencies submit to OCSE the names, Social Security numbers (SSNs), and the amount(s) of past-due child support of people who are delinquent in making child support payments.

Respondents: State IV–D Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Input Record	54	52	.3	842

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Output Record	54	52	.46	1,292
Payment File	54	26	.27	379
Certification Letter	54	1	.4	22

Estimated Total Annual Burden Hours: 2,535.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 12, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–9766 Filed 12–18–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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 estimated 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.

Proposed Project: OAT Telehealth Outcome Measures Development and Analysis: New

The Office for the Advancement of Telehealth (OAT) has created a set of performance measures that grantees can use to evaluate the effectiveness of their services programs and monitor their progress through the use of performance reporting data. As required by the Government Performance and Review Act of 1993 (GPRA), all Federal agencies must develop strategic plans describing their overall goal and objectives. The Office for the Advancement of Telehealth (OAT) has worked with its grantees to develop performance measures to be used to evaluate and monitor the progress of the grantees. Grantee goals are to: Improve access to needed services; reduce rural practitioner isolation; improve health system productivity and efficiency; and improve patient outcomes. In each of these categories, specific indicators were designed to be reported through a performance monitoring Web site.

The Program Assessment Response Tool (PART) is the newest instrument created for use by Federal agencies. The Office of Management and Budget (OMB) uses the PART to assess Federal programs. The PART is a series of diagnostic questions used to assess and evaluate programs across a set of performance-related criteria, including program design and purpose, strategic planning, program management, and results. PART results are used to inform the budget process and improve program management. OAT's Telehealth Network Grant Program has been undergoing a PART assessment this year. Thus, in addition to responding to the GPRA initiative, OAT now has the added responsibility of responding to the PART assessment of its Telehealth Network Grant Program. The proposed performance measures will provide performance data that will address the PART assessment, monitor progress, and evaluate program effectiveness.

The estimates of burden are as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hour burden	Total burden hours
Performance Measurement Tool	667	2	1,334	7	9,338

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 12, 2006.

Caroline Lewis,

Acting Associate Administrator for Administration and Financial Management.

[FR Doc. E6–21641 Filed 12–18–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1669–DR]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–1669–DR), dated December 8, 2006, and related determinations.

DATES: *Effective Date:* December 8, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 8, 2006, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from severe storms, flooding, landslides, and mudslides during the period of October 8–13, 2006, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, under Executive Order 12148, as amended, William M. Lokey, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster:

Chugach Regional Educational Attendance Area, Copper River Regional Educational Attendance Area, and the Kenai Peninsula Borough for Public Assistance.

All boroughs and Regional Educational Attendance Areas in the State of Alaska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–21575 Filed 12–18–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1668–DR]

Louisiana; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–1668–DR), dated November 2, 2006, and related determinations.

DATES: *Effective Date:* December 11, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 2, 2006:

The parish of Natchitoches for Public Assistance, including direct Federal assistance, if warranted as determined by FEMA (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–21578 Filed 12–18–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Revision of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Interagency Alien Witness and Informant Record; Form I–854; OMB Control No. 1615–0046.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 13, 2006, at 71 FR

60557, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 18, 2007. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0046 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Interagency Alien Witness and Informant Record.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–854. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households. This information collection is used by law enforcement agencies to bring alien witnesses and informants to the United States in ''S'' nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 125 responses at 4.25 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 531 annual burden hours.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529, Telephone Number (202) 272–8377.

Dated: December 13, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E6–21540 Filed 12–18–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Affidavit of Support; Form I–134, OMB Control Number 1615–0014.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 20, 2007.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by email add the OMB Control Number 1615–0014 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Affidavit of Support.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–134. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract: Primary:* Individuals or households. This information collection is used to determine if an applicant for an immigration benefit will become a public charge if admitted to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 44,000 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 22,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529; Telephone 202–272–8377.

Dated: December 13, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E6–21582 Filed 12–18–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2397–06; DHS Docket No. USCIS–2006–0060]

RIN 1615–ZA42

Proposed Revised Content for English, U.S. History and Government Test for Naturalization Applicants

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: This notice announces that U.S. Citizenship and Immigration Services (USCIS) will be conducting a pilot of a redesigned naturalization test. Applicants for naturalization must, among other things, demonstrate an understanding of the English language, a knowledge and understanding of the fundamentals of the history, and the principles and form of government in the United States. Currently the naturalization testing process and test content vary in each USCIS district office. USCIS plans to revise the naturalization testing process to ensure that the naturalization testing process is uniform. Thus, a newly redesigned English reading and writing test, as well as the U.S. history and government test, will be pilot tested in the following, randomly selected sites:

Albany, New York sub-office; Boston, Massachusetts, District Office; Kansas City, Missouri, District Office; Charleston, South Carolina sub-office; El Paso, Texas District Office; San Antonio, Texas District Office; Miami, Florida District Office; Denver, Colorado District Office; Tucson, Arizona Sub-Office; and Yakima, Washington Sub-Office. Based on the evaluation of the pilot, the final test will be implemented nationally beginning in 2008.

DATES: This notice is effective January 3, 2007.

FOR FURTHER INFORMATION CONTACT: Lynn L. Thai, Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Citizenship, 20 Massachusetts Avenue, NW., Room 5200, Washington, DC, 20529, telephone (202) 272–1721.

SUPPLEMENTARY INFORMATION:

Background

Applicants for naturalization must, among other things, demonstrate an understanding of the English language including an ability to speak, read, and write, words in ordinary usage. 8 U.S.C. 1423(a)(1); 8 CFR 312.1(c)(1)–(c)(2). Another requirement is that applicants for naturalization must demonstrate a knowledge and understanding of the fundamentals of the history, and the principles and form of government in the United States. Under USCIS regulations, an applicant for naturalization may satisfy these requirements by passing a citizenship test. 8 U.S.C. 1423(a)(2); 8 CFR 312.2(c). Certain applicants who meet specific age and length of residence thresholds or who have a physical or developmental disability or mental impairment may be exempt from the English and civics requirements.

In 1997, the U.S. Commission on Immigration Reform (the Commission) recommended that the former Immigration and Naturalization Service (INS) [1] standardize the naturalization testing process. The Commission recommended that the naturalization tests be revised to better determine if applicants have a meaningful knowledge of U.S. history and government and can communicate in English. Also in 1997, the Department of Justice (DOJ) began to reengineer the naturalization process. With respect to naturalization testing, DOJ determined that it should develop a more uniform approach to testing, including standard and meaningful test content, standardized testing instruments and protocols, standard scoring, and standard levels of passing. The former INS began to redesign the testing process, with a goal of developing a new process that would be uniform, fair, and meaningful. The redesigned naturalization test USCIS plans to pilot is the culmination of test redesign efforts resulting from the Commission's recommendations and work in this area since that time.

[1] On March 1, 2003, INS transferred from the Department of Justice (DOJ) to the Department of Homeland Security (DHS), pursuant to the Homeland Security Act of 2002 (Pub. L. 107–296). INS' adjudication functions transferred to USCIS.

Current Testing Procedures

Currently USCIS District Adjudications Officers (DAOs) examine an applicant's English language skills and knowledge of U.S. history and government during the naturalization interview. DAOs generally test an applicant's ability to understand the English language while verifying that the information on his or her application for naturalization (Form N–400) is correct. The preferred manner of testing an applicant's reading ability by asking the applicant to read up to three sentences out loud and they test the applicant's ability to write in English by dictating from one to three English sentences to the applicant and having that applicant write in English what was dictated. Test content for the reading and writing portion of the test is taken from either former INS textbooks (United States History—1600 to 1987 (former INS publication M–289) and U.S. Government Structure (former INS publication M–291)), and from sample sentences in the Guide to Naturalization (M–476), which is available on USCIS' Web site, *http://www.uscis.gov*.

DAOs test an applicant's knowledge of U.S. history and government by asking up to 10 fundamental civics questions. For the U.S. history and government test, DAOs ask questions from either former INS textbooks or from a list of 96 questions published on the USCIS Web site. Each office's testing method may vary in terms of how the test is prepared and administered, and how the results are collected and evaluated. Test formats also vary among offices, even among offices that use the same test methods.

USCIS Plans To Revise the Tests and Testing Procedures

USCIS has worked with community-based organizations and other stakeholders to help ensure that the new test and testing procedures are developed and implemented fairly and consistently. USCIS' redesign project revises the English and U.S. history test items, and the test administration procedures.

During the redesign process of the U.S. history and government test, USCIS considered multiple perspectives, including views of U.S. history professors and experts, USCIS officers, and community-based organizations. It also reviewed State and local history standards, adult learning standards, citizenship preparation courses, and the current government authorized textbooks and other sound civics curricula.

Based on this review, USCIS is planning to retain the current U.S. history and government test format of asking 10 questions. Applicants need to answer six questions correctly to pass. However USCIS intends to replace the current trivia-based content of the questions with questions that will test applicants on the fundamentals of American democracy such as the rule of law, separation of powers, and unalienable rights. Making the test more meaningful will encourage civic learning and patriotism.

While redesigning the content of the English test, USCIS considered multiple perspectives, including the views of Teachers of English to Speakers of Other Languages (TESOL), selected English experts knowledgeable on adult learning standards (principally the National Reporting System (NRS) for adult education), USCIS officers, and community-based organizations. After considering these perspectives, USCIS intends to continue the current format for English testing. Applicants are asked to read a question and write a dictated sentence. However, USCIS intends to change the content of the dictation. Applicants will no longer be tested on everyday English sentences and phrases; under the revised procedures, the content for the reading and writing questions will be structured on civics.

Pilot Test

USCIS plans to conduct a pilot test in 10 randomly selected USCIS district and sub-offices, beginning in early 2007. The pilot test will be given to approximately 5,000 applicant volunteers. During the pilot, all applicants at the 10 selected pilot sites will be asked whether they want to participate in the pilot test, which will accompany the naturalization interview. If the applicant elects to take the pilot test and passes it, the adjudications officer will note in the file that the applicant has passed the reading, writing and civics test sections, and the current test will not be administered. Failure to pass the pilot test will not affect an applicant's eligibility of admission to citizenship. If the applicant elects to take the pilot test but fails the reading, writing and/or civics test section(s), the DAO will, without prejudice, administer the corresponding current test section(s) in the same sitting. If the applicant fails a given section of the current naturalization test, the applicant will be allowed another opportunity within 60–90 days to take the failed section(s) of the current test again. USCIS expects the pilot test to take approximately 5 minutes to administer to each willing applicant. The total length of the pilot test evaluation period is estimated to last up to 4 months. USCIS plans to collect and evaluate test administration procedures, scoring rules and procedures, and training procedures. This information will be gathered through information collected on each pilot testing situation, focus groups with DAOs who administer the pilot test as well as through observations of applicants taking the revised test.

Once all the information from the pilot test is collected, evaluated, and considered, USCIS will finalize a redesigned test. USCIS will produce study guides and work with community-based organizations to prepare applicants for the redesigned naturalization tests.

Paperwork Reduction Act

Examinations designated to test the aptitude, abilities, or knowledge of the person tested, and the collection of information and identification or classification in connection with such examinations, are not considered information collections under 5 CFR 1320.3(h)(7).

Dated: November 21, 2006.

Emilio T. Gonzalez,

Director, U.S. Citizenship and Immigration Services.

[FR Doc. E6–21548 Filed 12–18–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–94]

Notice of Submission of Proposed Information Collection to OMB; Housing Counseling Training Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Nonprofit organizations submit information to HUD through Grants.gov to apply for funding to develop and implement an ongoing training program for housing counselors. HUD will use the information to evaluate applicants competitively and then select one or more organizations to receive funding to develop and implement the ongoing training program for housing counselors.

DATES: *Comments Due Date:* January 18, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. This notice also lists the following information:

Title of Proposal: Housing Counseling Training Program.

OMB Approval Number: 2502–NEW.

Form Numbers: SF–424, SF–424Supp, HUD–424CB, SF–LLL, HUD–2880, HUD–96010, HUD–2994–A.

Description of the Need for the Information and Its Proposed Use: Nonprofit organizations submit information to HUD through Grants.gov to apply for funding to develop and implement an ongoing training program for housing counselors. HUD will use the information to evaluate applicants competitively and then select one or

more organizations to receive funding to develop and implement the ongoing training program for housing counselors.

Frequency of Submission: Quarterly, Other NOFA is a one-time response.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	4	2		16.37		131

Total Estimated Burden Hours: 131.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 13, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–21560 Filed 12–18–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–92]

Notice of Submission of Proposed Information Collection to OMB; New Approach to the Anti-Drug Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The New Approach to the Anti-Drug Program (formerly known as the Safe Neighborhood Action Grant Program) was authorized through yearly appropriations. Owners were eligible to apply for grants to fund security and crime elimination activity in Federally assisted low-income housing projects. Funding for this program has not been appropriated since fiscal year 2001, but quarterly and semi-annually reporting is still required until all grant funds are expended.

DATES: *Comments Due Date:* January 18, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0520) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: New Approach to the Anti-Drug Program.

OMB Approval Number: 2502–0520.

Form Numbers: HUD–50080–SNGP, SF–269A.

Description of the Need for the Information and Its Proposed Use: The New Approach to the Anti-Drug Program (formerly known as the Safe Neighborhood Action Grant Program) was authorized through yearly appropriations. Owners were eligible to apply for grants to fund security and crime elimination activity in Federally assisted low-income housing projects. Funding for this program has not been appropriated since fiscal year 2001, but quarterly and semi-annually reporting is still required until all grant funds are expended.

Frequency of Submission: On occasion, Quarterly, Semi-annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	40	7		0.35		100

Total Estimated Burden Hours: 100.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 12, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–21561 Filed 12–18–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–93]

Notice of Submission of Proposed Information Collection to OMB; Eligibility of a Nonprofit Corporation/Housing Consultant Certification

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Nonprofit organizations provide financial and other information so that HUD can determine that the sponsor and/or mortgagor is truly a nonprofit and demonstrates probably success in project development and continuing operation. A Housing Consultant hired by the nonprofit certifies to HUD that he/she has no other financial interest in the project and has no conflict of interest. The general contractor, subcontractors, equipment lessees, material and other suppliers, and management of the project certify to any direct or indirect contractual relationship they have with the sponsor or the mortgagor. HUD uses this information to assure compliance with regulations.

DATES: *Comments Due Date:* January 18, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0057) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's website at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title Of Proposal: Eligibility of a Nonprofit Corporation/Housing Consultant Certification.

OMB Approval Number: 2502–0057.

Form Numbers: HUD–3433, HUD–3434, HUD–3435, HUD–92531.

Description Of The Need For The Information And Its Proposed Use: Nonprofit organizations provide financial and other information so that HUD can determine that the sponsor and/or mortgagor is truly a nonprofit and demonstrates probably success in project development and continuing operation. A Housing Consulting hired by the nonprofit certifies to HUD that he/she has no other financial interest in the project and has no conflict of interest. The general contractor, subcontractors, equipment lessees, material and other suppliers, and management of the project certify to any direct or indirect contractual relationship they have with the sponsor or the mortgagor. HUD uses this information to assure compliance with regulations.

Frequency of Submission: On occasion.

	Nunber of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	290	1.10		0.44		143

Total Estimated Burden Hours: 143.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 12, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–21562 Filed 12–18–06; 8:45 am]

BILLING CODE 4210–667–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5030–FA–18]

Announcement of Funding Awards for the Assisted Living Conversion Program Fiscal Year 2006

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Super Notice of Funding Availability (SuperNOFA) for the Assisted Living Conversion Program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Mr. Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–3000 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at (800) 877–8339. For general information on this and other HUD programs, visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: The Assisted Living Conversion Program is authorized by Section 202(b) of the Housing Act of 1959 (12 U.S.C. 1701q-2). The competition was announced in the SuperNOFA published in the **Federal Register** on March 8, 2006 (71 FR 11988). Applications were rated and

selected for funding on the basis of selection criteria contained in that Notice.

The Catalog of Federal Domestic Assistance number for this program is 14.314.

The Assisted Living Conversion Program is designed to provide funds to private nonprofit Owners to convert their projects (that is, projects funded under Section 202, Section 8 project-based [including Rural Housing Services' Section 515], Section 221(d)(3) BMIR, and Section 236) to assisted living facilities. Grant funds are used to convert the units and related space for the assisted living facility.

A total of $7,849,336.00 was awarded to 6 projects for 64 units nationwide. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987. 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A of this document.

Dated: December 1, 2006.

Brian Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A—Fiscal Year 2006 ALCP Awardees

Welles Country Village, Ltd.
46 Welles Rd
Vernon, CT 06066
$1,059,106.00

Horace Bushnell Congregate Homes, Inc.
51 Vine Street.
Hartford, CT 06112
$1,059,062.00

The Bernadine Apartments, Inc.
700 E. Brighton Avenue
Syracuse, NY 13205
$497,206.00

Mercy-Douglas Human Services Residences Corp.
4511 Walnut Street
Philadelphia, PA 19139
$2,043,664.00

Trent Center Apartments, Inc.
511 Greenwood Ave.
Trenton, NJ 08609
$2,043,608.00

Christian Care Manor II, Inc.
11802 N. 19th Avenue
Phoenix, AZ 85029
$1,146,690.00

TOTAL: $7,849,336.00

[FR Doc. E6–21559 Filed 12–18–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5030–FA–22]

Announcement of Funding Awards for the Section 202 Supportive Housing for the Elderly Program, Fiscal Year 2006

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Super Notice of Funding Availability (SuperNOFA) for the section 202 Supportive Housing for the Elderly Program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Mr. Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–3000 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at (800) 877–8339. For general information on this and other HUD programs, visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: The Section 202 Supportive Housing for the Elderly Program is authorized by section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625; approved November 28, 1990); the Housing and Community Development Act of 1992 (Pub. L. 102–550; approved October 28, 1992); the Recessions Act (Pub. L. 104–19; enacted on July 27, 1995); the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569; approved December 27, 2000); the Department of Housing and Urban Development Appropriations Act, 2006 (Pub. L. 109–115, approved November 30, 2005); and the governmentwide rescissions pursuant to the Department of Defense Appropriations Act, 2006 (Pub. L. 109–148; approved December 30, 2005). The competition was announced in the SuperNOFA published in the **Federal Register** on March 8, 2006 (71 FR 12009). Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

The Catalog of Federal Domestic Assistance number for this program is 14.157.

The section 202 program is the Department's primary program for providing affordable housing for the elderly that allows them to live independently with supportive services. Under this program, HUD provides funds to private non-profit organizations to develop supportive housing for the elderly. Funds are also provided to subsidize the expenses to operate the housing projects.

A total of $511,952,100 was awarded to 110 projects for 4,242 units nationwide. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A of this document.

Dated: December 1, 2006.

Brian Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

A—Funding Awards for the Section 202 Supportive Housing for the Elderly Program Fiscal Year 2006

Alabama

Bayou La Batre, AL
Non-Profit Sponsor: VOA Southeast, Inc.
Capital Advance: $1,556,000
Five-year rental subsidy: $174,900
Number of units: 20

Gadsden, AL
Non-Profit Sponsor: Baptist Health Services, Inc.
Capital Advance: $3,947,700
Five-year rental subsidy: $411,000
Number of units: 47

Arizona

Tucson, AZ
Non-Profit Sponsor: Catholic Community Services of Southern Arizona,
Co-Sponsor: Tucson Housing Foundation, Inc.
Capital Advance: $4,678,100
Five-year rental subsidy: $519,900
Number of units: 56

Tucson, AZ
Non-Profit Sponsor: Chicanos Por La Causa, Inc.
Capital Advance: $4,678,100
Five-year rental subsidy: $352,800
Number of units: 38

Arkansas

Jonesboro, AR
Non-Profit Sponsor: St. Bernard's Village, Inc.
Capital Advance: $1,417,300
Five-year rental subsidy: $162,600
Number of units: 20

Jonesboro, AR

Non-Profit Sponsor: St. Bernard's Village, Inc.
Capital Advance: $1,417,300
Five-year rental subsidy: $162,600
Number of units: 20

Pine Bluff, AR
Non-Profit Sponsor: First Trinity Church of God in Christ
Capital Advance: $1,133,800
Five-year rental subsidy: $130,200
Number of Units: 16

California

Clearlake Oaks, CA
Non-Profit Sponsor: ESKATON Properties, Inc.
Capital Advance: $1,122,800
Five-year rental subsidy: $130,500
Number of Units: 10

Hayward, CA
Non-Profit Sponsor: Eden Housing, Inc.
Capital Advance: $8,117,500
Five-year rental subsidy: $991,200
Number of Units: 60

Montclair, CA
Non-Profit Sponsor: Southern California Housing Development Corp
Capital Advance: $10,604,000
Five-year rental subsidy: $1,231,200
Number of Units: 85

Petaluma, CA
Non-Profit Sponsor: Petaluma Ecumenical Properties
Capital Advance: $6,095,400
Five-year rental subsidy: $739,200
Number of Units: 45

Riverside, CA
Non-Profit Sponsor: TELACU
Capital Advance: $9,359,700
Five-year rental subsidy: $1,084,800
Number of Units: 75

Roseville, CA
Non-Profit Sponsor: ESKATON Properties, Inc.
Capital Advance: $5,818,100
Five-year rental subsidy: $567,300
Number of Units: 49

San Bernardino, CA
Non-Profit Sponsor: TELACU
Capital Advance: $11,226,200
Five-year rental subsidy: $1,304,700
Number of Units: 90

San Francisco, CA
Non-Profit Sponsor: BRIDGE Housing Corporation
Capital Advance: $9,735,200
Five-year rental subsidy: $1,192,800
Number of Units: 72

Colorado

Longmont, CO
Non-Profit Sponsor: Longmont Housing Development Corporation
Capital Advance: $5,884,200
Five-year rental subsidy: $492,300
Number of Units: 50

Montrose, CO
Non-Profit Sponsor: VOA Natl Ser
Capital Advance: $3,358,400
Five-year rental subsidy: $261,300
Number of Units: 27

Pagosa Springs, CO
Non-Profit Sponsor: Hsg Sol for the SW
Capital Advance: $2,515,600
Five-year rental subsidy: $190,800
Number of Units: 20

Connecticut

Hartford, CT
Non-Profit Sponsor: Volunteers of America National Services
Capital Advance: $3,129,600
Five-year rental subsidy: $282,000
Number of Units: 23

New Britain, CT
Non-Profit Sponsor: Mercy Housing, Inc.
Co-Sponsor: Daughters of Mary of the Immaculate Conception
Capital Advance: $5,661,900
Five-year rental subsidy: $538,200
Number of Units: 42

Delaware

Dover, DE
Non-Profit Sponsor: Martin Luther Fnd of Dover
Capital Advance: $4,313,800
Five-year rental subsidy: $418,200
Number of Units: 32

Florida

Miami, FL
Non-Profit Sponsor: Archdiocese of Miami
Capital Advance: $11,309,200
Five-year rental subsidy: $769,800
Number of Units: 84

Miami Beach, FL
Non-Profit Sponsor: Miami Beach CDC
Capital Advance: $4,853,000
Five-year rental subsidy: $333,900
Number of Units: 36

Plant City, FL
Non-Profit Sponsor: Diocese of St. Petersburg
Co-Sponsor: Catholic Charities
Capital Advance: $8,109,100
Five-year rental subsidy: $557,100
Number of Units: 68

Georgia

Atlanta, GA
Non-Profit Sponsor: Salem Baptist Church of Atlanta, Inc.
Capital Advance: $4,780,100
Five-year rental subsidy: $492,000
Number of Units: 56

Atlanta, GA
Non-Profit Sponsor: Providence Missionary Baptist Ch
Capital Advance: $3,929,800
Five-year rental subsidy: $402,600
Number of Units: 46

Valdosta, GA
Non-Profit Sponsor: Valdosta Deliverance Evangelistic Ctr
Capital Advance: $2,438,200
Five-year rental subsidy: $268,500
Number of Units: 30

Illinois

East St. Louis, IL
Non-Profit Sponsor: Ascension Devl
Co-Sponsor: St Andrews Resources for Seniors
Capital Advance: $5,963,600
Five-year rental subsidy: $602,700
Number of Units: 54

Freeport, IL
Non-Profit Sponsor: Accessible Space Inc
Capital Advance: $2,600,000
Five-year rental subsidy: $250,200
Number of Units: 23

Lemont, IL
Non-Profit Sponsor: Cath Char Hsg Devl
Capital Advance: $10,919,300
Five-year rental subsidy: $921,300
Number of Units: 81

Taylorville, IL
Non-Profit Sponsor: Luth Soc Ser of Illinois
Capital Advance: $2,385,000
Five-year rental subsidy: $261,600
Number of Units: 23

Indiana

Marion, IN
Non-Profit Sponsor: Community Reinvestment foundation, Inc.
Capital Advance: $1,733,800
Five-year rental subsidy: $192,000
Number of Units: 19

Merrillville, IN
Non-Profit Sponsor: AHEPA National Housing Corporation
Capital Advance: $5,081,200
Five-year rental subsidy: $505,200
Number of Units: 50

Iowa

Marion, IA
Non-Profit Sponsor: Marion Churches Senior Living Community Foundation
Capital Advance: $2,696,100
Five-year rental subsidy: $175,200
Number of Units: 20

Kansas

Wichita, KS
Non-Profit Sponsor: Mennonite Hsg Rehabilitation Srvcs, Inc.
Capital Advance: $4,244,300
Five-year rental subsidy: $546,300
Number of Units: 54

Kentucky

Barbourville, KY
Non-Profit Sponsor: KY Communities Economic Opportunity Council Inc
Capital Advance: $1,734,400
Five-year rental subsidy: $189,900
Number of Units: 20

Lexington, KY
Non-Profit Sponsor: Christian Benevolent Outreach, Inc.
Capital Advance: $3,810,900
Five-year rental subsidy: $398,700
Number of Units: 42

Russellville, KY
Non-Profit Sponsor: Baptist Homes Inc
Capital Advance: $1,814,700
Five-year rental subsidy: $189,900
Number of Units: 20

Louisiana

Arcadia, LA
Non-Profit Sponsor: Macon Ridge Comm Dev Corp
Capital Advance: $1,063,000
Five-year rental subsidy: $113,700
Number of Units: 14

Houma, LA
Non-Profit Sponsor: Terrebonne Council on Aging, Inc.
Capital Advance: $3,980,800
Five-year rental subsidy: $415,200
Number of Units: 50

Iowa, LA
Non-Profit Sponsor: Calcasieu Council on Aging
Capital Advance: $1,013,700

Five-year rental subsidy: $110,100
Number of Units: 14

Opelousas, LA
Non-Profit Sponsor: Diocese of Lafayette
Capital Advance: $1,105,200
Five-year rental subsidy: $110,100
Number of Units: 14

Maryland

Chillum, MD
Non-Profit Sponsor: Victory Housing Inc
Capital Advance: $5,708,900
Five-year rental subsidy: $671,700
Number of Units: 60

Odenton, MD
Non-Profit Sponsor: Associated Catholic Charities
Capital Advance: $5,557,300
Five-year rental subsidy: $692,700
Number of Units: 63

Massachusetts

Ayer, MA
Non-Profit Sponsor: Montachusetts Home Care Corporation
Capital Advance: $2,801,900
Five-year rental subsidy: $297,000
Number of Units: 22

Franklin, MA
Non-Profit Sponsor: The Community Builders, Inc.
Co-Sponsor: Franklin Federated Church
Capital Advance: $6,662,500
Five-year rental subsidy: $707,100
Number of Units: 50

Roxbury, MA
Non-Profit Sponsor: Action for Boston Community Development
Capital Advance: $5,330,000
Five-year rental subsidy: $565,800
Number of Units: 40

Somerville, MA
Non-Profit Sponsor: Visiting Nurse Foundation, Inc.
Capital Advance: $4,130,800
Five-year rental subsidy: $438,600
Number of Units: 31

Michigan

Detroit, MI
Non-Profit Sponsor: Presbyterian Villages of Michigan
Capital Advance: $5,175,900
Five-year rental subsidy: $509,700
Number of Units: 46

Detroit, MI
Non-Profit Sponsor: Lutheran Social Services of Michigan
Capital Advance: $5,175,900
Five-year rental subsidy: $509,700
Number of Units: 46

Minnesota

Albert Lea, MN
Non-Profit Sponsor: Accessible Space
Capital Advance: $2,334,500
Five-year rental subsidy: $242,100
Number of Units: 23

Mora, MN
Non-Profit Sponsor: Horizon Health Inc
Co-Sponsor: Living Solutions
Capital Advance: $2,231,000
Five-year rental subsidy: $242,100
Number of Units: 23

Wyoming, MN
Non-Profit Sponsor: Ebenezer Society
Capital Advance: $3,415,500
Five-year rental subsidy: $340,800
Number of Units: 32

Missouri

Independence, MO
Non-Profit Sponsor: Community of Christ
Capital Advance: $5,228,500
Five-year rental subsidy: $546,300
Number of Units: 54

O'Fallon, MO
Non-Profit Sponsor: Cardinal Ritter Sr Svcs
Capital Advance: $4,645,600
Five-year rental subsidy: $434,700
Number of Units: 40

Nebraska

Papillion, NE
Non-Profit Sponsor: Immanuel Health Sys
Capital Advance: $1,813,700
Five-year rental subsidy: $185,700
Number of Units: 20

Nevada

Reno, NV
Non-Profit Sponsor: Volunteers of America Nat'l Svcs
Capital Advance: $7,493,100
Five-year rental subsidy: $639,000
Number of Units: 60

New Hampshire

Pembroke, NH
Non-Profit Sponsor: CAP Belknap-Marrimack Counties
Capital Advance: $2,963,500
Five-year rental subsidy: $247,500
Number of Units: 23

New Jersey

Leonia, NJ
Non-Profit Sponsor: Leonia Retirement Hsg Corp
Capital Advance: $3,774,600
Five-year rental subsidy: $505,200
Number of Units: 28

Midland Park, NJ
Non-Profit Sponsor: Cath Char of Archdiocese of Newark
Co-Sponsor: Domus Corp
Capital Advance: $10,813,700
Five-year rental subsidy: $1,425,300
Number of Units: 80

New Mexico

Carlsbad, NM
Non-Profit Sponsor: Eastern Plains Housing Dev. Corp.
Capital Advance: $1,619,400
Five-year rental subsidy: $213,600
Number of Units: 24

New York

Amsterdam, NY
Non-Profit Sponsor: Maranatha Human Services
Capital Advance: $2,289,600
Five-year rental subsidy: $265,500
Number of Units: 24

Astoria, NY
Non-Profit Sponsor: Hanac, INC.
Capital Advance: $11,501,600
Five-year rental subsidy: $1,938,300
Number of Units: 94

Briarwood, NY
Non-Profit Sponsor: The Silvercrest Center for Nursing and Rehab
Capital Advance: $10,106,300
Five-year rental subsidy: $1,667,400
Number of Units: 81

Bronx, NY
Non-Profit Sponsor: Fordham Bedford Housing Corp.
Capital Advance: $10,355,200
Five-year rental subsidy: $1,709,100
Number of Units: 83

Bronx, NY
Non-Profit Sponsor: United Odd Fellow & Rebekah Home
Capital Advance: $9,110,800
Five-year rental subsidy: $1,500,600
Number of Units: 73

Henrietta, NY
Non-Profit Sponsor: Urban League of Rochester Economic Dev Corp
Capital Advance: $2,022,100
Five-year rental subsidy: $225,600
Number of Units: 20

Lewiston, NY
Non-Profit Sponsor: ITC Corporation
Capital Advance: $2,563,400
Five-year rental subsidy: $270,600
Number of Units: 24

Lockport, NY
Non-Profit Sponsor: People Inc
Capital Advance: $5,363,500
Five-year rental subsidy: $552,300
Number of Units: 50

Project Location: Van Buren, NY
Non-Profit Sponsor: Loretto Management Company
Capital Advance: $3,794,900
Five-year rental subsidy: $450,000
Number of Units: 40

North Carolina

Red Springs, NC
Non-Profit Sponsor: St. Joseph's of the Pines
Capital Advance: $3,053,900
Five-year rental subsidy: $265,800
Number of Units: 29

Roxboro, NC
Non-Profit Sponsor: Metropolitan Housing & CDC, Inc.
Capital Advance: $3,032,300
Five-year rental subsidy: $275,400
Number of Units: 29

Ohio

Cleveland, OH
Non-Profit Sponsor: Kappa Alpha Psi Fraternity House of Cleve., OH Inc
Capital Advance: $3,447,100
Five-year rental subsidy: $408,000
Number of Units: 37

Columbus, OH
Non-Profit Sponsor: National Church Residences
Capital Advance: $3,565,600
Five-year rental subsidy: $391,800
Number of Units: 40

Frankfort, OH
Non-Profit Sponsor: Housing Service Alliance
Co-Sponsor: Community Action Comm. of Fayette Co.
Capital Advance: $1,338,000
Five-year rental subsidy: $150,900
Number of Units: 15

Kettering, OH
Non-Profit Sponsor: Franklin Foundation
Capital Advance: $2,135,200
Five-year rental subsidy: $234,000

Number of Units: 24

Lebanon, OH
Non-Profit Sponsor: Warren County Community Services, Inc.
Capital Advance: $2,768,700
Five-year rental subsidy: $305,400
Number of Units: 30

Harbor, OH
Non-Profit Sponsor: Lutheran Homes Society Inc
Capital Advance: $1,118,000
Five-year rental subsidy: $136,200
Number of Units: 12

West Union, OH
Non-Profit Sponsor: Adams-Brown Counties Economic Opp
Capital Advance: $450,900
Five-year rental subsidy: $51,000
Number of Units: 5

Willoughby, OH
Non-Profit Sponsor: Lithuanian Center Inc
Capital Advance: $3,899,000
Five-year rental subsidy: $453,600
Number of Units: 40

Oklahoma

Antlers, OK
Non-Profit Sponsor: Little Dixie Community Action Agency, Inc.
Capital Advance: $1,189,300
Five-year rental subsidy: $135,300
Number of Units: 16

Broken Arrow, OK
Non-Profit Sponsor: Volunteers of America of Oklahoma, Inc.
Capital Advance: $2,972,100
Five-year rental subsidy: $333,300
Number of Units: 38

Durant, OK
Non-Profit Sponsor: Choctaw Hope Development Corporation
Capital Advance: $1,204,600
Five-year rental subsidy: $135,300
Number of Units: 16

Hugo, OK
Non-Profit Sponsor: Choctaw Hope Development Corp.
Capital Advance: $1,204,600
Five-year rental subsidy: $135,300
Number of Units: 16

Oregon

Lake Oswego, OR
Non-Profit Sponsor: Northwest Housing Alternatives, Inc
Co-Sponsor: Lake Grove Presbyterian Church
Capital Advance: $4,688,800
Five-year rental subsidy: $432,600
Number of Units: 45

Springfield, OR
Non-Profit Sponsor: St. Vincent de Paul Society of Lane County
Capital Advance: $5,181,800
Five-year rental subsidy: $531,000
Number of Units: 55

Pennsylvania

Jamestown, PA
Non-Profit Sponsor: Luth Ser Soc of Western PA
Capital Advance: $3,149,800
Five-year rental subsidy: $276,900
Number of Units: 27

Lansford, PA
Non-Profit Sponsor: Cath Senior Hsg & Health Care Servs Inc
Capital Advance: $2,291,700
Five-year rental subsidy: $240,300
Number of Units: 17

McKean, PA
Non-Profit Sponsor: HANDS Inc
Capital Advance: $2,657,700
Five-year rental subsidy: $225,600
Number of Units: 22

Philadelphia, PA
Non-Profit Sponsor: Haven Peniel Un Meth Ch
Co-Sponsor: No Co Conservancy, Inc
Capital Advance: $7,443,500
Five-year rental subsidy: $763,200
Number of Units: 55

West Grove, PA
Non-Profit Sponsor: Luther Fnd of So Chester Co, Inc
Capital Advance: $5,931,500
Five-year rental subsidy: $621,900
Number of Units: 44

Puerto Rico

San Juan, PR
Non-Profit Sponsor: Grace English Ev Luth Congregation Inc
Capital Advance: $2,893,300
Five-year rental subsidy: $253,500
Number of Units: 29

Rhode Island

Portsmouth, RI
Non-Profit Sponsor: Coastal Housing Corporation
Capital Advance: $2,319,200
Five-year rental subsidy: $237,300
Number of Units: 18

South Carolina

Columbia, SC
Non-Profit Sponsor: AHEPA National Housing Corporation
Capital Advance: $4,726,500
Five-year rental subsidy: $375,900
Number of Units: 43

Holly Hill, SC
Non-Profit Sponsor: Orangeburg County Council on Aging
Capital Advance: $1,260,700
Five-year rental subsidy: $105,000
Number of Units: 12

Spartanburg, SC
Non-Profit Sponsor: Upstate Homeless Coalition of SC
Capital Advance: $4,474,900
Five-year rental subsidy: $375,900
Number of Units: 43

Tennessee

Cleveland, TN
Non-Profit Sponsor: Douglas Cherokee Economic Authority, Inc.
Capital Advance: $1,704,700
Five-year rental subsidy: $174,900
Number of Units: 20

Memphis, TN
Non-Profit Sponsor: United Church Homes, Inc.
Capital Advance: $3,878,300
Five-year rental subsidy: $384,600
Number of Units: 43

Sparta, TN
Non-Profit Sponsor: Douglas Cherokee Economic Authority
Capital Advance: $1,130,800
Five-year rental subsidy: $117,900
Number of Units: 14

Texas

Georgetown, TX
Non-Profit Sponsor: United Meth. Ch. Wesleyan Home
Capital Advance: $1,753,000
Five-year rental subsidy: $200,400
Number of Units: 23

Houston, TX
Non-Profit Sponsor: Pilgrim Senior Citizens Hsg Dev.
Capital Advance: $4,666,400
Five-year rental subsidy: $565,500
Number of Units: 60

La Porte, TX
Non-Profit Sponsor: Methodist Retirement Communities
Capital Advance: $4,744,100
Five-year rental subsidy: $575,100
Number of Units: 61

Odessa, TX
Non-Profit Sponsor: Christian Church Homes of N. CA.
Capital Advance: $2,162,100
Five-year rental subsidy: $274,500
Number of Units: 30

Tyler, TX
Non-Profit Sponsor: NE Texas Disciples Homes, Inc.
Capital Advance: $4,036,300
Five-year rental subsidy: $474,600
Number of Units: 51

Vermont

Essex, VT
Non-Profit Sponsor: Cathedral Square Corporation
Capital Advance: $5,392,200
Five-year rental subsidy: $431,400
Number of Units: 40

Newport, VT
Non-Profit Sponsor: Gilman Housing Trust, Inc.
Capital Advance: $1,617,600
Five-year rental subsidy: $129,600
Number of Units: 12

Virginia

Dublin, VA
Non-Profit Sponsor: Metropolitan Housing and CDC, Inc.
Capital Advance: $4,886,300
Five-year rental subsidy: $570,300
Number of Units: 58

Washington

Lake Stevens, WA
Non-Profit Sponsor: Senior Services of Snohomish County
Capital Advance: $5,046,000
Five-year rental subsidy: $444,000
Number of Units: 40

Seattle, WA
Non-Profit Sponsor: Low Income Housing Institute
Capital Advance: $5,761,300
Five-year rental subsidy: $536,100
Number of Units: 50

Wisconsin

Siren, WI
Non-Profit Sponsor: Catholic Charities Bureau Inc
Capital Advance: $1,442,400
Five-year rental subsidy: $144,300

Number of units: 14

[FR Doc. E6–21558 Filed 12–18–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5030–FA–26]

Announcement Of Funding Awards For The Service Coordinators In Multifamily Housing Fiscal Year 2006

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Super Notice of Funding Availability (SuperNOFA) for the Service Coordinators in Multifamily Housing program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Mr. Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at (800) 877–8339. For general information on this and other HUD programs, visit the HUD Web site at *http://www.hud.gov*.

SUPPLEMENTARY INFORMATION: The Service Coordinators in Multifamily Housing program is authorized by Section 808 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990), as amended by sections 671, 674, 676, and 677 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), and section 851 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, approved December 27, 2000). The competition was announced in the SuperNOFA published in the **Federal Register** on March 8, 2006 (71 FR 12001). Applications were reviewed and selected for funding on the basis of selection criteria contained in that Notice.

The Catalog of Federal Domestic Assistance number for this program is 14.191.

The Service Coordinators in Multifamily Housing program allows multifamily housing owners to assist elderly individuals and nonelderly people with disabilities living in HUD-assisted housing and in the surrounding area to obtain needed supportive services from the community, to enable them to continue living as independently as possible in their homes.

A total of $12,105,849 was awarded to 75 owners, serving 79 projects with 6,088 units nationwide. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987. 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A of this document.

Dated: December 1, 2006.

Brian Montgomery,

Assistant Secretary for Housing, Federal Housing Commissioner.

Appendix A—Funding Awards For The Service Coordinators In Multifamily Housing

Fiscal Year 2006

Shelby Senior Housing, Incorporated
P.O. Box 830605
Birmingham, AL 35283
Shelby Woods Apartments $89,513

Christopher Homes of El Dorado, Incorporated
2417 North Tyler
Little Rock, AR 72217
Christopher Homes of El Dorado
$141,737

Our Way Partners, LP
10681 Foothill Blvd Suite 220
Rancho Cucamonga, CA 91730
Our Way Apartments
$247,307

Christopher Homes of West Helena, Incorporated
2417 North Tyler
Little Rock, AR 72217
Christopher Homes of West Helena
$131,777

Salvation Army Chula Vistas Res., Incorporated.
180 E. Ocean Blvd.
Long Beach, CA 90802
Silvercrest—Chula-Vista
$227,113

Las Palmas Foundation, General Partner
531 Encintas Blvd., Suite 206
Encintas, CA 92024
Indio Gardens
$278,100

Saint James Wilshire Found. Dba Saint James Manor
3903 Wilshire Blvd.
Los Angeles, CA 90010
Saint James Manor
$234,865

NHDC Tres Lomas, LP
10681 Foothill Blvd
Rancho Cucamonga, CA 91730
Tres Lomas Apartments
$242,835

Community Church Retirement Center #2
40 Camino Alto
Mill Valley, CA 94941
The Redwoors II
$147,543

Hudson Street Apartments Limited Partnership
55 Beattie Place
Greenville, SC 29602
Hudson Gardens
$123,640

Gardena Valley Cultural Institute
16215 South Gramercy Place
Gardena, CA 90247
JCI Gardens
$234,865

Arvada House Preservation Limited Partnership
P. O. BOX 1089
Greenville, SC 29602
Arvada House
$184,112

Francis Heights, Incorporated
2626 Osceola
Denver, CO 80212
Francis Heights
$205,196

First Baptist Housing Corporation
1130 Albany Avenue
Hartford, CT 06112
First Village
$169,206

First Housing Corporation
1132 Albany Ave.
Hartford, CT 06112
Second Village
$169,206

Schoolhouse Apts Incorporated
156 South Avenue
New Canaan, CT 06840
School House Apartments
$156,173

New Neighborhoods, Incorporated
40 Stillwater Avenue
Stamford, CT 06902
Martin Luther King Apartments
$172,229

Welles Country Village, Limited
2664–2 State Street
Hamden, CT 06517
Welles Country Lane
$72,891

Farmington Ecumenical & Elderly Housing Corporation
300 Plainville Avenue
Unionville, CT 06085
Westerleigh
$142,726

West Hartford Fellowship Housing, Incorporated
759 Farmington Ave
West Hartford, CT 06119
West Hartford Fellowship I
$254,777

West Hartford Fellowship Housing III, Incorporated.
20 Starkel Rd
West Hartford, CT 06117

West Hartford Fellowship III
$254,777

Fannie E. Taylor Home for the Aged, Incorporated
6601 Chester Avenue
Jacksonville, FL 32217
Fannie E. Taylor Home for the Aged
$207,862

Presbyterian Homes of South Florida, Inc.
1200 Broad St. W.
Lehigh Acres, FL 33936
Sunshine Villas Annex
$147,403

Ashton Lenox, LLC
7000 Central Pkwy NE
Atlanta, GA 30328
Lenox Summit
$421,794

Wheat Street Towers LLC
PO Box 10522
Atlanta, GA 30310
Wheat Street Towers
$282,502

Elderwood Incorporated
P.O. Box 1965
Waycross, GA 31502
Elderwood Homes
$201,673

American Heritage Enterprises, LLC
2715 Fair Ln
Denison, IA 51442
Oakwood Manor Apartments
$86,404

Sioux Falls Environmental Access Incorporated
2101 W 41st St Ste 20
Sioux Falls, SD 57105
Kingston Apartments
$86,992

Sioux Falls Environmental Access, Incorporated
2101 W 41st St Ste 20
Sioux Falls, SD 57105
Century II Apartments
$163,881

NWRECC Idaho Affordable Housing Preservation LP
210 W. Mallard Drive
Boise, ID 83706
Burrell Street Station
$125,148

Highlander Limited Liability Corporation
3540 12TH ST
Lewiston, ID 83501
The Highlander
$112,436

Diversey Square Parkway/Associates
205 W Wacker Dr Ste 23
Chicago, IL 60606
Diversey Square I
$207,820

Walden Oaks Apartments Preservation, NFP
325 N. Wells Street, 8th floor
Chicago, IL 60610
WALDEN OAKS
$203,130

East Cental Towers Limited Partnerships
55 Beattie Place
Greenville, SC 29601
East Cental Towers
$194,093

Lawrence Senior Residences, L.P.
7701 E Kellogg
Wichita, KS 67207
Vermont Towers
$129,391

Hubbarston Elderly Housing, Incorporated
205 School Street
Gardner, MA 1440
Hubbardston House Apartments
$241,670

Coursey Stations Apartments, Incorporated
320 Cathedral Street
Baltimore, MD 21201
Coursey Station Apartments
$95,099

Sharp-Leadenhall Associates
55 Beattie Place
Greenville, SC 29602
Sharp-Leadenhall I
$200,613

Harborview Housing Associates
P.O. Box 2388
Augusta, ME 4338
Harbor View Apartments
$93,600

One Madison Avenue Associates
55 Beattie Place, 3rd Floor
Greenville, SC 29601
One Madison Avenue
$87,375

Cadillac Harbor View, LDHA LP
8111 Rockside Rd
Cleveland, OH 44125
Harbor View
$129,867

National Church residences of Harper Wds MI
2335 N Bank Dr
Columbus, OH 43220
Park Place of Harper Woods
$202,229

Winterset Limited Dividend Housing Association LP
707 Sable Oaks Dr
Somerset
$223,136

Arlington Leased Housing Associated, A MN LP
2355 Polaris Lane, Suite 100
Plymouth, MN 55447
Highland Commoms
$111,419

Cloquet Housing Associated, Ltd Partnership
2355 Polaris Lane, Suite 100
Plymouth, MN 55447
Larson Tower
$117,169

United Handicap Federation Apt Associates
2355 Polaris Lane, Suite 100
Plymouth, MN 55447
2100 Bloomington Court
$134,787

Housing Initiatives of New England Corporation
415 Congress St Ste 204
Portland, ME 4101
Bagdad Wood
$54,674

LH Housing—Hiniec, LLC
415 Congress Street
Portland, ME 4101
Lane House
$58,685

Cedar House Senior Living Limited Partnership
415 Congress St Ste 204
Portland, ME 4101
Cedar House
$41,401

MAHLEP Housing, LP
415 Congress Street
Portland, ME 4101
Pelham Terrace
$42,044

RESL Limited Partnership
415 Congress St Ste 204
Portland, ME 4101
Rochester East
$56,806

Ballantyne House Associates
505 Mt. Prospect Ave
Newark, NJ 07104
Ballantyne House
$128,923

Piotr Stadinski Gardens Incorporated
350 Essjay Rd
Williamsville, NY 14221
Piotr Stadinski Gardens
$135,126

Lake Area Development Corp. (LADC)
41 Lewis Street
Geneva, NY 14456
The Seneca Apartments
$73,674

St. Simeon Second Mile Corporation
700 Second Mile Drive
Poughkeepsie, NY 12601
Saint Simeon Apartments
$99,506

Syracuse Senior Citizens Project Corporation
821 E Brighton Ave
Syracuse, NY 13205
Brighton Towers
$167,047

National Church Residences of Balimore Ohio
2335 North Bank Drive
Columbus, OH 43220
Walnut Creek Village
$86,466

Community Development Properties Cleveland I, Incorporated
51 East 42nd Street, Suite 300
New York, NY 10017
Rainbow Group
$312,125

Benchmark Winton House Associates, L.P.
4053 Maple Rd
Amherst, NY 14226
Winton House
$182,781

National Church Residences of Northern Columbus
2335 N Bank Drive
Columbus, OH 43220
Stygler Commons
$91,503

Gorsuch Management
603 W Wheeling St
Lancaster, OH 43130
Village Park
$106,644

Hunterwood Park Ltd
603 W Wheeling St
Lancaster, OH 43130
Hunterwood Park Ltd
$179,813

Lima Towers, A Limited Partnership

1170 Terminal Tower
Cleveland, OH 44113
Lima Towers, A Limited Partnership
$183,379

Aimco
4582 S. Ulster Si. Parkway Suite 1100
Denver, CO 80237–2632
White Cliffs Apartments
$182,685

Owensville Commons, Limited
P.O. Box 190
Lancaster, OH 43130
Owensville Commons
$106,512

Charleston Court, Limited
603 West Wheeling Street
Lancaster, OH 43130
Charleston Court, Ltd.
$108,373

Villa Park Ltd.
603 W Wheeling St
Lancaster, OH 43130
Villa Park, Ltd.
$183,105

Fish Creek Plaza, Limited
1201 Third Avenue, Suite 5400
Seattle, WA 98101
Lawrence Saltis Plaza
$190,908

National Church Residences of Wapkoneta, Ohio
2335 N. Bank Dr.
Columbus, OH 43220
Wapakoneta Village
$100,903

S J Strauss Lodge of B'Nai B'Rith Housing
61 East Northhampton Street
Wilkes-Barre, PA 18701
B'Nai B'Rith Apartments
$166,420

United Housing Partnership-Morristown, Ltd.
55 Beattie Place
Greeneville, SC 29602
Laurelwood Apartments
$96,890

Gunn Garden Apartments, A Limited Partnership
35 Union Avenue, Suite 200
Memphis, TN 38103
Gunn Gasrden Apartments
$131,979

Knopp Enterprises, Incorporated
22 Terry Court
Staunton, VA 24401
Plaza Apartments
$370,833

Wisconsin Housing Preservation Corp.
2 E Mifflin St Ste 401
Madison, WI 53703
Chateau/Regency Apartments
$162,281

Senior Towers Associates
6190 Canal Road
Valley View, OH 44125
Senior Towers
$216,282

[FR Doc. E6–21557 Filed 12–18–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Statement of Findings: Zuni Indian Tribe Water Rights Settlement Act of 2003

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Statement of Findings in accordance with Public Law 108–34.

SUMMARY: The Secretary of the Interior is causing this notice to be published as required by section 9 of the Zuni Indian Tribe Water Rights Settlement Act of 2003 (Settlement Act), Public Law 108–34, 117 Stat. 782–98. The publication of this notice causes the waiver and release of certain claims to become effective as required to implement the Settlement.

DATES: In accordance with section 9 of the Settlement Act, the waiver and release of claims described in section 7(b) and 7(c) of the Settlement Act are effective on December 19, 2006.

Contact: Address all comments and requests for additional information to Christopher Banet, Chair, Zuni Indian Tribe Water Rights Settlement Federal Implementation Team, Department of the Interior, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road, NW., Albuquerque, NM 87104. (505) 563–3540.

SUPPLEMENTARY INFORMATION: In 1984, the United States established a reservation for the Zuni Indian Tribe (Tribe) in northern Arizona, the Zuni Heaven Reservation, for longstanding religious and sustenance activities. On June 7, 2002, the Tribe and other parties entered into the Zuni Indian Tribe Water Rights Settlement Agreement (Settlement Agreement), a negotiated settlement of the water rights for the Zuni Heaven Reservation in the General Adjudication of All Rights to Use Water in the Little Colorado River System and Source. The Settlement Agreement resolves all of the Tribe's water rights claims in the Arizona portion of the Little Colorado River Basin, assists the Tribe in acquiring surface water rights therein, provides for the Tribe's use of groundwater therefrom and provides for wetland restoration of a portion of the Tribe's Arizona lands.

The purposes of the Settlement Act are:

(1) To approve, ratify, and confirm the Settlement Agreement entered into by the Tribe and the neighboring non-Indians;

(2) To authorize and direct the Secretary to execute and perform the Settlement Agreement and related waivers;

(3) To authorize and direct the United States to take legal title and hold such title to certain lands in trust for the benefit of the Zuni Indian Tribe; and

(4) To authorize the actions, agreements, and appropriations as provided for in the Settlement Agreement and the Settlement Act.

In order for terms of the Settlement Act and Settlement Agreement to be effective, the Secretary is required to make a statement of findings that certain conditions have been met.

Statement of Findings

As required by section 9 of the Settlement Act and as required by section 3.1.L of the Settlement Agreement, I find as follows:

1. The Settlement Act has been enacted in a form approved by the parties in paragraph 3.1 of the Settlement Agreement.

2. The funds authorized by section 4(b) of the Settlement Act have been appropriated by the United States and deposited into the Zuni Indian Tribe Water Rights Development Fund (Fund), established under section 6 of the Settlement Act.

3. The State of Arizona has appropriated and deposited into the Fund the amount required by paragraph 7.6 of the Settlement Agreement.

4. The Tribe has waived the condition, as provided in paragraph 3.2 of the Settlement Agreement, that it purchase or acquire the rights to purchase 2,350 acre-feet per annum of surface water rights.

5. The Tribe has waived the condition, as provided in paragraph 3.2 of the Settlement Agreement, that it acquire conditional approval for severance and transfer of surface water rights that the Tribe owns or has the right to purchase.

6. Pursuant to subparagraph 3.1.E of the Settlement Agreement, the Tribe and the Lyman Water Company have executed two separate agreements relating to the process of severance and transfer of surface water rights acquired by the Tribe or the United States and relating to the pass-through, use, and storage of the Tribe's surface water rights in Lyman Lake and the operation of Lyman Dam. The United States and the Arizona Game and Fish Commission were also signatories to the severance and transfer agreement, and both agreements were made in consultation with the City of St. Johns, Arizona and St. Johns Irrigation Company. The Lyman Water Company did not find it necessary to amend any operating procedures or by-laws in furtherance of these agreements.

7. Pursuant to subparagraph 3.1.F of the Settlement Agreement, all parties to the Settlement Agreement have agreed and stipulated to certain Arizona Game and Fish Commission abstracts of water uses.

8. Pursuant to subparagraph 3.1.G of the Settlement Agreement, all parties to the Settlement Agreement have agreed to the location of an observation well and that well has been installed.

9. Pursuant to subparagraph 3.1.H of the Settlement Agreement, the Tribe, Apache County, Arizona and the State of Arizona have executed an Intergovernmental Agreement that satisfies all of the conditions in paragraph 6.2 of the Settlement Agreement.

10. The Tribe has acquired title to the section of land adjacent to Zuni Heaven Reservation described as Section 34, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian.

11. The Settlement Agreement was modified to the extent that it was in conflict with the Settlement Act and the modification has been agreed to by all the parties to the Settlement Agreement.

12. A court of competent jurisdiction has approved the Settlement Agreement by a final judgment and decree.

As authorized by section 4(a) of the Act, I find as follows:

1. Pursuant to subparagraph 3.1.J of the Settlement Agreement, the Settlement Agreement, as amended, and all exhibits requiring signatures have been executed.

As required by paragraph 6.2.B of the Settlement Agreement, I hereby certify to the Governor of the State of Arizona that all of the conditions precedent in paragraph 6.2 have been satisfied.

Dated: December 8, 2006.

Dirk Kempthorne,

Secretary of the Interior.

[FR Doc. 06–9756 Filed 12–18–06; 8:45 am]

BILLING CODE 4310–W7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–FA–24 1A, OMB Control Number 1004–0114]

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) will send a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On April 21, 2005, the BLM published a notice in the **Federal Register** (70 FR 20768) requesting comment on this information collection. The comment period ended on June 20, 2005. The BLM did not receive any comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0114), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov*. Please provide a copy of your comments to the U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., Attention: Bureau Information Collection Clearance Officer (WP–630), Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Recordation of Location Notices and Annual Filings for Mining Claims, Mill Sites, and Tunnel Sites; Payment of Location and Maintenance Fees and Service Charges. (43 CFR part 3730, 3810, 3820, 3830–3838).

OMB Control Number: 1004–0114.

Bureau Form Number: 3830–2 and 3830–3.

Abstract: The Bureau of Land Management (BLM) collects and uses the information to determine whether or not mining claimants have met statutory requirements. Mining claimants must record location notices or certificates of mining claims, mill sites, and tunnel sites with BLM within 90 days of their location. Claimants who do not pay the maintenance fee must make an annual filing by December 30. The mining claim or site is forfeited by operation of law if claimants fail to record the mining claim or site or to submit an annual filing when required.

Frequency: Once for notices and certificates of location, notice of intent to locate mining claims, and payment of location fees. Once for annual filings, payment of maintenance fees, or filing of waivers, and as needed for recording of amendments to a previously recorded notice or certificate of location or transfer of interest.

Description of Respondents: Private sector.

Estimated Completion Time:

43 CFR citation	Annual # of responses	Hours/response (minutes)	Total hours	Cost to public
Form 3830–2	5,675	20	1,892	$51,075
Form 3830–3	271	25	113	2,710
3830	111,274	8	14,837	148,370
3832	1,800	8	240	2,400
3833	1,800	8	240	2,400
3834	1,800	8	240	2,400
3836	100,000	8	13,333	133,330
3837	1,800	8	240	2,400
Totals	224,420		31,135	

Annual Responses: 224,420.

Filing Fee Per Response: A $25 filing fee for Form 3830–3.

Annual Burden Hours: 31,135.

Bureau Clearance Officer: (202) 452–5033.

Dated: December 14, 2006.

Ted R. Hudson,

Bureau of Land Management, Acting Division Chief of Regulatory Affairs.

[FR Doc. 06–9764 Filed 12–18–06; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–923–05–1330–00]

Known Gilsonite Leasing Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Known Leasing Area.

SUMMARY: Notice is hereby given that based upon recent geologic information the following lands have been classified as the Bonanza, Cowboy, Independent, Little Emma and Wagon Hound Known Leasing Areas for gilsonite. Detailed information regarding this action, a description of the lands included in the Bonanza, Cowboy, Independent, Little Emma and Wagon Hound Known Leasing Areas, and the gilsonite Master Title Plats (MTPs) showing the boundaries of the proposed known leasing areas, are available to the public in the Public Room of the Utah State Office of the BLM.

DATES: *Effective Date:* December 19, 2006.

ADDRESSES: Inquiries should be sent to the State Director (UT–923), Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101.

FOR FURTHER INFORMATION CONTACT: Stan Perkes (801) 539–4036.

Pursuant to the authority contained in the Act of March 3, 1879, (43 U.S.C. 31), as Supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note) 220 Departmental Manual 2, and Secretarial Orders No. 3071 and 3087, the Bonanza, Cowboy, Independent, Little Emma and Wagon Hound Known Leasing Areas (Gilsonite), is established, as follows:

Salt Lake Meridian

Bonanza

T. 9 S., R. 24 E., SLM, Utah
sec. 7, SE¼SW¼, S½SE¼;
sec. 16, SW¼NW¼, N½SW¼, W½SE¼SE¼;
sec. 17, S½NE¼, N½NW¼, SE¼NW¼;
sec. 18, NE¼NE¼;

Cowboy

T. 8 S., R. 23 E., SLM, Utah
sec. 36, N½NE¼.
T. 8 S., R. 24 E., SLM, Utah
sec. 31, S½NE¼, N½NW¼, SE¼NW¼;
sec. 32, S½NW¼, NE¼SW¼, N½SE¼.

Independent

T. 8 S., R. 23 E., SLM, Utah
sec. 33, N½SE¼, SE¼SE¼;
sec. 34, S½SW¼, SW¼SE¼;
T. 9 S., R. 23 E., SLM, Utah
sec. 1, SE¼SE¼;
sec. 2, SW¼NE¼, NW¼;
sec. 3, lots 1 &2;
sec. 12, NE¼NE¼;
T. 9 S., R. 24 E., SLM, Utah
sec. 7, lot 1, S½NE¼, E½NW¼, NE¼SE¼,
sec. 8, SW¼NW¼, N½SW¼.

Little Emma

T. 9 S., R. 23 E., SLM, Utah
sec. 22, S½NE¼, N½NW¼, NE¼SW¼, NE¼SE¼;
sec. 23 N½SW¼, SE¼SW¼, S½SE¼;
sec. 25, N½NW¼;
sec. 26, NE¼NE¼.

Wagon Hound

T. 9 S., R. 24 E., SLM, Utah
sec. 20, SE¼SW¼;
sec. 28, SW¼NE¼, NW¼NW¼, S½NW¼, N½SE¼.
Containing 2,870.21 acres, more or less.

Dated: August 17, 2006.

Kent Hoffman,

Deputy State Director, Lands and Minerals.

[FR Doc. E6–21468 Filed 12–18–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Land Exchange at Richmond National Battlefield Park

AGENCY: National Park Service, Interior.

ACTION: Announcement of land exchange.

SUMMARY: This notice announces a proposed exchange of a 0.32-acre parcel of Federal land in Chesterfield County, Virginia for a 236-acre parcel of privately owned land in Hanover County, Virginia. Both properties are inside the boundaries of Richmond National Battlefield Park (the Park). Acquisition of this 236-acre property will allow the Park to protect the resources and more fully interpret the Battle of Beaver Dam Creek for visitors in perpetuity. An Environmental Survey Assessment of the proposed exchange and a Cultural Resource Survey have been made of the lands involved in this proposed exchange. The parcels have been surveyed for endangered and threatened species. Copies of the surveys are available upon request.

I. The following described 0.32-acre parcel of Federal land, located in the Drewry's Bluff Unit of the Park, has been determined to be suitable for disposal by exchange. Federal Tract 03–110 is located near Fort Darling Road in Chesterfield County. It is a 0.32-acre portion of a 23-acre tract acquired in 1936 by the United States, National Park Service by Deed Book 1179 at Page 843 recorded at the Clerk's Office of the Circuit Court of Chesterfield County, Virginia. The parcel is a 30-foot wide strip of land which is currently occupied by underground pipes that are a portion of a five mile long acid and water pipeline owned by E.I. DuPont de Nemours & Company (DuPont). The pipeline was installed in 1980 under a special use permit which has expired, and the National Park Service has no authority to renew it. This strip of land is approximately 100 feet from the northbound lanes of Interstate 95 and is crossed by the entrance road to the Drewry's Bluff Unit of the Park.

The United States will convey fee simple title to Tract 03–110, together with a right-of-way for access from Fort Darling Road, by a quitclaim deed to DuPont. The deed will include permanent restrictions that prohibit construction of any above ground improvements and will require DuPont to restore the surface of the ground to its previous condition, in the event the ground is disturbed for any reason. The United States will retain a permanent right-of-way across the parcel for public access to the Drewry's Bluff Unit.

II. In exchange for the land described in paragraph I above, the United States will acquire fee title to Tract 01–114, a 236-acre unimproved parcel of land owned by The Conservation Fund (TCF) located on Old Cold Harbor Road in Hanover County, in the Beaver Dam Creek Unit of the Park. Both surface and mineral estates of the 236-acre parcel are to be exchanged. All right, title and interest in the Chesterfield County parcel is to be conveyed by the United States in exchange for the conveyance of all right, title and interest in the Hanover County parcel by TCF. The land conveyed to the United States will be administered by the National Park Service as part of the Richmond National Battlefield Park upon completion of the exchange. This exchange will ensure the protection of 236 acres of the Beaver Dam Creek Battlefield and provide DuPont with ownership of a small strip of land that is occupied by a portion of its underground pipeline.

The values of the properties to be exchanged were established by appraisals of fair market value. Since the appraised value of the 236-acre parcel exceeds the appraised value of the 0.32-acre parcel, TCF will donate the difference in value to the United States.

For a period of 45 days from the date of this notice, interested parties may submit written comments to the Park Superintendent at the address listed below. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Superintendent Cynthia MacLeod, Richmond National Battlefield Park, 3215 East Broad Street, Richmond, Virginia, *Phone:* 804–226–1981. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

SUPPLEMENTARY INFORMATION: The Act of November 13, 2000 (16 U.S.C. 4231–4(a)(1) authorizes the Secretary of the Interior to acquire lands, waters, and interests in lands within the boundaries of Richmond National Battlefield Park from willing landowners by donation, purchase with donated or appropriated funds, or exchange.

Dated: December 5, 2006.

Chrysandra L. Walter,

Acting Regional Director, Northeast Region.

[FR Doc. E6–21616 Filed 12–18–06; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0007]

Office on Violence Against Women; Agency Information Collection Activities: Extension of a Currently Approved Collection

ACTION: 60-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for the Legal Assistance for Victims Grant Program.

The Department of Justice, Office on Violence Against Women (OVW) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for ''sixty days'' until February 20, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees of the Legal Assistance for Victims Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0007. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 200 grantees of the Legal Assistance for Victims Grant Program (LAV Program) whose eligibility is determined by statute. In 1998, Congress appropriated funding to provide civil legal assistance to domestic violence victims through a set-aside under the Grants to Combat Violence Against Women, Public Law 105–277. In the Violence Against Women Act of 2000 and again in 2005, Congress statutorily authorized the LAV Program. 42 U.S.C. 3796gg-6. The LAV Program is intended to increase the availability of legal assistance necessary to provide effective aid to victims of domestic violence, stalking, or sexual assault who are seeking relief in legal matters arising as a consequence of that abuse or violence. The LAV Program awards grants to law school legal clinics, legal aid or legal services programs, domestic violence victims' shelters, bar associations, sexual assault programs, private nonprofit entities, and Indian tribal governments. These grants are for providing direct legal services to victims of domestic violence, sexual assault, and stalking in matters arising from the abuse or violence and for providing enhanced training for lawyers representing these victims. The goal of the Program is to develop innovative, collaborative projects that provide quality representation to victims of domestic violence, sexual assault, and stalking.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the approximately 200 respondents (LAV Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities that grantees may engage in and the different types of grantees that receive funds. An LAV Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the data collection forms is 400 hours, that is 200 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: December 13, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6–21538 Filed 12–18–06; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection: Evaluation of State Implementation of 303(k) of the Social Security Act; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed State Unemployment Tax Avoidance (SUTA) Study Implementation Survey. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/Performance/guidance/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 30, 2007.

ADDRESSES: Kevin M. Culp, Room N5641, 200 Constitution Avenue, NW., Washington, DC 20210; telephone number: 202–693–3679 (this is not a toll-free number); internet address: *culp.kevin@dol.gov;* facsimile number: 202–693–2844.

SUPPLEMENTARY INFORMATION:

I. Background

On August 9, 2004, President George W. Bush signed into law the SUTA Dumping Prevention Act of 2004 (Act), which amended Federal unemployment compensation law by adding section 303(k) to the Social Security Act (SSA). This Act established a minimum standard nationwide for curbing an unemployment compensation tax rate manipulation scheme known as SUTA Dumping. In addition, the Act required the Secretary of Labor (Secretary) to conduct a study of the states' implementation of the provisions of section 303(k) of the SSA, and to submit to the Congress a report on the findings of this study no later than July 15, 2007. Specifically, the law states:

(1) STUDY—The Secretary of Labor shall conduct a study of the implementation of the provisions of section 303(k) of the Social Security Act (as added by subsection (a)) to assess the status and appropriateness of State actions to meet the requirements of such provisions.

(2) REPORT—Not later than July 15, 2007, the Secretary of Labor shall submit to the Congress a report that contains the findings of the study required by paragraph (1) and recommendations for any Congressional action that the Secretary considers necessary to improve the effectiveness of section 303(k) of the Social Security Act.

In order to comply with these provisions, the U.S. Department of Labor, Employment and Training Administration contracted with Coffey Communications, LLC, in collaboration with its subcontractor, the Urban Institute, to conduct the required study. In addition, an element was added to the study requiring that it look into the impact the Act had, if any, on state practice in regard to the Professional Employer Organization (PEO) industry and what impact, if any, the Act had on PEOs.

The goals of the study are to:

- Identify state legislation, policy and procedures intended to mitigate the practice of SUTA dumping;
- Measure the use and effectiveness of state penalties intended to curb SUTA dumping;
- Analyze state law transfer of experience provisions regarding the entry of a client into a PEO relationship and the financial impact of such treatment both on the state UI trust funds and on the PEO industry;
- Compile resultant data and information necessary to allow the Secretary of Labor to report to Congress no later than July 15, 2007, on the effectiveness of section 303(k) of the SSA.

The proposed survey represents the main instrument for collecting state data and experience on the states' implementation of section 303(k) of the SSA.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The proposed survey will provide useful, policy relevant data and information required by the Administration, DOL, ETA, and state administrators to make appropriate decisions and judgments regarding the states' implementation of section 303(k) of the SSA. The information, gathered through this survey from all 50 states, the District of Columbia, the Virgin Islands, and Puerto Rico will provide the Secretary of Labor with the necessary information needed to file the required July 15, 2007, report to Congress. In addition, the knowledge gained regarding states' policy on the transfer of experience between client companies and PEO companies as they enter or leave a contractual relationship should prove beneficial in any future state and/or ETA discussions and legislative proposals regarding the PEO industry. ETA will also be able to use this information to determine what future SUTA dumping training, if any, must be provided to personnel within the State Workforce Agencies.

Type of Review: New collection of information.

Agency: Employment and Training Administration.

Title: Evaluation of State Implementation of section 303(k) of the Social Security Act, SUTA Study Implementation Survey.

OMB Number: 1205–0NEW.

Recordkeeping: No additional record keeping. One time survey.

Affected Public: State Government.

Reference: Section 303(k) of the SSA.
Total Respondents: 53.
Estimated Total Burden Hours: 106.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 13, 2006.

Maria K. Flynn

Administrator, Office of Policy Development and Research.

[FR Doc. E6–21544 Filed 12–18–06; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 17, 2007. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant*; Permit Application No. 2007–023; Catherine Herrick, CBS News, 9th Floor, 555 West 57th Street, New York, NY 10019.

Activity for Which Permit Is Requested

Enter an Antarctic Specially Protected Area (ASPA). The applicant proposes to enter the Admiralty Bay, King George Island Antarctic Specially Protected Area (ASPA #128) to film and conduct interviews with scientists studying penguins. The applicant plans to produce a story for the CBS New magazine 60 Minutes about the various factors in Antarctica that are contributing to global warming and the effects on the wildlife. Access to the site will be via zodiacs.

Location: Admiralty Bay, King George Island (ASPA #128).

Dates: February 7, 2007 to February 14, 2007.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E6–21476 Filed 12–18–06; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation (NSF).

ACTION: Notice of permit applications received under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of a remote field support and emergency provisions helicopter flight seeing for the Motor Vessel, Octopus for the 2006–2007 austral summer season. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within January 17, 2007. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale, Environmental Officer at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the operation of up to nine expeditions per year to Antarctica. Passengers will be taken ashore at selected sites by Zodiac (rubber raft) or helicopter for approximately for several hours at a time. On each of the two helicopters, emergency gear would be taken ashore in case weather deteriorates and passengers are required to camp on shore. Anything taken ashore will be removed from Antarctica and disposed of in a port of disembarkation. No hazardous domestic products or wastes (aerosol cans, paints, solvents, etc.) will be brought ashore. Cooking stoves/fuel will be used only in an emergency were passengers are forced to spend night on shore. Conditions of the permit would include requirements to report on the removal of materials and any accidental releases, and management of all waste, including human waste, in accordance with Antarctic waste regulations.

Application for the permit is made by: Othmar Hehli, Senior Director of Yacht Operatons, Valcan Incorporated, 505 Fifth Avenue S., Suite 900, Seattle, WA 98104.

Location: Antarctica (south of 60 degrees south latitude) .

Dates: February 1, 2007 to February 29, 2007.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E6–21508 Filed 12–18–06; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Charter of the Advisory Committee on Reactor Safeguards (ACRS).

SUMMARY: The Advisory Committee on Reactor Safeguards was established by Section 29 of the Atomic Energy Act (AEA) in 1954. Its purpose is to provide

advice to the Commission with regard to the hazards of proposed or existing reactor facilities, to review each application for a construction permit or operating license for certain facilities specified in the AEA, and such other duties as the Commission may request. The AEA as amended by Public Law 100–456 also specifies that the Defense Nuclear Safety Board may obtain the advice and recommendations of the ACRS.

Membership on the Committee includes individuals experienced in reactor operations, management; probabilistic risk assessment; analysis of reactor accident phenomena; design of nuclear power plant structures, systems and components; materials science; and mechanical, civil, and electrical engineering.

The Nuclear Regulatory Commission has determined that renewal of the charter for the ACRS until December 12, 2008 is in the public interest in connection with the statutory responsibilities assigned to the ACRS. This action is being taken in accordance with the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, NRC, Washington, DC 20555; telephone: (301) 415–1963.

Dated: December 13, 2006.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E6–21583 Filed 12–18–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of December 18, 25, 2006, January 1, 8, 15, 22, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of December 18, 2006

Thursday, December 21, 2006

12:55 p.m. Affirmation Session (Public Meeting) (Tentative) a. Entergy Nuclear Vermont Yankee, LLC, & Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP–06–20 (Sept. 22, 2006), reconsid'n denied (Oct. 30, 2006) (Tentative). b. Final Rulemaking to Revise 10 CFR 73.1, Design Basis Threat (DBT) Requirements (Tentative).

Week of December 25, 2006—Tentative

There are no meetings scheduled for the Week of December 25, 2006.

Week of January 1, 2007—Tentative

Thursday, January 4, 2007

12:55 p.m. Affirmation Session (Public Meeting) (Tentative) a. Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), Intervenor Pilgrim Watch's Appeal of LBP–06–23 (Ruling on Standing and Contentions) (Tentative).

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.

Week of January 22, 2007—Tentative

Tuesday, January 23, 2007

1:30 p.m. Joint Meeting with Federal Energy Regulatory Commission on Grid Reliability (Public Meeting) (Contact: Mike Mayfield, 301–415–5621).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

Additional Information

Affirmation of 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) tentatively scheduled on Thursday, December 14, 2006 at 9:25 a.m. has been rescheduled tentatively on Thursday, December 21, 2006 at 12:55 p.m.

* * * * *

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, D.C. 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 13, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–9787 Filed 12–15–06; 1:56 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 22, 2006 to December 7, 2006. The last

biweekly notice was published on December 5, 2006 (71 FR 70553).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding

the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of amendment request: September 15, 2006.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 6.8.5, ''Reactor Building Leakage Rate Testing Program,'' to allow a one-time deferral of the next Type A, containment integrated leak rate test (ILRT) from ''no later than September 2008'' to ''prior to startup from T1R18 refueling outage.'' The NRC has previously approved a one-time 5-year extension to the Type A ILRT schedule for TMI–1 by issuance of Amendment No. 244, dated August 14, 2003. Amendment No. 244 changed the TSs to state that the Type A ILRT shall be performed no later than September 2008. The proposed amendment would add approximately 15 months to the currently-approved 15-year interval. This deferral would allow the Type A ILRT to be performed during a steam generator replacement in the fall of 2009.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will revise TS 6.8.5 to reflect a one-time extension to the Three Mile Island, Unit 1 Type A Integrated Leak Rate Test (ILRT) as currently specified in the Technical Specifications. This change will extend the requirement to perform the Type A ILRT from the current requirement of ''no later than September 2008'' to ''prior to startup from the T1R18 refueling outage,'' which is currently scheduled for Fall 2009. The current Type A ILRT interval of 15 years, based on past performance, would be extended on a one-time basis by approximately 15 months.

The function of the containment is to isolate and contain fission products released from the reactor coolant system following a design basis Loss of Coolant Accident (LOCA) and to confine the postulated release of radioactive material to within limits. The test interval associated with Type A ILRTs is not a precursor of any accident previously evaluated. Type A ILRTs provide assurance that the TMI, Unit 1 containment will not exceed allowable leakage rate values specified in the TS and will continue to perform its design function following an accident. The risk assessment of the proposed change has concluded that there is an insignificant increase in postulated total population dose rate and an insignificant increase in the postulated conditional containment failure probability. Additionally, containment inspections have also been performed which demonstrate the continued structural integrity of the primary containment.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change for a one-time extension of the Type A ILRT for TMI, Unit 1 will not affect the control parameters governing unit operation or the response of plant equipment to transient and accident conditions. The proposed change does not introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The integrity of the containment penetrations and isolation valves is verified through Type B and Type C local leak rate tests (LLRTs) and the overall leak tight integrity of the containment is verified by a Type A ILRT, as required by 10 CFR [Part] 50, Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.'' These tests are performed to verify the essentially leak tight characteristics of the containment at the design basis accident pressure. The proposed change for a one-time extension of the Type A ILRT does not affect the method for Type A, B or C testing or the test acceptance criteria.

AmerGen has conducted a risk assessment to determine the impact of a change to the TMI, Unit 1 Type A ILRT schedule from a baseline ILRT frequency of three times in 10 years to once in 15 years plus 15 months for the risk measures of Large Early Release Frequency (*i.e.*, LERF), Population Dose, and Conditional Containment Failure Probability (*i.e.*, CCFP). This assessment indicated that the proposed TMI, Unit 1 ILRT interval extension has a small change in risk to the public and is an acceptable plant change from a risk perspective.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Brad Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.

NRC Branch Chief: Harold K. Chernoff.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: May 30, 2006, as supplemented by letter dated November 20, 2006.

Description of amendment request: The proposed amendment would modify the Technical Specification (TS) requirements related to steam generator tube integrity. The amendment would adopt Nuclear Regulatory Commission (NRC)-approved Revision 4 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–449, ''Steam Generator Tube Integrity.''

The NRC staff published a notice of opportunity for comment in the **Federal Register** on March 2, 2005 (70 FR 10298), on possible amendments adopting TSTF–449, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on May 6, 2005 (70 FR 24126). The licensee affirmed the applicability of the following NSHC determination in its application dated May 30, 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change requires a SG [Steam Generator] Program that includes performance criteria that will provide reasonable assurance that the SG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational LEAKAGE.

A Steam Generator Tube Rupture (SGTR) event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a SGTR event, a bounding primary to secondary LEAKAGE rate equal to the operational LEAKAGE rate limits in the licensing basis plus the LEAKAGE rate associated with a double-ended rupture of a single tube is assumed.

For other design basis accidents such as Main Steam Line Break (MSLB), rod ejection, and reactor coolant pump locked rotor the tubes are assumed to retain their structural integrity (*i.e.*, they are assumed not to rupture). These analyses typically assume that primary to secondary LEAKAGE for all SGs is 1 gallon per minute or increases to 1 gallon per minute as a result of accident induced stresses. The accident induced leakage criterion introduced by the proposed changes accounts for tubes that may leak during design basis accidents. The accident induced leakage criterion limits this leakage to no more than the value assumed in the accident analysis.

The SG performance criteria proposed change to the TSs identifies the standards against which tube integrity is to be measured. Meeting the performance criteria provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. The performance criteria are only a part of the SG Program required by the proposed change to the TSs. The program, defined by NEI 97–06, Steam Generator Program Guidelines, includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring. The proposed changes do not, therefore, significantly increase the probability of an accident previously evaluated.

The consequences of design-basis accidents are, in part, functions of the DOSE EQUIVALENT I–131 in the primary coolant and the primary to secondary LEAKAGE rates resulting from an accident. Therefore, limits are included in the plant technical specifications for operational leakage and for DOSE EQUIVALENT I–131 in primary coolant to ensure the plant is operated within its analyzed condition. The typical analysis of the limiting design basis accident assumes that primary to secondary leak rate after the accident is 1 gallon per minute with no more than 500 gallons per day in any one SG, and that the reactor coolant activity levels of DOSE EQUIVALENT I–131 are at the TS values before the accident.

The proposed change does not affect the design of the SGs, their method of operation, or primary coolant chemistry controls. The proposed approach updates the current TSs and enhances the requirements for SG inspections. The proposed change does not adversely impact any other previously evaluated design basis accident and is an improvement over the current TSs.

Therefore, the proposed change does not affect the consequences of a SGTR accident and the probability of such an accident is reduced. In addition, the proposed change does not affect the consequences of an MSLB, rod ejection, or a reactor coolant pump locked rotor event, or other previously evaluated accident.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed performance based requirements are an improvement over the requirements imposed by the current technical specifications. Implementation of the proposed SG Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The result of the implementation of the SG Program will be an enhancement of SG tube performance. Primary to secondary LEAKAGE that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions.

The proposed change does not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. In addition, the proposed change does not impact any other plant system or component. The change enhances SG inspection requirements.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of an SG is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change is expected to result in an improvement in the tube integrity by implementing the SG Program to manage SG tube inspection, assessment, repair, and plugging. The requirements established by the SG Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current TSs.

For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by the proposed change to the TSs.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief (Acting): Douglas V. Pickett.

Carolina Power & Light Company, Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: May 23, 2006, as supplemented by letter dated October 3, 2006.

Description of amendment request: The proposed amendment would modify the Technical Specification (TS) requirements related to steam generator tube integrity. The amendment would adopt Nuclear Regulatory Commission (NRC)-approved Revision 4 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–449, ''Steam Generator Tube Integrity.''

The NRC staff published a notice of opportunity for comment in the **Federal Register** on March 2, 2005 (70 FR 10298), on possible amendments adopting TSTF–449, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on May 6, 2005 (70 FR 24126). The licensee affirmed the applicability of the following NSHC determination in its application dated May 23, 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change requires a SG [Steam Generator] Program that includes performance criteria that will provide reasonable assurance that the SG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational LEAKAGE.

A Steam Generator Tube Rupture (SGTR) event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a SGTR event, a bounding primary to secondary LEAKAGE rate equal to the operational LEAKAGE rate limits in the licensing basis plus the LEAKAGE rate associated with a double-ended rupture of a single tube is assumed.

For other design basis accidents such as Main Steam Line Break (MSLB), rod ejection, and reactor coolant pump locked rotor the tubes are assumed to retain their structural integrity (i.e., they are assumed not to rupture). These analyses typically assume that primary to secondary LEAKAGE for all SGs is 1 gallon per minute or increases to 1 gallon per minute as a result of accident induced stresses. The accident induced leakage criterion introduced by the proposed changes accounts for tubes that may leak during design basis accidents. The accident induced leakage criterion limits this leakage to no more than the value assumed in the accident analysis.

The SG performance criteria proposed change to the TSs identifies the standards against which tube integrity is to be measured. Meeting the performance criteria provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. The performance criteria are only a part of the SG Program required by the proposed change to the TSs. The program, defined by NEI 97–06, Steam Generator Program Guidelines, includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring. The proposed changes do not, therefore, significantly increase the probability of an accident previously evaluated.

The consequences of design-basis accidents are, in part, functions of the DOSE EQUIVALENT I–131 in the primary coolant and the primary to secondary LEAKAGE rates resulting from an accident. Therefore, limits are included in the plant technical specifications for operational leakage and for DOSE EQUIVALENT I–131 in primary coolant to ensure the plant is operated within its analyzed condition. The typical analysis of the limiting design basis accident assumes that primary to secondary leak rate after the accident is 1 gallon per minute with no more than 500 gallons per day in any one SG, and that the reactor coolant activity levels of DOSE EQUIVALENT I–131 are at the TS values before the accident.

The proposed change does not affect the design of the SGs, their method of operation, or primary coolant chemistry controls. The proposed approach updates the current TSs and enhances the requirements for SG inspections. The proposed change does not adversely impact any other previously evaluated design basis accident and is an improvement over the current TSs.

Therefore, the proposed change does not affect the consequences of a SGTR accident and the probability of such an accident is reduced. In addition, the proposed change does not affect the consequences of an MSLB, rod ejection, or a reactor coolant pump locked rotor event, or other previously evaluated accident.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed performance based requirements are an improvement over the requirements imposed by the current technical specifications. Implementation of the proposed SG Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The result of the implementation of the SG Program will be an enhancement of SG tube performance. Primary to secondary LEAKAGE that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions.

The proposed change does not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. In addition, the proposed change does not impact any other plant system or component. The change enhances SG inspection requirements.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of an SG is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change is expected to result in an improvement in the tube integrity by implementing the SG Program to manage SG tube inspection, assessment, repair, and plugging. The requirements established by the SG Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current TSs.

For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by the proposed change to the TSs.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief (Acting): Douglas V. Pickett.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, (HBRSEP) Unit No. 2, Darlington County, South Carolina

Date of amendment request: June 1, 2006, as supplemented by letter dated November 20, 2006.

Description of amendment request: The proposed amendment would revise the surveillance requirements (SR) for the emergency core cooling system suction inlet in the containment as specified in Technical Specification SR 3.5.2.6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed surveillance change will continue to ensure that the emergency core cooling system (ECCS) containment sump inlet is inspected in a manner that will verify operability. Performance of the required system surveillances, in conjunction with the applicable operational and design requirements for the ECCS, provide assurance that the system will be capable of performing the required design functions for accident mitigation and that the system will perform in accordance with the functional requirements for the system as described in the Updated Final Safety Analysis Report for HBRSEP, Unit No. 2. The proposed rewording of the surveillance requirement will continue to ensure that the ECCS containment sump suction inlet is not restricted by debris and suction inlet strainers show no evidence of structural distress or abnormal corrosion for HBRSEP, Unit No. 2. This ensures that the rate of occurrence and consequences of analyzed accidents will not change. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

No. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. HBRSEP, Unit No. 2, is replacing the existing ECCS containment sump inlet trash racks and screens with new strainers in accordance with the response to Generic Letter 2004–02. The strainer is a passive component in the ECCS, which is a standby safety system used for accident mitigation. As such, the strainer cannot be an accident initiator. A change to Technical Specifications Surveillance Requirement 3.5.2.6 is needed to accommodate the change to the ECCS containment sump inlet design. This change does not alter the nature of events postulated in the HBRSEP, Unit No. 2, Updated Final Safety Analysis Report, nor does it introduce any unique precursor mechanisms. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

No. The proposed change does not involve a significant reduction in the margin of safety. The proposed change to the ECCS containment sump inlet surveillance requirement provides appropriate and applicable surveillance for this system. The proposed change to this surveillance requirement for the ECCS system will continue to ensure system operability. The proposed change does not adversely affect any plant safety limits, setpoints, or design parameters. The change also does not adversely affect the fuel, fuel cladding, Reactor Coolant System (RCS), or containment integrity. Therefore, this change does not affect any margin of safety for HBRSEP, Unit No. 2.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief (Acting): Douglas Pickett.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: May 31, 2006.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) requirements related to steam generator (SG) tube integrity. In particular, Dominion Nuclear Connecticut, Inc. (DNC) is proposing to replace the existing SG tube surveillance program with the NRC-approved Technical Specifications Task Force (TSTF) 449, Revision 4. The proposed changes are consistent with the Consolidated Line Item Improvement Process (CLIIP) provided in the May 6, 2005, **Federal Register** notice (70 FR 24126). In addition, the Millstone Power Station, Unit No. 2 (MPS2) TSs are revised beyond the scope of the CLIIP to provide consistent terminology and format. *Basis for proposed no significant hazards consideration determination:* DNC proposed minor variations and/or deviations from the TS changes described in the CLIIP beyond the scope of the no significant hazards consideration determination published on March 2, 2005. DNC has evaluated the proposed beyond-scope TS changes and determined it does not represent a significant hazards consideration. As required by 10 CFR 50.91(a), DNC has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect initiators of previously analyzed events or assumed mitigation of accident or transient events.

Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve adding a new definition and rewording the existing TS to be consistent with NUREG–1432, Revision 3. In addition, the requested change for MPS2 incorporates a more conservative leakage limit of 75 gallons per day per steam generator as opposed to the CLIIP specified limit of 150 gallons per day per steam generator. The changes will not impose any requirements or eliminate any existing requirements that will create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety. Since the proposed changes do not have an impact on any safety analysis assumptions and accidents previously evaluated, there are no margin of safety issues involved.

Therefore, the changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Branch Chief: Harold K. Chernoff.

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 31, 2006.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) requirements related to steam generator (SG) tube integrity. In particular, Dominion Nuclear Connecticut, Inc. (DNC) is proposing to replace the existing SG tube surveillance program with the NRC-approved Technical Specifications Task Force (TSTF) 449, Revision 4. The proposed changes are consistent with the Consolidated Line Item Improvement Process (CLIIP) provided in the May 6, 2005, **Federal Register** notice (70 FR 24126). In addition, the Millstone Power Station, Unit No. 3 (MPS3) TSs are revised beyond the scope of the CLIIP to provide consistent terminology and format.

Basis for proposed no significant hazards consideration determination: DNC proposed minor variations and/or deviations from the TS changes described in the CLIIP beyond the scope of the no significant hazards consideration determination published on March 2, 2005. DNC has evaluated the proposed beyond-scope TS changes and determined it does not represent a significant hazards consideration. As required by 10 CFR 50.91(a), DNC has provided its analysis of the issue of no significant hazards consideration to support this conclusion. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve rewording the existing technical specifications to be consistent with NUREG–1431, Revision 3. These proposed changes do not affect initiators of previously analyzed events or assumed mitigation of accident or transient events.

Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

These proposed changes do not involve physical alteration of the plant (no new or different type of equipment will be installed). The changes will not impose any requirements or eliminate any existing requirements that will create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Since the proposed changes do not have an impact on any safety analysis assumptions and accidents previously evaluated, there are no margin of safety issues involved.

Therefore, the changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Branch Chief: Harold K. Chernoff.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: November 13, 2006.

Description of amendment request: The proposed amendment would revise Grand Gulf Nuclear Station, Unit 1, Technical Specification (TS) Limiting Condition for Operation (LCO) 3.10.1, and the associated TS Bases, to expand its scope to include provisions for temperature excursions greater than 200 °F as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in MODE 4.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 21, 2006 (71 FR 48561), on possible amendments to revise the plant-specific TS, to expand the scope of TS LCO 3.10.1, to include provisions for temperature excursions greater than 200 °F as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in MODE 4, including a model safety evaluation and model No Significant Hazards Determination (NSHC), using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 27, 2006 (71 FR 63050). The licensee affirmed the applicability of the model NSHC determination in its application dated November 13, 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1: The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Technical Specifications currently allow for operation at greater than [200] °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact the probability or consequences of an accident previously evaluated. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

Technical Specifications currently allow for operation at greater than [200] °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. No new operational conditions beyond those currently allowed by LCO 3.10.1 are introduced. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

Technical Specifications currently allow for operation at greater than [200] °F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact any margin of safety. Allowing completion of inspections and testing and supporting completion of scram time testing initiated in conjunction with an inservice leak or hydrostatic test prior to power operation results in enhanced safe operations by eliminating unnecessary maneuvers to control reactor temperature and pressure. Therefore, the proposed change

does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear, Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: David Terao.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: July 14, 2006.

Description of amendment request: The proposed changes would modify Technical Specification (TS) requirements related to required end states for TS action statements. The changes are generally consistent with the NRC-approved Revision 0 to Technical Specification Task Force (TSTF) Change Traveler, TSTF–423, ''Risk Informed Modification to Selected Required Action End States for BWR Plants.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on December 14, 2005 (70 FR 74037), on possible amendments adopting TSTF–423, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 23, 2006 (71 FR 14726).

The licensee affirmed the applicability of the following TSTF–423 model NSHC determination in its application dated July 14, 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows a change to certain required end states when the TS Completion Times for remaining in power operation will be exceeded. Most of the requested technical specification (TS) changes are to permit an end state of hot shutdown (Mode 3) rather than an end state of cold shutdown (Mode 4) contained in the current TS. The request was limited to: (1) Those end states where entry into the shutdown mode is for a short interval, (2) entry is initiated by inoperability of a single train of equipment or a restriction on a plant operational parameter, unless otherwise stated in the applicable technical specification, and (3) the primary purpose is to correct the initiating condition and return to power operation as soon as is practical. Risk insights from both the qualitative and quantitative risk assessments were used in specific TS assessments. Such assessments are documented in Section 6 of GE [General Electric] NEDC–32988, Revision 2, ''Technical Justification to Support Risk Informed Modification to Selected Required Action End States for BWR [boiling-water reactor] Plants.'' They provide an integrated discussion of deterministic and probabilistic issues, focusing on specific technical specifications, which are used to support the proposed TS end state and associated restrictions. The staff finds that the risk insights support the conclusions of the specific TS assessments. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident after adopting proposed TSTF–423, are no different than the consequences of an accident prior to adopting TSTF–423. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). If risk is assessed and managed, allowing a change to certain required end states when the TS Completion Times for remaining in power operation are exceeded, i.e., entry into hot shutdown rather than cold shutdown to repair equipment, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change and the commitment by the licensee to adhere to the guidance in TSTF–IG–05–02, Implementation Guidance for TSTF–423, Revision 0, ''Technical Specifications End States, NEDC–32988-A,'' will further minimize possible concerns.

Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change allows, for some systems, entry into hot shutdown rather than cold shutdown to repair equipment, if risk is assessed and managed. The BWROG's [Boiling Water Reactor Owner's Group's] risk assessment approach is comprehensive and follows staff guidance as documented in RGs [Regulatory Guides] 1.174 and 1.177. In addition, the analyses show that the criteria of the three-tiered approach for allowing TS changes are met. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in RG 1.177. A risk assessment was performed to justify the proposed TS changes. The net change to the margin of safety is insignificant.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mr. Brad Fewell, Assistant General Counsel, Exelon Generation Company LLC, 200 Exelon Way, Kennett Square, PA 19348.

NRC Branch Chief: Harold K. Chernoff.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: September 15, 2006.

Description of amendment request: The proposed amendment would revise the required frequency for control rod scram time testing, as described in Technical Specification (TS) Surveillance Requirement 3.1.4.2, from ''120 days cumulative operation in MODE 1'' to ''200 days cumulative operation in MODE 1.'' The proposed TS change is based on the NRC-approved Revision 0 to Technical Specification Task Force (TSTF) Change Traveler, TSTF–460, ''Control Rod Scram Time Testing Frequency.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on May 27, 2004 (69 FR 30339), on possible amendments adopting TSTF–460, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on August 23, 2004 (69 FR 51864).

The licensee affirmed the applicability of the following TSTF–460

model NSHC determination in its application dated September 15, 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The frequency of surveillance testing is not an initiator of any accident previously evaluated. The frequency of surveillance testing does not affect the ability to mitigate any accident previously evaluated, as the tested component is still required to be operable. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The proposed change does not result in any new or different modes of plant operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The proposed change continues to test the control rod scram time to ensure the assumptions in the safety analysis are protected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for Licensee: Mr. Brad Fewell, Assistant General Counsel, Exelon Generation Company LLC, 200 Exelon Way, Kennett Square, PA 19348.

NRC Branch Chief: Harold K. Chernoff.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: November 14, 2006.

Description of amendment request: The proposed amendment would revise Specification 3.3.5.1–1 of the Technical Specifications (TSs) to permit a one-time extension of the quarterly surveillance interval (i.e., from 92 days to 140 days) for three low pressure coolant injection (LPCI) loop select logic functions.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR) Part 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (NSHC), which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This amendment requests a one-time extension to the performance interval for a limited number of TS surveillance requirements. The performance of these surveillances, or the failure to perform, is not a precursor and does not affect the probability of an accident. Therefore, the delay in performance proposed in this amendment request for these surveillance requirements does not increase the probability of an accident previously evaluated.

A delay in performing these surveillances does not result in a system being unable to perform its required function. In the case of this one-time extension, the relatively short period of additional time period for the systems and components to be in service prior to the next performance of the surveillance will not affect the ability of those systems to operate as designed. Therefore, the systems required to mitigate accidents will remain capable of performing their required function. No new failure modes have been introduced because of this action and the consequences remain consistent with previously evaluated accidents. Therefore, the proposed delay in performance of the surveillance requirements in this amendment request does not involve a significant increase in the consequences of an accident.

Therefore, operation of the facility in accordance with the proposed license amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind or accident from any accident previously evaluated?

Response: No.

The proposed amendment does not involve a physical alteration of any system, structure, or component (SSC) or a change in the way any SSC is operated. The proposed amendment does not involve operation of any SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the one-time surveillance requirement deferrals being requested.

Thus, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment is a one-time extension of the performance interval of a limited number of TS surveillance requirements. Extending these surveillance requirements does not involve a modification of any TS Limiting Condition for Operation. Extending these surveillance requirements does not involve a change to any limit on accident consequences specified in the license or regulations. Extending these surveillance requirements does not involve a change to how accidents are mitigated or a significant increase in the consequences of an accident. Extending these surveillance requirements does not involve a change in a methodology used to evaluate consequences of an accident. Extending these surveillance requirements does not involve a change in any operating procedure or process.

The instrumentation and components involved in this request have exhibited reliable operation based on the results of their performance during past periodic ECCS [emergency core cooling system] functional testing.

Based on the limited additional period of time that the systems and components will be in service before the surveillances are next performed, as well as the operating experience that these surveillances are typically successful when performed, it is reasonable to conclude that the margins of safety associated with these surveillance requirements will not be affected by the requested extension.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The U.S. Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Branch Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: November 6, 2006.

Description of amendment request: The proposed amendment would add the realistic large break loss-of-coolant accident (RLBLOCA) methodology to the analytical methods referenced in Technical Specification (TS) 5.6.5.b.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (CFR) Section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed license amendment adds approved analytical methods used to determine the core operating limits per Technical Specification 5.6.5.b. Accidents previously evaluated will be unaffected because they will continue to be analyzed using applicable methodologies approved by the Nuclear Regulatory Commission to ensure all required safety limits are met. The proposed amendment does not affect the acceptance criteria for any Final Safety Analysis Report (FSAR) safety analysis analyzed accidents and anticipated operational occurrences. As such, the proposed amendment does not increase the probability or consequences of an accident. The proposed amendment does not involve operation of the required structures, systems or components (SSCs) in a manner or configuration different from those previously recognized or evaluated.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not involve a physical alteration of any SSC or a change in the way any SSC is operated. The proposed amendment does not involve operation of any required SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the changes being requested.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not, by itself, introduce a failure mechanism. The proposed amendment does not involve any physical changes to the plant or manner in which the plant is operated. The proposed changes do not affect the acceptance criteria for any FSAR safety analysis analyzed accidents or anticipated operational occurrences. All required safety limits would continue to be analyzed using methodologies approved by the Nuclear Regulatory Commission.

Therefore, the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Branch Chief: L. Raghavan.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: November 13, 2006.

Description of amendment request: The proposed amendment would relocate the requirements of Technical Specification (TS) 2.22, ''Toxic Gas Monitors,'' and TS Table 3–3, Item 29 to the Fort Calhoun Station, Unit No. 1, Updated Safety Analysis Report (USAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the [proposed] change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relocates requirements for toxic gas monitors that do not meet the criteria for inclusion in the TS set forth in 10 CFR 50.36(c)(2)(ii). The requirements for toxic gas monitors are being relocated from [the] TS to the USAR, which will be maintained pursuant to 10 CFR 50.59, thereby reducing the level of regulatory control. The level of regulatory control has no impact on the probability or consequences of an accident previously evaluated. Therefore, the change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the [proposed] change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change relocates requirements for toxic gas monitors that do not meet the criteria for inclusion in [the] TS set forth in 10 CFR 50.36(c)(2)(ii). The change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. The change will not impose different requirements, and adequate control of information will be maintained. This change will not alter assumptions made in the safety analysis and licensing basis. Therefore, the change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does th[e] [proposed] change involve a significant reduction in a margin of safety?

Response: No.

The proposed change relocates requirements for toxic gas monitors that do not meet the criteria for inclusion in [the] TS set forth in 10 CFR 50.36(c)(2)(ii). The change will not reduce a margin of safety since the location of a requirement has no impact on any safety analysis assumptions. In addition, the relocated requirements for toxic gas monitors remain the same as the existing TS. Since any future changes to these requirements or the surveillance procedures will be evaluated per the requirements of 10 CFR 50.59, there will be no reduction in a margin of safety. [Therefore, the TS change does not involve a significant reduction in the margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: David Terao.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of amendment request: May 31, 2006.

Description of amendment request: The proposed amendments would correct administrative errors in the SSES 1 and 2 Technical Specifications (TSs) by adding a logical connector in Condition B of Limiting Condition for Operation (LCO) 3.8.1 (SSES 1 TS only) and correct the routing of Interstate 80 (I–80) on Figure 4.1–2 in the SSES 1 and 2 TSs Section 4.0.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability [* * *] or consequences of an accident previously evaluated?

Response: No.

Change to Technical Specification 3.8.1

The proposed change is administrative in nature and does not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility. Therefore, this proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated.

Change to Technical Specification Figure 4.1–2

The proposed change is administrative in nature and does not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. It does not involve the addition or removal of any equipment or any design changes to the facility.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Change to Technical Specification 3.8.1

The proposed change is an administrative change and does not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released off-site, and there is no increase in individual or cumulative occupational exposure. Therefore, this proposed change does not create the possibility of an accident of a different kind than previously evaluated.

Change to Technical Specification Figure 4.1–2

The proposed change is an administrative change and will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released off-site, and there is no increase in individual or cumulative occupational exposure.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Change to Technical Specification 3.8.1

The proposed change revises Condition B in LCO 3.8.1 to be consistent with Technical Specification 1.2, ''Logical Connectors.'' This change is administrative in nature. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

Change to Technical Specification Figure 4.1–2

The proposed change is administrative in nature and does not affect any plant systems.

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Branch Chief: Richard J. Laufer.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of amendment request: September 7, 2006.

Description of amendment request: The proposed amendments would revise the SSES 1 and 2 Technical Specification (TSs) Section 5.5.6, ''Inservice Testing Program,'' and TS 5.5.12, ''Primary Containment Leakage Rate Testing Program,'' to be consistent with the requirements of Title 10 of the Code of Federal Regulations (10 CFR) Section 50.55a(f)(4) and 10 CFR 50.55a(g)(4), respectively. The proposed amendments would implement TS Task Force (TSTF) 343, Revision 1 and TSTF 479, Revision 0.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability [* * *] or consequences of an accident previously evaluated?

Response: No.

Change to Technical Specification 5.5.6

The proposed change revises the Inservice Testing Program for consistency with the requirements of 10 CFR 50.55a(f)(4) for pumps and valves which are classified as American Society of Mechanical Engineers (ASME) Code Class 1, Class 2 and Class 3.

The proposed change does not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. It does not involve the addition or removal of any equipment, or any design changes to the facility. Therefore, this proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated.

Change to Technical Specification 5.5.12

The proposed change revises the TS administrative controls programs for consistency with the requirements of 10 CFR [Part] 50, paragraph 55a (g)(4) for components classified as Code Class CC.

The proposed change affects the frequency of visual examinations that will be performed for the concrete surfaces of the containment for the purpose of the Primary Containment Leakage Rate Testing Program. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The frequency of visual examinations of the concrete surfaces of the containment and the mode of operation during which those examinations are performed has no relationship to or adverse impact on the probability of any of the initiating events assumed in the accident analyses. The proposed change would allow visual examinations that are performed pursuant to NRC approved ASME Section XI Code requirement (except where relief has been granted by the NRC) to meet the intent of visual examinations required by Regulatory Guide 1.163, without requiring additional visual examinations pursuant to the Regulatory Guide. The intent of early detection of deterioration will continue to be met by the more rigorous requirements of the Code required visual examinations. As such, the safety function of the containment as a fission product barrier is maintained.

The proposed change does not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. It does not involve the addition or removal of any equipment, or any design changes to the facility.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Change to Technical Specification 5.5.6

The proposed change revises the Inservice Testing Program for consistency with the requirements of 10 CFR 50.55a(f)(4) for pumps and valves which are classified as American Society of Mechanical Engineers (ASME) Code Class 1, Class 2 and Class 3.

The proposed change does not involve a modification to the physical configuration of the plant (*i.e.*, no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released off-site and there is no increase in individual or cumulative occupational exposure. Therefore, this proposed change does not

create the possibility of an accident of a different kind than previously evaluated.

Change to Technical Specification 5.5.12

The proposed change revises the TS administrative controls programs for consistency with the requirements of 10 CFR [Part] 50, paragraph 55a (g)(4) for components classified as Code Class CC.

The change affects the frequency of visual examinations that will be performed for the concrete surfaces containments. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The proposed change does not involve a modification to the physical configuration of the plant (*i.e.*, no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released off-site and there is no increase in individual or cumulative occupational exposure.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Change to Technical Specification 5.5.6

The proposed change revises the Inservice Testing Program for consistency with the requirements of 10 CFR 50.55a(f)(4) for pumps and valves which are classified as American Society of Mechanical Engineers (ASME) Code Class 1, Class 2 and Class 3. The safety function of the affected pumps and valves will be maintained. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

Change to Technical Specification 5.5.12

The proposed change revises the Improved Standard Technical Specification Administrative Controls program requirements for consistency with the requirements of 10 CFR [Part] 50, paragraph 55a (g)(4) for components classified as Code Class CC.

The change affects the frequency of visual examinations that will be performed for the concrete surfaces of containments. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The safety function of the containment as a fission product barrier will be maintained.

[Therefore, this proposed change does not involve a significant reduction in a margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Branch Chief: Richard J. Laufer.

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2 (SSES 2), Luzerne County, Pennsylvania

Date of amendment request: November 16, 2006.

Description of amendment request: The proposed amendment would revise the SSES 2 Technical Specification (TS) Section 2.1.1.2 to reflect the Unit 2 Cycle 14 (U2C14) Minimum Critical Power Ratio (MCPR) Safety Limits for two-loop and single-loop operation. Additionally, TS Section 5.6.5.b would be revised to reflect the NRC-approved methodology used in the MCPR Safety Limit Analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

2. Does the proposed change involve a significant increase in the probability [* * *] or consequences of an accident previously evaluated?

Response: No.

The proposed change to the two-loop and single-loop MCPR Safety Limits do not directly or indirectly affect any plant system, equipment, component, or change the processes used to operate the plant. Further, the proposed U2C14 MCPR Safety Limits were generated using NRC-approved methodology and meet the applicable acceptance criteria. Thus, this proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

Prior to the startup of U2C14, licensing analyses are performed (using NRC-approved methodology referenced in Technical Specification Section 5.6.5.b) to determine changes in the critical power ratio as a result of anticipated operational occurrences. These results are added to the MCPR Safety Limit values to generate the MCPR operating limits in the U2C14 COLR [Core Operating Limits Report]. These limits could be different from those specified for the previous Unit 2 COLR. The COLR operating limits thus assure that the MCPR Safety Limit will not be exceeded during normal operation or anticipated operational occurrences. Postulated accidents are also analyzed prior to the startup of U2C14 and the results shown to be within the NRC-approved criteria.

The changes to the references in Section 5.6.5.b were made to properly reflect the NRC-approved methodology used to generate the U2C14 core operating limits. The use of this approved methodology does not increase the probability [* * *] or consequences of an accident previously evaluated.

Therefore, the proposed amendment does not involve a significant increase in the probability [* * *] or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The changes to the two-loop and single-loop MCPR Safety Limits do not directly or indirectly affect any plant system, equipment, or component and therefore does not affect the failure modes of any of these items. Thus, the proposed change does not create the possibility of a previously unevaluated operator error or a new single failure.

The changes to the references in Section 5.6.5.b were made to properly reflect the NRC-approved methodology used to generate the U2C14 core operating limits. The use of this approved methodology does not create the possibility of a new or different kind of accident.

Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Since the proposed changes do not alter any plant system, equipment, component, or the processes used to operate the plant, the proposed change will not jeopardize or degrade the function or operation of any plant system or component governed by Technical Specifications. The proposed two-loop and single-loop MCPR Safety Limits do not involve a significant reduction in the margin of safety as currently defined in the Bases of the applicable Technical Specification sections because the MCPR Safety Limits calculated for U2C14 preserve the required margin of safety.

The changes to the references in Section 5.6.5.b were made to properly reflect the NRC-approved methodology used to generate the U2C14 core operating limits. This approved methodology is used to demonstrate that all applicable criteria are met, thus, demonstrating that there is no reduction in the margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Branch Chief: Richard J. Laufer.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 4, 2006.

Description of amendment request: The amendments would revise the Technical Specifications (TSs) to allow the movement of irradiated fuel inside containment to commence at 24 hours after shutdown or at the decay time calculated using the licensee's spent fuel pool integrated decay heat management program, whichever is later.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The proposed license amendment would allow fuel assemblies to be removed from the reactor core and be stored in the Spent Fuel Pool in less time after subcriticality (but more accurately calculated), than currently allowed by the TSs. Decreasing the decay time of the fuel affects the radionuclide make-up of the fuel to be offloaded as well as the amount of decay heat that is present from the fuel at the time of offload. The proposed changes do not involve a significant increase in the probability of occurrence of an accident previously evaluated. The accident previously evaluated that is associated with the proposed license amendment is the fuel handling accident. Allowing the fuel to be offloaded based on the IDHM [integrated decay heat management program] calculated time after subcriticality does not impact the manner in which the fuel is offloaded. The accident initiator is the dropping of the fuel assembly. Since earlier offload does not affect fuel handling, there is no increase in the probability of occurrence of a fuel handling accident. The time frame in which the fuel assemblies are moved has been evaluated against the 10 CFR 50.67 dose limits for members of the public, licensee personnel and control room. Additionally, the guidance provided in Reg. Guide 1.183 was used for the selective application of Alternative Source Term. All dose limits are met with the reduced core offload times; and significant margin is maintained, as the minimum decay time prior to movement of fuel for the FHA [fuel handling accident] analysis is 24 hours.

Therefore, the proposed license amendment does not increase the probability of occurrence or the consequences of accidents previously evaluated are not increased.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Response: No.

The proposed license amendment would allow core offload to occur in less time after subcriticality (but more accurately calculated), which affects the radionuclide make-up of the fuel to be offloaded as well as the amount of decay heat that is present from the fuel at the time of offload. The radionuclide makeup of the fuel assemblies and the amount of decay heat produced by the fuel assemblies do not currently initiate any accident. A change in the radionuclide makeup of the fuel at the time of core offload or an increase in the decay heat produced by the fuel being offloaded will not cause the initiation of any accident. The accident previously evaluated that is associated with fuel movement is the fuel handling accident. There is no change to the manner in which fuel is being handled or in the equipment used to offload or store the fuel. The effects of the additional decay heat load have been analyzed. The analysis demonstrated that the existing Spent Fuel Pool cooling system and associated systems under worst-case circumstances would maintain the integrity of the Spent Fuel Pool. The proposed method of offload does not create a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety pertinent to the proposed changes is the dose consequences resulting from a fuel handling accident. The shorter decay time prior to fuel movement has been evaluated against 10 CFR part 50.67 and all limits continue to be met. All dose limits are met with the reduced core offload times; and significant margin is maintained, as the minimum decay time prior to movement of fuel for the FHA analysis is 24 hours. Decay heatup calculations performed prior to each refueling outage as part of the IDHM program ensure that planned spent fuel transfer to the SFP [spent fuel pool] will not result in maximum SFP temperature exceeding the design basis limit of 149 °F (with both heat exchangers available) or 180 °F (with one heat exchanger alternating between the two pools). As stated above, the changes in radionuclide makeup and additional heat load do not impact any safety settings and do not cause any safety limit to not be met. In addition, the integrity of the Spent Fuel Pool is maintained.

The time frame in which the fuel assemblies are moved has been evaluated against the 10 CFR 50.67 dose limits for members of the public, licensee personnel and control room. Additionally, the guidance provided in Reg. Guide 1.183 was used. Calculations performed conclude that expected dose limits following a Fuel handling Accident are met with the proposed decay time prior to commencing fuel movement.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: November 7, 2006.

Description of amendment requests: The amendments request to revise Main Steam Safety Valve Requirements and Actions (Technical Specification 3.7.1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Based on a detailed plant transient analysis, the Limiting Conditions for Operation (LCOs) and Action statements will continue to restrict operation to within the regions that provide acceptable results. The safety analysis was performed in accordance with the Nuclear Regulatory Commission (NRC) approved San Onofre Units 2 and 3 reload analysis methodology, and considered the concerns identified in NRC Information Notice 94–60.

The increase in Completion Time for Required Action 3.7.1.A.2 from 12 hours to 36 hours is consistent with NUREG–1432 Revision 3, ''Standard Technical Specifications for Combustion Engineering Plants.''

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not add any new equipment, modify any interfaces with any existing equipment, alter the equipment's function, or change the method of operating the equipment. The proposed change does not alter plant conditions in a manner that could affect other plant components. The proposed change does not

cause any existing equipment to become an accident initiator.

The increase in Completion Time for Required Action 3.7.1.A.2 from 12 hours to 36 hours is consistent with NUREG–1432 Revision 3, ''Standard Technical Specifications for Combustion Engineering Plants.''

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The Limiting Conditions for Operation (LCOs) and Action statements will continue to restrict operation such that the American Society of Mechanical Engineers (ASME) code requirements continue to be met. The analyses were performed using the NRC approved San Onofre Units 2 and 3 reload analysis methodology. Therefore, the proposed change will have no impact on the margins as defined in the Technical Specification bases.

The increase in Completion Time for Required Action 3.7.1.A.2 from 12 hours to 36 hours is consistent with NUREG–1432 Revision 3, ''Standard Technical Specifications for Combustion Engineering Plants.''

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: David Terao.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: November 15, 2006 (TS–459).

Description of amendment request: The proposed amendment requests revision to the Fire Protection License Condition for Units 1, 2, and 3, condition number (13), (14), and (7), respectively, to accommodate operation of Units 1, 2, and 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated.

No. The proposed change revises the license condition to reflect a combined Units 1, 2 and 3 Fire Protection Report. Compliance with the applicable Appendix R requirements is ensured through implementation of the Fire Protection Program and the Appendix R Safe Shutdown Program including Regulatory Issue Summary 2006–10, ''Regulatory Expectations with Appendix R Paragraph III.G.2 Post-Fire Manual Actions.'' The change does not affect any design bases accident or the ability of any safe shutdown equipment to perform its function. Also, although modifications were required to bring BFN in compliance with 10 CFR 50 Appendix R, there are no physical modifications required to implement this license amendment.

Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

3. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change revises the license condition to reflect a combined Units 1, 2 and 3 Fire Protection Report. Compliance with the applicable Appendix R requirements is ensured through implementation of the Fire Protection Program and Appendix R Safe Shutdown Program including Regulatory Issue Summary 2006–10, ''Regulatory Expectations with Appendix R Paragraph III.G.2 Post-Fire Manual Actions.'' This change does not affect any design basis accident or the ability of any safe shutdown equipment to perform its function. Also, there are no physical modifications required to implement this license amendment. Therefore, this proposed change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

4. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change revises the license condition to reflect a combined Units 1, 2 and 3 Fire Protection Report. Compliance with the applicable Appendix R requirements is ensured through the implementation of the Fire Protection Program and Appendix R Safe Shutdown Program (Units 1, 2, and 3 Fire Protection Report) including Regulatory Issue Summary 2006–10, ''Regulatory Expectations with Appendix R Paragraph III.G.2 Post-Fire Manual Actions.'' The proposed change does not affect any design basis accident and does not reduce or adversely affect the capability to achieve and maintain safe shutdown in the event of a fire. Furthermore, no reductions to the requirements for equipment operability, surveillance requirements or setpoints are being made which could result in reduction in the margin of safety. Therefore, this proposed change will not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: L. Raghavan.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents

located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: December 23, 2005, as supplemented by letters dated May 4 and August 3, 2006.

Brief description of amendments: These amendments revise Technical Specification (TS) 3.8.1, ''AC Sources—Operating,'' to extend the allowed out of service time for one inoperable emergency diesel generator from 72 hours to 10 days. TS 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' is revised by the addition of a clarifying note to Condition F of this specification. Additionally, TS 3.4.9, ''Pressurizer,'' is revised to delete the words contained in the limiting condition for operation which require that the two groups of pressurizer heaters are capable of being powered from an emergency power supply.

Date of issuance: December 5, 2006.

Effective date: As of the date of issuance to be implemented within 90 days from the date of issuance.

Amendment Nos.: Unit 1—164, Unit 2—164, Unit 3—164

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Operating Licenses for all three units.

Date of initial notice in **Federal Register:** January 31, 2006 (71 FR 5080). The May 4 and August 3, 2006, supplemental letters provided additional information that clarified the application as originally noticed, and did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 5, 2006.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: September 30, 2004, as supplemented by letters dated March 16, September 29, 2005, and March 21, August 7, August 24, and September 11, 2006.

Brief description of amendment: The license amendment request revised the technical specifications and the final safety analysis report to amend the Columbia Generating Station's licensing and design bases to reflect the application of the alternative source term methodology with an exception. That exception is the Technical Information Document (TID)–14844, ''Calculation of Distance Factors for Power and Test Reactor Sites,'' which will continue to be used as the radiation dose basis for equipment qualification, and radiation zone maps/shielding calculations.

Date of issuance: November 27, 2006.

Effective date: As of its date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment No.: 199.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications and Final Safety Analysis Report.

Date of initial notice in Federal Register: October 26, 2004 (69 FR 62472). The March16, September 29, 2005, and March 21, August 7, August 24, and September 11, 2006, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 27, 2006.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendment: October 3, 2005.

Brief description of amendment: The amendment revised the Technical Specification (TS) Section 1.1, ''Definitions,'' description of the Pressure and Temperature Limits Report (PTLR), by deleting reference to specifications containing limits in the PTLR; (2) revised administrative controls TS 5.6.6, ''Reactor Coolant System (RCS) Pressure and Temperature Limits Report (PTLR),'' by requiring the NRC approval documents to be identified by date and topical reports to be identified by number and title; and (3) added Westinghouse Electric Company, LLC report, WCAP–16143, ''Reactor Vessel Closure Head/Vessel Flange Requirements Evaluation for Byron/Braidwood Units 1 and 2,'' to the list of analytical methods provided in TS 5.6.6. The amendment also revises the title of the NRC letter dated August 8, 2001 to clarify the regulation being referenced.

Date of issuance: November 27, 2006.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 148, 148, 142, 142.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications and License.

Date of initial notice in Federal Register: March 14, 2006 (71 FR 13175).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 27, 2006.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendment: June 2, 2006, as supplemented by letters dated August 18 and October 5, 2006.

Brief description of amendment: The amendments revised Technical Specification Surveillance Requirement 3.1.7.10, ''Standby Liquid Control System Sodium Pentaborate Isotopic Enrichment'' such that the required enrichment increases from ≥ 30.0 atom percent boron-10 to ≥ 45.0 atom percent boron-10.

Date of issuance: November 16, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 222/214.

Renewed Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specification Surveillance Requirement and Licenses.

Date of initial notice in Federal Register: (71 FR 46931; August 15, 2006).

The August 18 and October 5, 2006, supplements provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on August 15, 2006 (71 FR 46931). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 16, 2006.

No significant hazards consideration comments received: No.

FPL Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: November 14, 2005, as supplemented by letter dated September 1, 2006.

Brief description of amendment: The amendment revises Technical Specification (TS) Table 3.3.6.1–1, ''Primary Containment Isolation Instrumentation,'' to eliminate the Main Steamline Radiation Monitor trip function.

Date of issuance: November 15, 2006.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 261.

Facility Operating License No. DPR–49: The amendment revises the TSs.

Date of initial notice in Federal Register: (71 FR 43533) August 1, 2006.

The supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination, as published in the **Federal Register** on August 1, 2006 (71 FR 43533).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 15, 2006.

No significant hazards consideration comments received: No.

FPL Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: December 22, 2005.

Brief description of amendment: The amendment revises the Duane Arnold Energy Center licensing basis, as described in the Updated Final Safety Analysis Report (UFSAR), to replace the current plant-specific reactor pressure vessel material surveillance program with the Boiling Water Reactor Vessel and Internals Project Integrated Surveillance Program as the basis for demonstrating compliance with the requirements of Appendix H to Part 50 of Title 10 of the Code of Federal Regulations, ''Reactor Vessel Material Surveillance Program Requirements.''

Date of issuance: November 27, 2006.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 262.

Facility Operating License No. DPR–49: The amendment authorizes changes to the UFSAR.

Date of initial notice in Federal Register: (71 FR 43533) August 1, 2006.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 27, 2006.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: November 9, 2005, supplemented by letter dated May 15, 2006.

Brief description of amendments: The amendments modify the Technical Specifications (TS) for Prairie Island Nuclear Generating Plant Units 1 and 2, to clarify which TS Surveillance Requirements shall be met for the TS systems which include more components (installed spare components) than are required to satisfy the TS Limiting Conditions for Operation. These amendments revise TS 3.7.8, ''Cooling Water (CL) System,'' TS 3.8.1, ''AC Sources-Operating,'' and TS 3.9.3, ''Nuclear Instrumentation.'' The amendments also make minor corrections for some of these TSs.

Date of issuance: November 14, 2006.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 175 and 165.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 14, 2006 (71 FR 7809).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 14, 2006. The supplemental information provided in letter May 15, 2006, did not impact the conclusions of the Determination of No Significant Hazards Consideration and Environmental Assessment presented in the November 9, 2005 submittal.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket No. 50–275, Diablo Canyon Nuclear Power Plant, Unit No. 1, San Luis Obispo County, California

Date of application for amendment: December 16, 2005, as supplemented by a letter dated September 27, 2006.

Brief description of amendment: The amendment revised Technical Specification (TS) 5.6.5, ''Core Operating Limits Report (COLR).'' Specifically, the change added Westinghouse Topical Report WCAP–12945–P–A, Addendum 1–A, Revision 0, ''Method for Satisfying 10 CFR 50.46 Reanalysis Requirements for Best Estimate LOCA [Loss-of-Coolant Accident] Evaluation Models,'' dated December 2004, to the list of approved analytical methods in TS 5.6.5.b.

Date of issuance: November 21, 2006.

Effective date: As of its date of issuance, and shall be implemented within 90 days of issuance.

Amendment No.: 191.

Facility Operating License No. DPR–80: The amendment revised the Technical Specifications and Facility Operating License.

Date of initial notice in Federal Register: February 14, 2006 (71 FR 7810).

The September 27, 2006, supplemental letter provided additional information that clarified the application, and did not expand the scope of the application as originally noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 2006.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: December 6, 2005, as supplemented by letters dated March 14 and November 30, 2006.

Brief description of amendments: The amendment deleted Technical Specification (TS) Limiting Condition for Operation (LCO) 3.3.10, ''Fuel Handling Isolation Signal (FHIS),'' and TS LCO 3.7.14, ''Fuel Handling Building Post-Accident Cleanup Filter System,'' and their associated surveillance requirements. The amendment also deleted the Fuel Handling Building Post-Accident Cleanup Filter Systems from the Ventilation Filter Testing Program in administrative TS 5.5.2.12.

Date of issuance: December 4, 2006.

Effective date: As of its date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 2—208; Unit 3—200.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Operating Licenses and Technical Specifications.

Date of initial notice in Federal Register: January 3, 2006 (71 FR 155). The March 14 and November 30, 2006, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed,

and did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 2006.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259 Browns Ferry Nuclear Plant, Unit 1, Limestone County, Alabama

Date of application for amendment: October 12, 2004, as supplemented by letters dated September 7 and November 1, 2006.

Brief description of amendment: To remove License Condition 2.C(4).

Date of issuance: November 28, 2006.

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment No.: 265

Renewed Facility Operating License Nos. DPR–33: Amendment revised the Renewed Operating License.

Date of initial notice in Federal Register: August 15, 2006 (71 FR 46937). The supplements dated September 7 and November 1, 2006, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 2006.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 25, 2006, as supplemented by letter dated September 1, 2006.

Brief description of amendments: The requested changes provide a revision to the design and licensing basis for the containment sump debris transport analysis as described in the Sequoyah Nuclear Plant (SQN) Updated Final Safety Analysis Report (UFSAR). The current transport analysis for SQN is a two-dimensional physical transport model, and Tennessee Valley Authority (TVA) is requesting to update the analysis to a three-dimensional computational fluid dynamics transport model. The results of the reanalysis will be used to size the flow area of the advanced design containment sump strainers which will replace the original sump intake structure.

Date of issuance: November 7, 2006.

Effective date: Implementation of the amendment is the incorporation into the next UFSAR update made in accordance with 10 CFR 50.71(e), of the changes to the description of the facility as described in TVA's application dated May 25, 2006, as supplemented by letter dated September 1, 2006, and evaluated in the staff's Safety Evaluation attached to this amendment.

Amendment Nos. 313 and 302.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the Updated Final Safety Analysis Report.

Date of initial notice in Federal Register: June 20, 2006 (71 FR 35460). The supplemental letter dated September 1, 2006, provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 7, 2006.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 20, 2006, as supplemented by letter dated November 20, 2006.

Brief description of amendment: The amendment revised (1) the definition of the Pressure and Temperature Limits Report (PTLR) in Technical Specification (TS) 1.1, ''Definitions,'' and (2) TS 5.6.6, ''Reactor Coolant System (RCS) PRESSURE AND TEMPERATURE LIMITS REPORT (PTLR).''

Date of issuance: December 5, 2006.

Effective date: As of its date of issuance, and shall be implemented within 90 days of the date of issuance.

Amendment No.: 177.

Facility Operating License No. NPF–30: The amendment revised the Operating License and Technical Specifications.

Date of initial notice in Federal Register: October 6, 2006 (71 FR 59136).

The supplemental letter dated November 20, 2006, provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 5, 2006.

No significant hazards consideration comments received: No.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket No. 50–259, Browns Ferry Nuclear Plant, Unit 1, Limestone County, Alabama

Date of application for amendments: November 9, 2006 (TS–458).

Description of amendments request: The proposed amendment would delete the Technical Specification Surveillance Requirement to verify the position of a low pressure coolant injection crosstie valve.

Date of publication of individual notice in the Federal Register: November 20, 2006 (71 FR 67166).

Expiration date of individual notice: December 20, 2006 (Public comments) and January 19, 2007 (Hearing requests).

Dated at Rockville, Maryland, this 11th day of December 2006.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–21346 Filed 12–18–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 206(3)–2; SEC File No. 270–216; OMB Control No. 3235–0243.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 206(3)–2, (17 CFR 275.206(3)–2) which is entitled ''Agency Cross Transactions for Advisory Clients,'' permits investment advisers to comply with section 206(3) of the Investment Advisers Act of 1940 (the ''Act'') (15 U.S.C. 80b–6(3)) by obtaining a client's blanket consent to enter into agency cross transactions (i.e., a transaction in which an adviser acts as a broker to both the advisory client and the opposite party to the transaction). Rule 206(3)–2 applies to all registered investment advisers. In relying on the rule, investment advisers must provide certain disclosures to their clients. Advisory clients can use the disclosures to monitor agency cross transactions that affect their advisory account. The Commission also uses the information required by Rule 206(3)–2 in connection with its investment adviser inspection program to ensure that advisers are in compliance with the rule. Without the information collected under the rule, advisory clients would not have information necessary for monitoring their adviser's handling of their accounts and the Commission would be less efficient and effective in its inspection program.

The information requirements of the rule consist of the following: (1) Prior to obtaining the client's consent, appropriate disclosure must be made to the client as to the practice of, and the conflicts of interest involved in, agency cross transactions; (2) at or before the completion of any such transaction, the client must be furnished with a written confirmation containing specified information and offering to furnish upon request certain additional information; and (3) at least annually, the client must be furnished with a written statement or summary as to the total number of transactions during the period covered by the consent and the total amount of commissions received by the adviser or its affiliated broker-dealer attributable to such transactions.

The Commission estimates that approximately 693 respondents use the rule annually, necessitating about 32 responses per respondent each year, for a total of 22,176 responses. Each response requires an estimated 0.5 hours, for a total of 11,088 hours. The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study of the cost of Commission rules and forms.

This collection of information is found at (17 CFR 275.206(3)–2) and is necessary in order for the investment adviser to obtain the benefits of Rule 206(3)–2. The collection of information requirements under the rule is mandatory. Information subject to the disclosure requirements of Rule 206(3)–2 does not require submission to the Commission; and, accordingly, the disclosure pursuant to the rule is not kept confidential.

Commission-registered investment advisers are required to maintain and preserve certain information required under Rule 206(3)–2 for five (5) years. The long-term retention of these records is necessary for the Commission's inspection program to ascertain compliance with the Advisers Act.

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.

General comments regarding the above information should be directed to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA, 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 11, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–21587 Filed 12–18–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 30e–2; SEC File No. 270–437; OMB Control No. 3235–0494.

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Section 30(e) of the Investment Company Act of 1940 (15 U.S.C. 80a–29(e)) (the ''Investment Company Act'' or ''Act'') and Rule 30e–2 [1] thereunder (17 CFR 270.30e–2) require registered unit investment trusts (''UITs'') that invest substantially all of their assets in securities of a management investment company [2] (''fund'') to send to shareholders at least semi-annually a report containing certain financial statements and other information. Specifically, Rule 30e–2 requires that the report contain the financial statements and other information that Rule 30e–1 under the Act (17 CFR 270.30e–1) requires to be included in the report of the underlying fund for the same fiscal period. Rule 30e–1 requires that the underlying fund's report contain, among other things, the financial statements and other information that is required to be included in such report by the fund's registration form.

The purpose of this requirement is to apprise current shareholders of the operational and financial condition of the UIT. Absent the requirement to disclose all material information in reports, investors would be unable to obtain accurate information upon which to base investment decisions and consumer confidence in the securities industry might be adversely affected. Requiring the submission of these reports to the Commission permits us to verify compliance with securities law requirements. In addition, Rule 30e–2 permits, under certain conditions, delivery of a single shareholder report to investors who share an address (''householding''). Specifically, Rule 30e–2 permits householding of annual and semi-annual reports by UITs to satisfy the delivery requirements of Rule 30e–2 if, in addition to the other conditions set forth in the rule, the UIT

[1] Rule 30e–2 was originally adopted as Rule 30d–2, but was redesignated as Rule 30e–2 effective February 15, 2001. See Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) (66 FR 3734 (Jan. 16, 2001)).

[2] Management investment companies are defined in Section 4(3) of the Investment Company Act as any investment company other than a face-amount certificate company or a unit investment trust, as those terms are defined in Sections 4(1) and 4(2) of the Investment Company Act. See 15 U.S.C. 80a–4.

has obtained from each applicable investor written or implied consent to the householding of shareholder reports at such address. The rule requires UITs that wish to household shareholder reports with implied consent to send a notice to each applicable investor stating that the investors in the household will receive one report in the future unless the investors provide contrary instructions. In addition, at least once a year, UITs relying on the rule for householding must explain to investors who have provided written or implied consent how they can revoke their consent. Preparing and sending the initial notice and the annual explanation of the right to revoke consent are collections of information under the Paperwork Reduction Act. The purpose of the notice and annual explanation requirements associated with the householding provisions of the rule is to ensure that investors who wish to receive individual copies of shareholder reports are able to do so.

The Commission estimates that as of April 2006, approximately 737 UITs were subject to the provisions of Rule 30e–2. The Commission further estimates that the annual burden associated with Rule 30e–2 is 121 hours for each UIT, including an estimated 20 hours associated with the notice requirement for householding and an estimated 1 hour associated with the explanation of the right to revoke consent to householding, for a total of 89,177 burden hours.

In addition to the burden hours, the Commission estimates that the cost of contracting for outside services associated with complying with Rule 30e–2 is $24,640 per respondent (80 hours times $308 per hour for independent auditor services), for a total of $18,159,680 ($24,640 per respondent times 737 respondents).

These estimates are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information under Rule 30e–2 is mandatory. The information provided under Rule 30e–2 is not kept confidential. 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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA, 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 11, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–21588 Filed 12–18–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submissions for OMB Review; Comment Request

Upon written request; copies available from: Securities and Exchange Commission Office of Filings and Information Services, Washington, DC 20549.

Extensions:

Rule 12d1–3; OMB Control No. 3235–0109; SEC File No. 270–116.

Schedule 13E–4F; OMB Control No. 3235–0375; SEC File No. 270–340.

Form F–X; OMB Control No. 3235–0379; SEC File No. 270–336.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget these requests for extension of the previously approved collections of information discussed below.

Rule 12d1–3 (17 CFR 240.12d1–3) requires a certification that a security has been approved by an exchange for listing and registration pursuant to Section 12(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(d)) to be filed with the Commission. The information required under Rule 12d1–3 must be filed with the Commission and is publicly available. We estimate that it takes approximately one-half hour to provide the information required under Rule 12d1–3 and that the information is filed by 688 respondents annually for a total annual reporting burden of 344 burden hours (.5 hours per response × 688 responses).

Schedule 13E–4F (17 CFR 240.13e–102) may be used by any foreign private issuer if: (1) The issuer is incorporated or organized under the laws of Canada; (2) the issuer is making a cash tender or exchange offer for the issuer's own securities; and (3) less than 40 percent of the class of such issuer's securities outstanding that is the subject of the tender offer is held by U.S. holders. The information collected must be filed with the Commission and is publicly available. We estimate that it takes 2 hours per response to prepare Schedule 13E–4F and that the information is filed by 3 respondents annually for a total annual reporting burden of 6 hours (2 hours per response × 3 responses).

Form F–X (17 CFR 239. 42) is used to appoint an agent for service of process by Canadian issuers registering securities on Form F–7, F–8, F–9 or F–10 or filing periodic reports on Form 40–F under the Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The information collected must be filed with the Commission and is publicly available. We estimate that it takes 2 hours per response to prepare Form F–X and that the information is filed by 129 respondents for a total annual reporting burden of 258 hours (2 hours per response × 129 responses).

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.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 11, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–21589 Filed 12–18–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission Office of Filings and Information Services, Washington, DC 20549

Extension: Form N–6; SEC File No. 270–446; OMB Control No. 3235–0503.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Form N–6 (17 CFR 239.17c and 274.11d) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) registration statement of separate accounts organized as unit investment trusts that offer variable life insurance policies.'' Form N–6 is the form used by insurance company separate accounts organized as unit investment trusts that offer variable life insurance contracts to register as investment companies under the Investment Company Act of 1940 and/or to register their securities under the Securities Act of 1933. The primary purpose of the registration process is to provide disclosure of financial and other information to investors and potential investors for the purpose of evaluating an investment in a security. Form N–6 also permits separate accounts organized as unit investment trusts that offer variable life insurance contracts to provide investors with a prospectus containing information required in a registration statement prior to the sale or at the time of confirmation of delivery of securities. The form also may be used by the Commission in its regulatory review, inspection, and policy-making roles.

The Commission estimates that there are approximately 241 separate accounts registered as unit investment trusts and offering variable life insurance policies that file registration statements on Form N–6. The Commission estimates that there are 32 initial registration statements on Form N–6 filed annually. The Commission estimates that approximately 641 registration statements (609 post-effective amendments plus 32 initial registration statements) are filed on Form N–6 annually. The Commission estimates that the hour burden for preparing and filing a post-effective amendment on Form N–6 is 67.5 hours. The total annual hour burden for preparing and filing post-effective amendments is 41,107.5 hours (609 post-effective amendments annually times 67.5 hours per amendment). The estimated hour burden for preparing and filing an initial registration statement on Form N–6 is 770.25 hours. The estimated annual hour burden for preparing and filing initial registration statements is 24,648 hours (32 initial registration statements annually times 770.25 hours per registration statement). The frequency of response is annual. The total annual hour burden for Form N–6, therefore, is estimated to be 65,755.5 hours (41,107.5 hours for post-effective amendments plus 24,648 hours for initial registration statements).

The information collection requirements imposed by Form N–6 are mandatory. Responses to the collection of information will not be kept confidential. 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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 11, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–21594 Filed 12–18–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form N–4; SEC File No. 270–282; OMB Control No. 3235–0318.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The collection of information is entitled: ''Form N–4 (17 CFR 239.17b and 274.11c) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) registration statement of separate accounts organized as unit investment trusts.'' Form N–4 is the form used by insurance company separate accounts organized as unit investment trusts that offer variable annuity contracts to register as investment companies under the Investment Company Act of 1940 and/or to register their securities under the Securities Act of 1933 (''Securities Act''). The primary purpose of the registration process is to provide disclosure of financial and other information to investors and potential investors for the purpose of evaluating an investment in a security. Form N–4 also permits separate accounts organized as unit investment trusts that offer variable annuity contracts to provide investors with a prospectus containing the information required in a registration statement prior to the sale or at the time of confirmation or delivery of the securities. The estimated annual number of respondents filing on Form N–4 is 48 for those filing initial registration statements and 1,894 for those filing post-effective amendments. The proposed frequency of response is annual. The estimate of the total annual reporting burden of the collection of information is approximately 278.5 hours per initial filing and 197.25 hours for a post-effective amendment, for a total of 386,959.5 hours ((48 initial registration statements × 278.5 hours) + (1,894 post-effective amendments × 197.25 hour)). Providing the information required by Form N–4 is mandatory. Responses will not be kept confidential. Estimates of the burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

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.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312, or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must

be submitted to OMB within 30 days of this notice.

Dated: December 11, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–21595 Filed 12–18–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549–0004.

Extension: Form 1–E, Regulation E; SEC File No. 270–221; OMB Control No. 3235–0232.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit the existing collection of information of the Office of Management and Budget (''OMB'') for extension and approval.

Form 1–E (17 CFR 239.200) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act'') is the form that a small business investment company (''SBIC'') or business development company (''BDC'') uses to notify the Commission that it is claiming an exemption under Regulation E from registering its securities under the Securities Act. Rule 605 of Regulation E (17 CFR 230.605) under the Securities Act requires an SBIC or BDC claiming such an exemption to file an offering circular with the Commission that must also be provided to persons to whom an offer is made. Form 1–E requires an issuer to provide the names and addresses of the issuer, its affiliates, directors, officers, and counsel; a description of events which would make the exemption unavailable; the jurisdiction in which the issuer intends to offer its securities; information about unregistered securities issued or sold by the issuer within one year before filing the notification on Form 1–E; information as to whether the issuer is presently offering or contemplating offering any other securities; and exhibits, including copies of the rule 605 offering circular and any underwriting contracts.

The Commission uses the information provided in the notification on Form 1–E and the offering circular to determine whether an offering qualifies for the exemption under Regulation E. It is estimated that approximately ten issuers file notifications, together with attached offering circulars, on Form 1–E with the Commission annually. The Commission estimates that the total burden hours for preparing these notifications would be 1,000 hours in the aggregate. Estimates of the burden hours are made solely for the purposes of the PRA, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia, 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: December 11, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–21596 Filed 12–18–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission Office of Filings and Information Services, Washington, DC 20549.

Extension: Rules 8b–1 to 8b–33; SEC File No. 270–135; OMB Control No. 3235–0176

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rules 8b–1 to 8b–33 (17 CFR 270.8b–1 to 8b–33) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Act'') are the procedural rules an investment company must follow when preparing and filing a registration statement. These rules were adopted to standardize the mechanics of registration under the Act and to provide more specific guidance for persons registering under the Act than the information contained in the statute. For the most part, these procedural rules do not require the disclosure of information. Two of the rules, however, require limited disclosure of information.[1] The information required by the rules is necessary to ensure that investors have clear and complete information upon which to base an investment decision. The Commission uses the information that investment companies provide on registration statements in its regulatory, disclosure review, inspection and policy-making roles. The respondents to the collection of information are investment companies filing registration statements under the Act.

The Commission does not estimate separately the total annual reporting and recordkeeping burden associated with rules 8b–1 to 8b–33 because the burden associated with these rules are included in the burden estimates the Commission submits for the investment company registration statement forms (*e.g.*, Form N–1A, Form N–2, Form N–3, and Form N–4). For example, a mutual fund that prepares a registration statement on Form N–1A must comply with the rules under section 8(b), including rules on riders, amendments, the form of the registration statement, and the number of copies to be submitted. Because the fund only incurs a burden from the section 8(b) rules when preparing a registration statement, it would be impractical to measure the compliance burden of these rules separately. The Commission believes that including the burden of the section 8(b) rules with the burden estimates for the investment company registration statement forms provides a more accurate and complete estimate of the total burdens associated with the registration process.

[1] Rule 8b–3 (17 CFR 270.8b–3) provides that whenever a registration form requires the title of securities to be stated, the registrant must indicate the type and general character of the securities to be issued. Rule 8b–22 (17 CFR 270.8b–22) provides that if the existence of control is open to reasonable doubt, the registrant may disclaim the existence of control, but it must state the material facts pertinent to the possible existence of control.

Investment companies seeking to register under the Act are required to provide the information specified in rules 8b–1 to 8b–33 if applicable. Responses will not be kept confidential.

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.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 11, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–21643 Filed 12–18–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54916; File No. SR–NYSE–2006–70]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to iShares® Lehman Bond Funds

December 11, 2006.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 24, 2006 the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange submitted Amendment No. 1 to the proposed rule change on November 6, 2006.[4] The Exchange submitted Amendment No. 1 to the proposed rule change on December 6, 2006.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares (''Shares'' or ''iShares'') of the following eight series of the iShares Trust (collectively, the ''Funds''): (1) iShares® Lehman Short Treasury Bond Fund; (2) iShares Lehman 3–7 Year Treasury Bond Fund; (3) iShares Lehman 10–20 Year Treasury Bond Fund; (4) iShares Lehman 1–3 Year Credit Bond Fund; (5) iShares Lehman Intermediate Credit Bond Fund; (6) iShares Lehman Credit Bond Fund; (7) iShares Lehman Intermediate Government/Credit Bond Fund; and (8) iShares Lehman Government/Credit Bond Fund.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted listing standards applicable to Investment Company Units (''ICUs'') and trading standards pursuant to which the Exchange may either list and trade ICUs or trade such ICUs on the Exchange on an unlisted trading privileges (''UTP'') basis.[6]

The Exchange now proposes to list and trade the following series of the iShares® Trust (the ''Trust'') [7] under Section 703.16 of the NYSE Listed Company Manual (the ''Manual'') and the Exchange's Rules 1100 *et seq.:* (1) iShares [8] Lehman Short Treasury Bond Fund; (2) iShares Lehman 3–7 Year Treasury Bond Fund; (3) iShares Lehman 10–20 Year Treasury Bond Fund; (4) iShares Lehman 1–3 Year Credit Bond Fund; (5) iShares Lehman Intermediate Credit Bond Fund; (6) iShares Lehman Credit Bond Fund; (7) iShares Lehman Intermediate Government/Credit Bond Fund; and (8) iShares Lehman Government/Credit Bond Fund.

The Funds will be based on the following indexes, respectively: (1) Lehman Brothers Short U.S. Treasury Index; (2) Lehman Brothers 3–7 Year U.S. Treasury Index; (3) Lehman Brothers 10–20 Year U.S. Treasury Index; (4) Lehman Brothers 1–3 Year U.S. Credit Index; (5) Lehman Brothers Intermediate U.S. Credit Index; (6) Lehman Brothers U.S. Credit Index; (7)

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, which supplemented the proposed rule change as filed, the Exchange, among other things, represented that less than 1% of the market value of the underlying indices consisted of Rule 144A securities; addressed the firewall procedures used by Lehman Brothers Inc.; explained why an independent calculation agent is not required for the covered products; provided the top-ten component weightings for each index; and clarified the applicability of trade halts.

[5] In Amendment No. 2, which supplemented the proposed rule change as filed, the Exchange added disclosure to the purpose section of the filing and Exhibit 1 thereto (a) to note that the Funds (defined below) must comply with the federal securities laws, including that the securities accepted for deposit and those used to satisfy redemption requests are sold in transactions that would be exempt from the Securities Act of 1933 (''Securities Act'') and in compliance with the conditions of Rule 144A thereunder; and (b) to clarify how market capitalization is calculated for the Underlying Index (defined below) of each Fund.

[6] In 1996, the Commission approved Section 703.16 of the NYSE Manual, which sets forth general the rules related to the listing of ICUs. *See* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996) (SR–NYSE–95–23). In 2000, the Commission also approved the Exchange's generic listing standards pursuant to Rule 19b–4(e) of the Act for listing and trading, or the trading pursuant to UTP, of ICUs under Section 703.16 of the Manual and NYSE Rule 1100. *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (SR–NYSE–00–46). Such standards, however, did not contemplate ICUs that are based on indexes containing fixed income securities, and thus the Exchange has filed this proposal to accommodate the products that are the subject of this proposal.

[7] The Trust is registered under the Investment Company Act of 1940 (the ''Investment Company Act''). 15 U.S.C. 80a. On July 19, 2006, the Trust filed with the Commission a Registration Statement for the Funds on Form N–1A under the Securities Act, 15 U.S.C. 77a, and under the Investment Company Act relating to the Funds (File Nos. 333–92935 and 811–09729) (the ''Registration Statement'').

The Commission has issued orders granting relief requested by the Trust in its Applications for Orders under Sections 6(c) and 17(b) of the Investment Company Act for the purpose of exempting the Funds from various provisions of the Investment Company Act. *See In the Matter of Barclays Global Fund Advisors, et al.*, Investment Company Act Release No. 25622 (June 22, 2002); *In the Matter of Barclays Global Fund Advisors, et al.*, Investment Company Act Release No. 26175 (September 8, 2003); and *In the Matter of Barclays Global Fund Advisors, et al.*, Investment Company Act Release No. 27417 (June 13, 2006).

[8] iShares is a registered trademark of Barclays Global Investors, N.A.

Lehman Brothers Intermediate U.S. Government/Credit Index; and (8) Lehman Brothers U.S. Government/Credit Index. The indexes are referred to herein collectively as ''Indexes'' or ''Underlying Indexes.''

Operation of the Funds.[9]

Each Fund is an ''index fund'' that seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of a particular index (its ''Underlying Index'') developed by Lehman.

Barclays Global Fund Advisors (''BGFA''), the investment adviser to each Fund (''Adviser''), is a subsidiary of Barclays Global Investors, N.A. (''BGI''). BGFA and its affiliates are not affiliated with the Index Provider. Investors Bank & Trust Company (''Investors Bank'' or ''IBT'') is the administrator, custodian and transfer agent for each Fund. SEI Investments Distribution Co. (''SEI'') serves as the Distributor of Creation Units (as described below) for each Fund on an agency basis. The Exchange states that SEI does not maintain a secondary market in shares of the Funds. The Exchange also notes that SEI has no role in determining the policies of any Fund or the securities that are purchased or sold by any Fund. Lehman Brothers, Inc. (''Lehman Brothers'') is the Index Provider. Lehman Brothers is not affiliated with the Trust, BGI, BGFA, Investors Bank, the Distributor, or the NYSE.

The Exchange states that BGFA uses a ''passive'' or indexing approach to try to achieve each Fund's investment objective. Unlike many investment companies, the Funds do not try to ''beat'' the indexes they track and do not seek temporary defensive positions when markets decline or appear overvalued.

Each of the iShares Lehman Short Treasury Bond Fund, iShares Lehman 3–7 Year Treasury Bond Fund, and iShares Lehman 10–20 Year Treasury Bond Fund (the ''Treasury Funds'') generally will invest at least 90% of its assets in the bonds of its Underlying Index and at least 95% of its assets in U.S. government bonds. Each Treasury Fund also may invest up to 10% of its assets in U.S. government bonds not included in its Underlying Index, but which BGFA believes will help the Fund track its Underlying Index. For example, a Treasury Fund may invest in bonds not included in its Underlying Index in order to reflect changes in its Underlying Index (such as reconstitutions, additions, and deletions). Each Treasury Fund also may invest up to 5% of its assets in repurchase agreements collateralized by U.S. government obligations and in cash and cash equivalents, including shares of money market funds affiliated with BGFA.

Each of the iShares Lehman 1–3 Year Credit Bond Fund, iShares Lehman Intermediate Credit Bond Fund, and iShares Lehman Credit Bond Fund (the ''Credit Bond Funds''), and iShares Lehman Intermediate Government/Credit Bond Fund and iShares Lehman Government/Credit Bond Fund (the ''Government/Credit Bond Funds'') will invest at least 90% of its assets in the securities of its Underlying Index. Each Credit Bond Fund and Government/Credit Bond Fund may invest the remainder of its assets in securities not included in its Underlying Index, but which BGFA believes will help the Fund track its Underlying Index. For example, a Credit Bond Fund or Government/Credit Bond Fund may invest in bonds not included in its Underlying Index in order to reflect changes in its Underlying Index (such as reconstitutions, additions and deletions). Each Credit Bond Fund or Government/Credit Bond Fund also may invest its other assets in futures, options and swap contracts, cash and cash equivalents, including money market funds advised by BGFA.

BGFA uses a Representative Sampling indexing strategy. ''Representative Sampling'' involves investing in a representative sample of bonds in the relevant Underlying Index, which has a similar investment profile as the relevant Underlying Index. Bonds selected have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation, duration, maturity, or credit ratings and yield) and liquidity measures similar to those of the relevant Underlying Index. Funds that use Representative Sampling generally do not hold all of the bonds that are included in the relevant Underlying Index.

BGFA expects that, over time, the correlation between each Fund's performance and that of its Underlying Index, before fees and expenses, will be 95% or better. A correlation percentage of 100% would indicate perfect correlation. Any correlation percentage of less than 100% is called ''tracking error.'' The Exchange states that a Fund using a Representative Sampling indexing strategy can be expected to have a greater tracking error than a Fund using a Replication indexing strategy.[10]

A Fund will not concentrate its investments (*i.e.*, hold 25% or more of its total assets), in a particular industry or group of industries, except that a Fund will concentrate its investments to approximately the same extent that its Underlying Index is so concentrated. For purposes of this limitation, securities of the U.S. government (including its agencies and instrumentalities), repurchase agreements collateralized by U.S. government securities, and securities of state or municipal governments and their political subdivisions are not considered to be issued by members of any industry.

From time to time, adjustments may be made in the portfolio of the Funds in accordance with changes in the composition of the Underlying Indexes or to maintain compliance with requirements applicable to a regulated investment company (''RIC'') under the Internal Revenue Code (''Code'').[11] For

[9] The Exchange notes that the information provided herein is based on information included in the Registration Statement. While the Adviser (defined above) would manage the Funds, the Funds' Board of Directors would have overall responsibility for the Funds' operations. Further, the composition of the Board is, and would be, in compliance with the requirements of Section 10 of the Investment Company Act. The Funds are subject to and must comply with Section 303A.06 of the Manual, which requires that the Funds have an audit committee that complies with Rule 10A–3 under the Act.

[10] Replication is an indexing strategy in which a Fund invests in substantially all of the securities in its Underlying Index in approximately the same proportions as in the Underlying Index.

[11] In order for the Funds to qualify for tax treatment as a RIC, they must meet several requirements under the Code. Among these is a requirement that, at the close of each quarter of the Funds' taxable year, (1) at least 50% of the market value of the Funds' total assets must be represented by cash items, U.S. government securities, securities of other RICs and other securities, with such other securities limited for the purpose of this calculation with respect to any one issuer to an amount not greater than 5% of the value of the Funds' assets and not greater than 10% of the outstanding voting securities of such issuer; and (2) not more than 25% of the value of their total assets may be invested in securities of any one issuer, or two or more issuers that are controlled by the Funds (within the meaning of Section 851(b)(4)(B) of the Code) and that are engaged in the same or similar trades or business (other than U.S. government securities of other RICs).

Other securities'' of an issuer are considered qualifying assets only if they meet the following conditions:

The entire amount of the securities of the issuer owned by the company is not greater in value than 5% of the value of the total assets of the company; and the entire amount of the securities of such issuer owned by the company does not represent more than 10% of the outstanding voting securities of such issuer.

Under the second diversification requirement, the ''25% diversification limitation,'' a company may not invest more than 25% of the value of its assets in any one issuer or two issuers or more that the taxpayer controls.

Compliance with the above referenced RIC asset diversification requirements are monitored by the

Continued

example, if at the end of a calendar quarter a Fund would not comply with the RIC diversification tests, the Adviser would make adjustments to the portfolio to ensure continued RIC status.

The Exchange states that an index is a theoretical financial calculation, while each Fund is an actual investment portfolio. The performance of the Funds and the Underlying Indexes will vary somewhat due to transaction costs, market impact, corporate actions (such as mergers and spin-offs), and timing variances. The Funds' investment objectives, policies, and investment strategies will be fully disclosed in their prospectus and statement of additional information (''SAI'').

Description of the Funds and the Underlying Indexes.[12]

The iShares Lehman Short Treasury Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the short-term sector of the U.S. Treasury market as defined by the Lehman Brothers Short U.S. Treasury Index. This Index measures the performance of public obligations of the U.S. Treasury that have a remaining maturity of between 1 and 12 months, are rated investment grade, and have more than $250 million or more of outstanding face value. In addition, the securities must be denominated in U.S. dollars and must be fixed rate and non-convertible. Excluded from the Index are certain special issues, such as flower bonds, targeted investor notes (''TINs''), and state and local government series bonds (''SLGs''), and coupon issues that have been stripped from assets that are already included in the Index. As of May 31, 2006, there were 43 issues included in the Index. The Index, as for each of the Underlying Indexes, is market capitalization weighted,[13] and the securities in the Index are updated (as described below) on the last calendar day of each month.

The iShares Lehman 3–7 Year Treasury Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the intermediate-term sector of the U.S. Treasury market as defined by the Lehman Brothers 3–7 Year U.S. Treasury Index. This Index measures the performance of public obligations of the U.S. Treasury that have a remaining maturity of greater than or equal to 3 years and less than 7 years, are rated investment grade, and have $250 million or more of outstanding face value. In addition, the securities must be denominated in U.S. dollars and must be fixed rate and non-convertible. Excluded from the Index are certain special issues, such as flower bonds, TINs, and SLGs, and coupon issues that have been stripped from assets that are already included in the Index. As of May 31, 2006, there were 36 issues included in the Index.

The iShares Lehman 10–20 Year Treasury Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the long-term sector of the U.S. Treasury market as defined by the Lehman Brothers 10–20 Year U.S. Treasury Index. This Index measures the performance of public obligations of the U.S. Treasury that have a remaining maturity of greater than or equal to 10 years and less than 20 years, are rated investment grade, and have $250 million or more of outstanding face value. In addition, the securities must be denominated in U.S. dollars and must be fixed rate and non-convertible. Excluded from the Index are certain special issues, such as flower bonds, TINs, and SLGs, and coupon issues that have been stripped from assets that are already included in the Index. As of May 31, 2006, there were 22 issues included in the Index.

The iShares Lehman 1–3 Year Credit Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the investment-grade credit sector of the U.S. bond market as defined by the Lehman Brothers 1–3 Year U.S. Credit Index. This Index measures the performance of investment-grade corporate debt and sovereign, supranational, local authority, and non-U.S. agency bonds[14] that are U.S. dollar denominated and have a remaining maturity of greater than or equal to 1 year and less than 3 years, are rated investment grade, and have more than $250 million or more of outstanding face value. In addition, the securities must be denominated in U.S. dollars and must be fixed rate and non-convertible. Excluded from the Index are structured notes with embedded swaps or other special features, private placements, floating rate securities, and Eurobonds. As of May 31, 2006, there were 601 issues included in the Index.[15]

The iShares Lehman Intermediate Credit Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the investment-grade credit sector of the U.S. bond market as defined by the Lehman Brothers Intermediate U.S. Credit Index. This Index measures the performance of investment-grade corporate debt and sovereign, supranational, local authority, and non-U.S. agency bonds that are U.S. dollar denominated and have a remaining maturity of greater than or equal to 1 year and less than 10 years, are rated investment grade, and have more than $250 million or more of outstanding face value. In addition, the securities must be denominated in U.S. dollars and must be fixed rate and non-convertible. Excluded from the Index are structured notes with embedded swaps or other special features, private placements, floating rate securities, and Eurobonds. As of May 31, 2006, there were 2,193 issues included in the Index.[16]

Adviser and any necessary adjustments to portfolio issuer weights will be made on a quarterly basis or as necessary to ensure compliance with RIC requirements. When a Fund's Underlying Index itself is not RIC compliant, the Adviser generally employs a representative sampling indexing strategy (as described in the Funds' prospectus) in order to achieve the Fund's investment objective. The Funds' prospectus also gives the Funds additional flexibility to comply with the requirements of the Code and other regulatory requirements and to manage future corporate actions and index changes in smaller markets by investing a percentage of fund assets in securities that are not included in the Fund's Underlying Index.

[12] For each of the Funds, a Fund's investment objective and its Underlying Index may be changed without shareholder approval. In such case, the Exchange would be obligated to file for approval of listing and trading such derivative product pursuant to Section 19(b)(1) of the Act (15 U.S.C. 78s(b)(1)) as a proposed rule change, which must be approved by the Commission, to permit continued listing and trading of the derivative product. *See* Telephone conference between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Michael Cavalier, Assistant General Counsel, NYSE, on November 17, 2006.

[13] The Exchange states that the market capitalization of each Underlying Index's bond component is calculated by multiplying the price of the bond (accounting for accrued interest) by the par amount outstanding. For investment grade corporate debt, Lehman utilizes trader marked prices and a multi-dealer pricing matrix. For U.S. Treasuries and certain government related bonds, Lehman marks the bonds on a daily basis. For both categories of bonds, multiple pricing sources are also used to verify pricing determinations. *See* Amendment No. 2, *supra note* 5.

[14] ''Local authority'' bonds are U.S. municipal securities. ''Non-U.S. agency bonds'' are issued by foreign government sponsored entities from developed nations but are not backed by the full faith and credit of the foreign government. See Telephone conference between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Michael Cavalier, Assistant General Counsel, NYSE, on November 20, 2006 (''November 20 Telephone Conference'').

[15] Regarding the top ten holdings in the Lehman Brothers 1–3 Year U.S. Credit Index, the top ten holdings constitute 8.3% of the Index, with the largest holding constituting 1%. *See* Amendment No. 1, *supra* note 4.

[16] Regarding the top ten holdings in the Lehman Brothers Intermediate U.S. Credit Index, the top ten holdings constitute 2.6% of the Index, with the largest holding constituting 0.3%. *See* Amendment No. 1, *supra* note 4.

The iShares Lehman Intermediate Government/Credit Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the investment-grade credit sector of the U.S. bond market and the total U.S. Treasury market as defined by the Lehman Brothers Intermediate U.S. Government/Credit Index. This Index measures the performance of U.S. dollar denominated U.S. Treasuries, investment-grade government-related (*i.e.*, U.S. and foreign agencies, sovereign, supranational, and local authority) debt, and investment-grade U.S. corporate securities that have a remaining maturity of greater than or equal to 1 year and less than 10 years, are rated investment grade, and have more than $250 million or more of outstanding face value. In addition, the securities must be denominated in U.S. dollars and must be fixed rate and non-convertible. Excluded from the Index are certain special issues, such as flower bonds, TINs, and SLGs, and coupon issues that have been stripped from assets that are already included in the Index. Also excluded from the Index are structured notes with embedded swaps or other special features, private placements, floating rate securities, and Eurobonds. As of May 31, 2006, there were 3,021 issues included in the Index.[17]

The iShares Lehman Credit Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the investment-grade credit sector of the U.S. bond market as defined by the Lehman Brothers U.S. Credit Index. This Index measures the performance of investment-grade corporate debt and sovereign, supranational, local authority, and non-U.S. agency bonds that are U.S. dollar denominated and have a remaining maturity of greater than or equal to 1 year, are rated investment grade, and have more than $250 million or more of outstanding face value. In addition, the securities must be denominated in U.S. dollars and must be fixed rate and non-convertible. Excluded from the Index are structured notes with embedded swaps or other special features, private placements, floating rate securities, and Eurobonds. As of May 31, 2006, there were 2,996 issues included in the Index.[18]

The iShares Lehman Government/Credit Bond Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the investment-grade U.S. government and U.S corporate securities of the U.S. bond market as defined by the Lehman Brothers U.S. Government/Credit Index. This Index measures the performance of U.S. dollar denominated U.S. Treasuries, investment-grade government-related (*i.e.*, U.S. and foreign agencies, sovereign, supranational and local authority) debt, and investment-grade U.S. corporate securities that have a remaining maturity of greater than or equal to 1 year, are rated investment grade, and have more than $250 million or more of outstanding face value. In addition, the securities must be denominated in U.S. dollars and must be fixed rate and non-convertible. Excluded from the index are certain special issues, such as flower bonds, TINs, and SLGs, and coupon issues that have been stripped from assets that are already included in the index. Also excluded from the index are structured notes with embedded swaps or other special features, private placements, floating rate securities, and Eurobonds. As of May 31, 2006 there were 3,935 issues included in the Index.[19]

The Exchange represents that, as of September 29, 2006, less than one percent of the market value of the Underlying Indexes for each of the Funds consisted of Rule 144A securities, and no Rule 144A securities were included in the Lehman Short Treasury Index; Lehman 3–7 Year Treasury Index; and Lehman 10–20 Year Treasury Index.[20]

Index Provider

The Index Provider for each Fund, Lehman Brothers, is a broker-dealer. Therefore, appropriate firewalls must exist around the personnel who have access to information concerning changes and adjustments to an index and the trading personnel of the broker-dealer. Lehman Brothers has represented to the Exchange that it will (1) implement and maintain procedures designed to prevent the misuse and dissemination, in violation of applicable laws, rules and regulations, of material non-public information relating to the Indexes licensed by BGI; and (2) periodically check the application of such procedures, including the application of such procedures as they relate to those persons directly responsible for changes in the composition or calculation of the relevant Index.[21]

The Exchange notes that, while there is not an independent calculation agent for the Indexes, the securities included in the Indexes are U.S. government, U.S. credit and investment-grade corporate debt issues that are traded in highly liquid, transparent markets and subject to multiple pricing sources, as described below.[22]

For each of the Indexes, the applicable Index constituents are reset on the last business day of each month and remain static throughout the month. The universe of Index constituents adjust for securities that become ineligible for inclusion in an Index during the month (*e.g.*, because of downgrades or called bonds) or for issues that are newly eligible (*e.g.*, up-grades or newly issued bonds) on the last business day of each month. The Indexes are valued using end of day bid side prices, as marked by Lehman Brothers. Intra-month cash flows contribute to monthly returns, but they are not reinvested during the month and do not earn a reinvestment return. Total returns are calculated based on the sum of price changes, gain/loss on repayments of principal, and coupon received or accrued, expressed as a percentage of beginning market value. The Indexes are calculated once a day and are available from major data vendors.

The Exchange states that Lehman Brothers has represented to BGI that, in calculating the Indexes, it utilizes multiple contributor sources to verify bond prices.[23] The primary price for

[17] Regarding the top ten holdings in the Lehman Brothers Intermediate U.S. Government/Credit Index, the top ten holdings constitute 6.9% of the Index, with the largest holding constituting 1.1%. *See* Amendment No. 1, *supra* note 4.

[18] Regarding the top ten holdings in the Lehman Brothers U.S. Credit Index, the top ten holdings constitute 2.3% of the Index, with the largest holding constituting 0.4%. *See* Amendment No. 1, *supra* note 4.

[19] Regarding the top ten holdings in the Lehman Brothers U.S. Government/Credit Index, the top ten holdings constitute 5.7% of the Index, with the largest holding constituting 0.8%. *See* Amendment No. 1, *supra* note 4.

[20] *See* Amendment No. 1, *supra* note 4. Rule 144A(b) under the Securities Act provides that ''[a]ny dealer who offers or sells securities in compliance with the conditions set forth in paragraph (d) of this section shall be deemed not to be a participant in a distribution of such securities within the meaning of section 4(3)(C) of the Act and not to be an underwriter of such securities within the meaning of section 2(11) of the Act, and such securities shall be deemed not to have been offered to the public within the meaning of section 4(3)(A) of the Act.'' 17 CFR 230.144A. Among the conditions to be met in paragraph (d) is that the ''securities are offered or sold only to a qualified institutional buyer or to an offeree or purchaser that the seller and any person acting on behalf of the seller reasonably believe is a qualified institutional buyer.'' *Id.*

[21] *See* November 20 Telephone Conference, *supra* note 14.

[22] *See* Amendment No. 1, *supra* note 4.

[23] *See id.*

each security is analyzed and compared to other third-party pricing sources through both statistical routines and scrutiny by the Lehman Brothers research staff. Significant discrepancies are researched and corrected, as necessary.

Net Asset Value

The Exchange states that, as with other open-end investment companies, iShares will be issued at the net asset value (''NAV'') per share next determined after an order in proper form is received. Investors Bank calculates the NAV for each Fund once daily Monday through Friday generally as of the regularly scheduled close of business of the NYSE (normally 4 p.m., Eastern Time) on each day that the NYSE is open for trading, based on prices at the time of closing, provided that (a) any assets or liabilities denominated in currencies other than the U.S. dollar shall be translated into U.S. dollars at the prevailing market rates on the date of valuation, as quoted by one or more major banks or dealers that makes a two-way market in such currencies (or a data service provider based on quotations received from such banks or dealers); and (b) U.S. fixed-income assets may be valued as of the announced closing time for trading in fixed-income instruments on any day that the Bond Market Association announces an early closing time. The NAV of each Fund is calculated by dividing the value of the net assets of such Fund (*i.e.*, the value of its total assets less total liabilities) by the total number of outstanding shares of the Fund, generally rounded to the nearest cent. In calculating a Fund's NAV, a Fund's investments are generally valued using market valuations. In the event that current market valuations are not readily available or such valuations do not reflect current market values, the affected investments will be valued using fair value pricing pursuant to the pricing policy and procedures approved by the Trust's Board of Trustees. The frequency with which a Fund's investments are valued using fair value pricing is primarily a function of the types of securities and other assets in which the Fund invests pursuant to its investment objective, strategies and limitations.

Investments that may be valued using fair value pricing include, but are not limited to: (i) An unlisted security related to corporate actions; (ii) a restricted security (*i.e.,* one that may not be publicly sold without registration under the Securities Act); (iii) a security whose trading has been suspended or which has been delisted from its primary trading exchange; (iv) a security that is thinly traded; (v) a security in default or bankruptcy proceedings for which there is no current market quotation; (vi) a security affected by currency controls or restrictions; and (vii) a security affected by a significant event (*i.e.,* an event that occurs after the close of the markets on which the security is traded but before the time as of which the Fund's NAV is computed and that may materially affect the value of the Fund's investments). Examples of events that may be ''significant events'' are government actions, natural disasters, armed conflict, acts of terrorism, and significant market fluctuations.

Continuous Distribution

Shares of the Funds will be issued on a continuous offering basis in groups of 50,000 to 100,000 iShares (as specified for each Fund), or multiples thereof. These ''groups'' of shares are called ''Creation Unit Aggregations'' (also, ''Creation Units''). The anticipated price at which the iShares will initially trade is approximately $100. The Funds will issue and redeem iShares only in Creation Unit Aggregations.[24]

The Shares that trade in the secondary market are ''created'' at NAV by market makers, large investors, and institutions (known as ''Authorized Participants'') only in Creation Unit Aggregations. Each ''creator'' enters into an authorized participant agreement (''Participant Agreement'') with SEI, the Funds'' distributor, which is subject to acceptance by the transfer agent, and then deposits into the applicable Fund a portfolio of bonds closely approximating the holdings of the Fund and a specified amount of cash in exchange for a specified number of Creation Units.

Similarly, Shares can only be redeemed in a specified number of Creation Units, principally in-kind for a portfolio of bonds held by a Fund and a specified amount of cash. Except when aggregated in Creation Units, shares are not redeemable. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received in a form described in the Participant Agreement.

Creations and redemptions must be made through a firm that is a Depository Trust Company (''DTC'') participant and has the ability to clear through the Federal Reserve System. Information about the procedures regarding creation and redemption of Creation Units (including the cut-off times for receipt of creation and redemption orders) is included in the SAI. Each Fund will impose a purchase transaction fee and a redemption transaction fee to offset transfer and other transaction costs associated with the issuance and redemption of Creation Units of shares.

All orders to purchase and redeem iShares in Creation Unit Aggregations must be placed through an Authorized Participant. An Authorized Participant must be either a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the clearing process through the National Securities Clearing Corporation (''NSCC'') Continuous Net Settlement System (the ''Clearing Process''), a clearing agency that is registered with the Commission, or a DTC participant, and in each case, must enter into a Participant Agreement.[25]

Issuance of Creation Unit Aggregations

The Trust issues and sells Shares of each Fund only in Creation Unit Aggregations on a continuous basis through the Distributor, without a sales load, at the NAV next determined after receipt, on any business day (any day the NYSE is open for trading), of an order in proper form.

The consideration for purchase of Creation Unit Aggregations of a Fund generally consists of the in-kind deposit of a designated portfolio of securities (the ''Deposit Securities''), which constitutes a substantial replication, or a portfolio sampling representation, of the securities involved in the relevant Fund's Underlying Index (''Fund Securities'') and an amount of cash (the ''Cash Component'') computed as described below. Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit Aggregation of any Fund.

The Cash Component is sometimes also referred to as the ''Balancing Amount.'' The function of the cash component is to compensate for any differences between the NAV per Creation Unit Aggregation and the Deposit Amount (as defined below). The Cash Component is an amount equal to the difference between the NAV of the shares (per Creation Unit Aggregation) and the ''Deposit Amount'' is an amount equal to the market value of the Deposit Securities. If the Cash Component is a positive number (*i.e.,* the NAV per Creation Unit Aggregation exceeds the

[24] A Creation Unit Aggregation of 50,000 iShares would have an estimated initial value of approximately $5,000,000.

[25] Such participant, if not registered as a broker-dealer, must be exempt from being (or otherwise not required to be) registered as a broker-dealer. *See* November 20 Telephone Conference, *supra* note 14.

Deposit Amount), the creator will deliver the Cash Component. If the Cash Component is a negative number (*i.e.,* the NAV per Creation Unit Aggregation is less than the Deposit Amount), the creator will receive the Cash Component. Computation of the Cash Component excludes any stamp duty or other similar fees and expenses payable upon transfer of beneficial ownership of the Deposit Securities, which are the sole responsibility of the Authorized Participant.

BGFA, through the NSCC, makes available on each business day, prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time), the list of the names and the required number of shares (subject to possible amendments or corrections) of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for each Fund.

Such Deposit Securities are applicable, subject to any adjustments as described below, in order to effect creations of Creation Unit Aggregations of a given Fund until such time as the next-announced composition of the Deposit Securities is made available. The identity and number of shares of the Deposit Securities required for a Fund Deposit for each Fund changes as rebalancing adjustments, corporate action events, and interest payments on underlying bonds are reflected from time to time by BGFA with a view to the investment objective of the relevant Fund. The composition of the Deposit Securities may also change in response to adjustments to the weighting or composition of the component securities of the relevant Underlying Index.

In addition, the Trust reserves the right to permit or require the substitution of an amount of cash (a ''cash in lieu'' amount) to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery or that may not be eligible for transfer through the systems of DTC for corporate bonds or the Federal Reserve System for U.S. Treasury securities. The Trust also reserves the right to permit or require a ''cash in lieu'' amount where the delivery of the Deposit Security by the Authorized Participant would be restricted under the securities laws or where the delivery of the Deposit Security to the Authorized Participant would result in the disposition of the Deposit Security by the Authorized Participant becoming restricted under the securities laws, or in certain other situations. The adjustments described above will reflect changes known to BGFA on the date of announcement to be in effect by the time of delivery of the Fund Deposit, in the composition of the Underlying Index being tracked by the relevant Fund or resulting from certain corporate actions.

Fund Deposits must be delivered through the Federal Reserve System (for cash and government securities) and through DTC (for corporate securities) by an Authorized Participant. The Fund Deposit transfer must be ordered by the DTC Participant in a timely fashion so as to ensure the delivery of the requisite number of Deposit Securities through DTC to the account of the Fund by no later than 3 p.m., Eastern Time, on the Settlement Date. The ''Settlement Date'' for all Funds is generally the third business day after the Transmittal Date.

A purchase transaction fee is imposed for the transfer and other transaction costs of the Funds associated with the issuance of Creation Units of shares. The fee is a single charge and will be the same regardless of the number of Creation Units purchased by an investor on the same day in the amount specified in the Funds' prospectus or SAI.

Redemptions of Creation Unit Aggregations

Shares may be redeemed only in Creation Unit Aggregations at their NAV next determined after receipt of a redemption request in proper form by a Fund only on a business day. A Fund will not redeem shares in amounts less than Creation Unit Aggregations. Beneficial owners must accumulate enough shares in the secondary market to constitute a Creation Unit Aggregation in order to have such shares redeemed by the Trust.

With respect to each Fund, BGFA, through the NSCC, makes available immediately prior to the opening of business on the NYSE (currently 9:30 a.m., Eastern Time) on each business day, the identity of the fund securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Unit Aggregations.

Unless cash redemptions are available or specified for a Fund, the redemption proceeds for a Creation Unit Aggregation generally consist of Fund Securities—as announced on the business day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount''), less a redemption transaction fee. A redemption transaction fee is imposed to offset transfer and other transaction costs that may be incurred by the Funds. The fee is a single charge and will be as set forth in the Funds' prospectus and SAI, and is the same regardless of the number of Creation Units redeemed by an investor on the same day. Investors will also bear the costs of transferring the Fund Securities from the Trust to their account or on their order. Investors who use the services of a broker or other such intermediary may be charged a fee for such services. The standard creation and redemption fee for each Fund is $500; however, as stated in the Fund's Registration Statement, if a Creation Unit is purchased or redeemed outside the usual process through NSCC or for cash, a variable fee may be charged up to four times the standard creation or redemption fee.

Compliance With Securities Laws—Creations and Redemptions; Rule 144A Securities [26]

The Exchange represents that the statutory prospectus for the Funds will state that the Funds must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act.

The Exchange further represents that the Funds must comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Fund Securities, including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act. In accepting Deposit Securities and satisfying redemptions with Fund Securities that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A, including in satisfying redemptions with such Rule 144A eligible restricted Fund Securities. The prospectus for the Funds will also state that ''An Authorized Participant that is not a Qualified Institutional Buyer (''QIB'') will not be able to receive Fund Securities that are restricted securities eligible for resale under Rule 144A.''

[26] *See* Amendment No. 2, *supra* note 5.

Availability of Information Regarding iShares and Each Underlying Index

As stated above, on each business day, the list of names and amount of each security constituting the current Deposit Securities of the Fund Deposit and the Balancing Amount effective as of the previous business day will be made available. An amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. dollars, on a per iShare basis (the ''Intraday Optimized Portfolio Value'' or ''IOPV'') will be calculated by an independent third party that is a major market data vendor (the ''Value Calculator''), such as Bloomberg L.P., at least every 15 seconds [27] during the Exchange's regular trading hours and disseminated at least every 15 seconds on the Consolidated Tape.

Because the Funds will utilize a representative sampling strategy, the Exchange states that the IOPV may not reflect the value of all securities included in the Underlying Indexes. In addition, the IOPV does not necessarily reflect the precise composition of the current portfolio of securities held by the Funds at a particular point in time. Therefore, the Exchange states that the IOPV on a per Fund share basis disseminated during the Exchange's trading hours should not be viewed as a real time update of the NAV of the Funds, which is calculated only once a day. While the IOPV disseminated by the Exchange at 9:30 a.m. is expected to be generally very close to the most recently calculated Fund NAV on a per Fund share basis, it is possible that the value of the portfolio of securities held by each Fund may diverge from the Deposit Securities values during any trading day. In such case, the IOPV will not precisely reflect the value of each Fund's portfolio. However, during the trading day, the IOPV can be expected to closely approximate the value per Fund share of the portfolio of securities for each Fund except under unusual circumstances (*e.g.,* in the case of extensive rebalancing of multiple securities in a Fund at the same time by the Adviser).

The IOPV will be updated throughout the day to reflect changing bond prices, using multiple prices from independent third party pricing sources. Information about the intra-day prices for the Deposit Securities of each Fund is readily available to the marketplace.[28] The Exchange represents that the Adviser has represented that: (1) IOPV will be calculated by an independent third party; (2) IOPV will be calculated using prices obtained from multiple independent third-party pricing sources (such as broker-dealers) throughout the day; and (3) IOPV will be calculated in accordance with pre-determined criteria and set parameters so that an individual bond ''price'' based on an analysis of multiple pricing sources is obtained for each security in the Portfolio Deposit.[29] The Exchange states that closing prices of the Funds' Deposit Securities are readily available from published or other public sources, such as the NYSE's Automated Bond System (ABS®), the Trace Reporting and Compliance Engine (''TRACE''), or on-line client-based information services provided by Credit Suisse, Goldman Sachs, Lehman Brothers, IDC, Merrill Lynch, Reuters, Bloomberg, TradeWeb, and other pricing services commonly used by bond mutual funds.[30]

The Exchange also intends to disseminate a variety of data with respect to each Fund on a daily basis by means of CTA and CQ High Speed Lines; information with respect to recent NAV, shares outstanding, estimated cash amount, and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the Exchange.

In addition, there will be disseminated, through major market data vendors, a value for the Underlying Indexes once each trading day, based on closing prices in the relevant market. The NAV for each Fund will be calculated and disseminated daily. The Funds' NAV will be calculated by IBT. IBT will disseminate the information to BGI, SEI, and others. The Funds' NAV will be published in a number of places, including *www.iShares.com* and on the Consolidated Tape.

In addition, the Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for each Fund: (a) The prior business day's NAV and the mid-point of the bid-ask price and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the bid/ask price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Exchange states that the Adviser for the Funds has represented to the Exchange that the Funds will make the NAV for the Fund Shares available to all market participants at the same time.[31]

Dividends and Distributions

Dividends will be paid out to investors at least monthly by the Funds and may be paid out on a more frequent basis. Distributions of net capital gains, if any, will be distributed to investors annually. Dividends and other distributions on iShares of the Funds will be distributed on a pro rata basis to beneficial owners of such iShares. Dividend payments will be made through the Depository and to the DTC Participants to beneficial owners then of record with amounts received from the Fund.

The Exchange represents that the Trust currently does not intend to make the DTC book-entry Dividend Reinvestment Service (the ''Service'') available for use by beneficial owners for reinvestment of their cash proceeds, but certain individual brokers may make the Service available to their clients. The SAI will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of the Service through such broker. The SAI will also caution interested beneficial owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the Service, and such investors should ascertain from their

[27] *See* November 20 Telephone Conference, *supra* note 14.

[28] The Exchange states that Authorized Participants and other market participants have a variety of ways to access the intra-day security prices that form the basis of the Funds' IOPV calculation. For example, intra-day prices for treasury securities and agency securities are available from Bloomberg, TradeWeb, ABS® and TRACE. Intra-day prices of callable agency securities are available from TradeWeb. Intra-day prices of corporate bonds are available from ABS® and TRACE. In addition, intra-day prices for each of these securities are available by subscription or otherwise to Authorized Participants and clients of major U.S. broker-dealers (such as Credit Suisse, Goldman Sachs, and Lehman Brothers).

[29] For example, the Exchange states that Bloomberg Generic Prices could be used. Bloomberg Generic Prices are current prices on individual bonds as determined by Bloomberg using a proprietary automated pricing program that analyzes multiple bond prices contributed to Bloomberg by third-party price contributors (such as broker-dealers).

[30] The Exchange understands that Credit Suisse, Goldman Sachs, Lehman Brothers, Merrill Lynch, IDC, Reuters, Bloomberg, and TradeWeb provide prices for each type of Deposit Security. ABS® and TRACE provide prices for corporate bonds. *See also* Telephone conference between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Michael Cavalier, Assistant General Counsel, NYSE, on November 21, 2006 (authorizing removal from this proposed rule change of language in which the Funds disclaim responsibility for IOPV calculation).

[31] *See* November 20 Telephone Conference, *supra* note 14.

broker such necessary details. The Shares acquired pursuant to the Service will be held by the beneficial owners in the same manner and subject to the same terms and conditions, as for original ownership of the Funds.

Beneficial owners of the Funds will receive all of the statements, notices, and reports required under the Investment Company Act and other applicable laws. They will receive, for example, annual and semi-annual reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of distributions, and IRS Form 1099–DIVs. Because the Trust's records reflect ownership of iShares by DTC only, the Trust will make available applicable statements, notices, and reports to the DTC Participants who, in turn, will be responsible for distributing them to the beneficial owners.

Other Issues

(a) *Criteria for Initial and Continued Listing.* The Shares are subject to the criteria for initial and continued listing of ICUs in Section 703.16 of the Manual. A minimum of 100,000 iShares for each Fund will be required to be outstanding at the start of trading. This minimum number of shares of each Fund required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously traded series of ICUs. The Exchange believes that the proposed minimum number of shares of each Fund outstanding at the start of trading is sufficient to provide market liquidity and to further the Funds' investment objective to seek to provide investment results that correspond generally to the price and yield performance of the Underlying Index.

(b) *Original and Annual Listing Fees.* The original listing fees applicable to the Shares of the Funds for listing on the Exchange is $5,000 for each Fund, and the continuing fees would be $2,000 for each Fund.

(c) *Stop and Stop Limit Orders.* Commentary .30 to NYSE Rule 13 provides that stop and stop limit orders in an ICU shall be elected by a quotation, but specifies that if the electing bid on an offer is more than 0.10 points away from the last sale and is for the specialist's dealer account, prior Floor Official approval is required for the election to be effective. This rule applies to ICUs generally.

(d) *NYSE Rule 460.10.* NYSE Rule 460.10 generally precludes certain business relationships between an issuer and the specialist in the issuer's securities. Exceptions in the Rule permit specialists in Fund shares to enter into Creation Unit transactions through the Distributor to facilitate the maintenance of a fair and orderly market. A specialist Creation Unit transaction may only be effected on the same terms and conditions as any other investor, and only at the net asset value of the Fund shares. A specialist may acquire a position in excess of 10% of the outstanding issue of a Fund's Shares, provided, however, that a specialist registered in a security issued by an investment company may purchase and redeem the ICU or securities that can be subdivided or converted into such unit, from the investment company as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

(e) *Prospectus Delivery.*[32] The Commission has granted the Trust an exemption from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act.[33] The Exchange states that any product description used in reliance on a Section 24(d) exemptive order will comply with all representations made therein and all conditions thereto. The Exchange, in an Information Memo to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading of the Shares, of the prospectus or product description delivery requirements applicable to the Shares of the Funds and will refer members and member organizations to NYSE Rule 1100(b), which requires that members and member organizations provide to purchasers a written description of the terms and characteristics of the securities not later than the time of a confirmation of the first transaction is delivered to the purchaser. There is not currently a product description available for the Funds. Therefore, the Information Memo will also advise members and member organizations that delivery of a prospectus to customers in lieu of a product description would satisfy the requirements of NYSE Rule 1100(b).

(f) *Information Memo.* The Exchange will distribute an Information Memo to its members in connection with the trading of the iShares. The Memo will discuss the special characteristics and risks of trading this type of security. Specifically, the Information Memo, among other things, will discuss what the Funds are, how the Funds' shares are created and redeemed, prospectus or Product Description delivery requirements applicable to the Funds, applicable NYSE rules, dissemination information, trading information and the applicability of suitability rules (including NYSE Rule 405). The Information Memo will also discuss exemptive, no-action and interpretive relief granted by the Commission from Section 11(d)(1) and certain rules under the Act, including Rule 10a–1, Regulation SHO, Rule 10b–10, Rule 14e–5, Rule 10b–17, Rule 11d1–2, Rules 15c1–5 and 15c1–6, and Rules 101 and 102 of Regulation M under the Act.

(g) *Trading Halts.* In order to halt the trading of the Shares of the Funds, the Exchange may consider, among other things, factors such as the extent to which trading is not occurring in underlying security(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Funds' shares is subject to trading halts caused by extraordinary market volatility pursuant to NYSE Rule 80B. If the end-of-day Index value or the intraday IOPV[34] applicable to a Fund is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Index value or IOPV occurs. If the interruption to the dissemination of the Index value or intraday IOPV persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[35]

(h) *Due Diligence.* The Exchange represents that the Information Memo to members will note, for example, Exchange responsibilities including that before an Exchange member, member organization, or employee thereof recommends a transaction in the Funds, a determination must be made that the recommendation is in compliance with all applicable Exchange and federal rules and regulations, including due diligence obligations under NYSE Rule 405.

(i) *Purchases and Redemptions in Creation Unit Size.* In the Memo referenced above, members and member organizations will be informed that procedures for purchases and redemptions of shares of the Funds in Creation Unit Size are described in the Funds' prospectus and SAI, and that shares of the Funds are not individually redeemable but are redeemable only in

[32] *See* Amendment No. 1, *supra* note 4.

[33] *See In the Matter of iShares, Inc., et al.*, Investment Company Act Release No. 25623 (June 25, 2002).

[34] *See* November 20 Telephone Conference, *supra* note 14.

[35] *See* Amendment No. 1, *supra* note 4.

Creation Unit Size aggregations or multiples thereof.

(j) *Surveillance.* Exchange surveillance procedures applicable to trading in the proposed iShares are comparable to those applicable to other ICUs currently trading on the Exchange. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares of the Funds.

(k) *Hours of Trading/Minimum Price Variation.* The Funds will trade on the Exchange until 4:15 p.m. (Eastern Time). The minimum price variation for quoting will be $.01.

2. Statutory Basis

NYSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [36] requiring that an exchange have rules that are designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov*. Please include File Number SR-NYSE–2006–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-NYSE–2006–70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–70 and should be submitted on or before January 9, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[37] In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,[38] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

A. Surveillance

The NYSE has represented that it has appropriate surveillance procedures in place that are designed to monitor the trading of the proposed Shares. The Exchange represents that these surveillance procedures applicable to trading in the proposed Shares are comparable to those applicable to other ICUs currently trading on the Exchange, and provide the Exchange with the means to detect and deter manipulation of the Shares.[39] The Commission also notes that certain concerns are raised when a broker-dealer, such as Lehman Brothers, is involved in the development, maintenance, and calculation of an index upon which an exchange traded fund is based. The Exchange has represented that Lehman Brothers has represented that it has in place procedures to prevent the misuse of material, non-public information relating to the Indexes. The Commission believes that these procedures should help to minimize concerns raised by Lehman Brothers' involvement in the management of the Indexes.

B. Dissemination of Information

The Commission believes that sufficient venues exist for obtaining reliable information so that investors in the Funds can monitor the value of the Underlying Indexes and securities held by each Fund.

A value for the Underlying Indexes will be disseminated once each trading day, based on closing prices in the relevant market.[40] In addition, the NAV for each Fund will be calculated and disseminated daily, and will be published in a number of places, including *www.iShares.com* and on the Consolidated Tape. The Commission notes that the Exchange will receive a representation from the Advisor to the Funds that the NAV will be calculated and made available to all market participants at the same time.

Further, an IOPV, calculated by an independent third party, will be updated and disseminated throughout the day on the Consolidated Tape to reflect changing bond prices. Additionally, information about the intra-day prices for the Deposit Securities of each Fund is available. For

[36] 15 U.S.C. 78f(b)(5).

[37] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[38] 15 U.S.C. 78f(b)(5).

[39] The Commission notes that NYSE specialists are required to provide daily trading information to the Exchange on Form 81. *See* NYSE Rule 104A.50.

[40] Closing prices of the Funds' Deposit Securities are available from sources such as ABS®, TRACE, and online client-based information services provided by broker-dealers and other information providers.

example, intra-day prices for treasury securities and agency securities are available from Bloomberg, TradeWeb, ABS® and TRACE. Intra-day prices of callable agency securities are available from TradeWeb. Intra-day prices of corporate bonds are available from ABS®, and TRACE. In addition, intra-day prices for these securities are available by subscription or otherwise to Authorized Participants and clients of major U.S. broker-dealers. If the Underlying Index values or IOPV is not disseminated as described, the Exchange may halt trading during the day in which the interruption occurs. If the interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Commission believes that the trading halt rules, together with the NAV dissemination requirements, will facilitate transparency, reduce the potential for an unfair informational advantage with respect to the Shares, and diminish the potential for manipulation.

C. Listing and Trading

The Commission finds that the Exchange's rules and procedures for the listing and trading of the Shares are consistent with the Act. The Shares will be subject to NYSE rules governing the trading of equity securities, including, among others, rules governing trading halts, customer suitability requirements, and the election of stop and stop limit orders. In addition, the Shares are subject to the criteria for initial and continued listing of ICUs in Section 703.16 of the NYSE Manual. The Commission believes that the listing and delisting criteria for the Shares of the Funds should help to maintain a minimum level of liquidity and, therefore, minimize the potential for manipulation of the Shares. Finally, the Commission notes that the Information Memo will inform members about the terms, characteristics, and risks in trading the Shares, including their prospectus delivery obligations.

Accelerated Approval

NYSE has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the proposal is consistent with the NYSE's listing and trading standards, and the Commission has previously approved similar products.[41] Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[42] that the proposed rule change, as amended, (SR–NYSE–2006–70) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[43]

Nancy M. Morris,

Secretary.

[FR Doc. E6–21585 Filed 12–18–06; 8:45 am]

BILLING CODE 8011–01–P

[41] *See* Securities Exchange Act Release Nos. 48881 (December 4, 2003), 68 FR 69739 (December 15, 2003) (SR–NYSE–2003–39) (relating to the iShares Lehman U.S. Aggregate Bond Fund and iShares Lehman TIPS Bond Fund); and 46299 (August 1, 2002), 67 FR 51907 (August 9, 2002) (SR–NYSE–2002–26) (relating to the iShares 1–3 Year Treasury Index Fund, iShares 7–10 Year Treasury Index Fund, iShares 20+ Year Treasury Index Fund, iShares Treasury Index Fund, iShares Government/Credit Index Fund, iShares Lehman Corporate Bond Fund, and iShares Goldman Sachs Corporate Bond Fund).

[42] 15 U.S.C. 78s(b)(2).

[43] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #10748 and #10749 Pennsylvania Disaster #PA–00006

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 12/11/2006.

Incident: Severe storm and flooding

Incident Period: 11/16/2006 through 11/17/2006

Effective Date: 12/11/2006

Physical Loan Application Deadline Date: 02/09/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 09/11/2007.

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 Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary County: Luzerne.

Contiguous Counties: Pennsylvania; Carbon; Columbia; Lackawanna; Monroe; Schuylkill; Sullivan; Wyoming.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	6.000
Homeowners without Credit Available Elsewhere	3.000
Businesses with Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10748 6 and for economic injury is 10749 0.

The Commonwealth which received an EIDL Declaration # is Pennsylvania.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: December 11, 2006.

Steven C. Preston,

Administrator.

[FR Doc. E6–21576 Filed 12–18–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Requirements Regarding Flights to College Bowl Games and Other Special Events

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice.

SUMMARY: The Department is publishing the following notice providing guidance to colleges and other organizations wishing to arrange charter flights to football bowl games, NCAA basketball playoff games, or other special events.

FOR FURTHER INFORMATION CONTACT: Dayton Lehman, Jr., Deputy Assistant General Counsel, or Lisa Swafford-Brooks, Senior Attorney, Office of Aviation Enforcement and Proceedings (C–70), 400 7th Street, SW., Washington, DC 20590, (202) 366–9342.

SUPPLEMENTARY INFORMATION: Notice of Department of Transportation Requirements Regarding Flights to

College Bowl Games and other Special Events.

This notice is to provide guidance to colleges and other organizations wishing to arrange charter flights, including flights to football bowl games, NCAA basketball playoff games, or other special events. The notice is also intended to provide information regarding the economic licensing and operational certification of air carriers by the U.S. Department of Transportation (DOT). It is important that colleges and other entities are fully aware of this information since they often charter aircraft to travel to events and we wish to avoid instances of organizations (1) contracting with entities that hold no DOT economic authority; (2) unknowingly chartering aircraft from entities that are not subject to the most stringent safety standards and oversight of the Federal Aviation Administration (FAA), a DOT operating administration; or (3) reselling seats on a charter flight without their first having obtained proper authority to do so.

There are generally two primary avenues whereby a college or other entity may seek to sponsor air transportation to a college bowl game or other special event. The organization may choose to (1) contract directly with a carrier to provide the air transportation to the bowl game or other special event or (2) contract with a Public Charter Operator or an air charter broker, who would, in turn, locate a direct air carrier to provide the air transportation.

Contracting Directly With an Air Carrier

If the college or other entity chooses to contract with the air carrier directly, they should be aware of the economic requirements that govern the carrier's operations. Before any U.S. aircraft operator can hold itself out to the public as providing interstate scheduled or charter service, it must have DOT economic authority. In general, such authority is granted to large aircraft operators in the form of an air carrier certificate issued under 49 U.S.C. 41101. Prior to granting such authority, this Department must find a carrier to be ''fit'', which entails a determination that the carrier has adequate financial resources, a competent management team and a proper compliance disposition. This fitness requirement is a continuing one and we monitor certificated carriers to ensure their compliance with the requirement. In addition, certificated carriers must meet certain DOT economic rules such as minimum liability insurance requirements (see, 14 CFR part 205) and escrow requirements to protect charterers (see, 14 CFR part 212).

Likewise, the FAA requires that any U.S. aircraft operator providing scheduled or charter service with large aircraft must comply with the safety-related certification and operating rules of part 121 of the Federal Aviation Regulations (14 CFR part 121). Those regulations are the most detailed and stringent of any of the FAA's aircraft operating rules and the FAA provides heightened safety surveillance of carriers subject to part 121.

There are, however, operators of large, jet-powered passenger aircraft that are not required to have DOT economic authority or to comply with 14 CFR part 121. These operators are regulated under the safety standards of part 125 of the Federal Aviation Regulations (14 CFR Part 125). While these aircraft operators may conduct ''private'' air services for a few entities for compensation or hire, they do not have authority to transport the general public by engaging in common carriage (*e.g.*, holding out to the general public, or a segment of the general public such as colleges, through advertisements or telephone listings or through agents or brokers, or otherwise acquiring a reputation for common carriage). Since carriers operating under part 125 are not authorized to hold out to the general public, part 125 does not contain safety standards as stringent as part 121. Likewise, carriers lawfully operating under part 125 hold no economic license from DOT and are not required to comply with DOT's insurance or monetary escrow requirements. You should therefore inquire about the specific authority under which the carrier you will be using will operate.

In addition to determining whether the air carrier has appropriate authority, any organization that contracts with an air carrier directly and wishes to resell seats on the charter flight to the public (for example, to its students or alumni, to the press, or to its club members), whether or not as a profit-making venture, should understand its own role as an ''indirect air carrier,'' whose reselling of the air transportation must be licensed under the Department's Public Charter regulations.

Public Charter operators must comply with the requirements of 14 CFR Part 380. Among the most important requirements of 14 CFR Part 380 are the rules designed to prevent economic harm to charter passengers, including the requirements that (1) before any sales of seats takes place there is in place an approved Public Charter prospectus based upon a contract between the charter operator and a direct air carrier covering the transportation to be sold and (2) all payments by charter participants to charter operators be covered in full by a security agreement or in part by a security agreement with the payments themselves being placed directly into an escrow account. There are other specific rules governing Public Charter solicitation and the content of the charter contract between the Public Charter operator and the charter participants, including provisions on the cancellation of trips and a participant's right to a refund.

Exemptions From the Public Charter Requirements

We recognize that organizations may have only a short time after learning of an event in which to organize participation in a charter flight, such as might occur with a bowl game or NCAA basketball playoff appearance. The Department has always been willing to work with organizations that can show that an exemption from certain of its rules is in the public interest. While such matters are reviewed on a case-by-case basis, in seeking such relief, an organization should be prepared to show, at a minimum, that it has a contract with a carrier holding appropriate authority for the flight and that appropriate financial arrangements are in place to protect consumer payments.

Using a Public Charter Operator or an Air Charter Broker

Organizations may contract with a Public Charter operator to organize a charter flight. Any organization that does so should assure itself that the Public Charter operator has complied with the requirements of part 380, as described above (and part 381, where applicable, as described below). Organizations may also contract directly with an air carrier through an ''air charter broker.'' An air charter broker cannot misrepresent itself as an air carrier and, because it does not hold authority from the Department, it cannot in its own right contract to sell air transportation. Therefore, it must generally have authority to act either (1) as the agent of a chartering organization in contracting with an air carrier or (2) as the agent of the air carrier in contracting with a chartering organization. Air charter brokers also may act merely as a ''go-between'' without being involved in the actual contract between the carrier and the charter customer, e.g., by locating a customer for an air carrier and being paid a finder's fee by the carrier, but this is a rare occurrence.

Organizations using air charter brokers should be aware that, since the Department does not license air charter brokers, there is no DOT-required financial security in place to protect an organization's payments to a broker that is the lawful agent of the organization or who acts in a ''go-between'' function. With respect to air charter brokers that state that they are acting as the agent of one or more air carriers, prior to signing a contract for air services organizations should take steps to assure themselves of the agency relationship and that the carrier represented is properly licensed by DOT and FAA to provide the air transportation.[1]

Tickets to a Game or Other Special Event Sold in Conjunction With a Flight

It is also important to note that specific rules apply to situations where tickets to a game or other special event are being offered in conjunction with a flight, whether it is a charter flight or a regularly scheduled flight. Under 14 CFR Part 381, an entity that offers special event or game tickets in connection with a flight must be in physical possession of a sufficient number of tickets or have a written contract for the tickets, which must be directly traceable to the actual sponsor of the game or other special event. Failure to meet Part 381's requirements can entitle a participant to a full refund, including the price of the air fare.

We seek the chartering public's cooperation and assistance to ensure that they arrange an enjoyable and secure traveling experience. If you have any questions or desire additional information, please contact Dayton Lehman, Deputy Assistant General Counsel for Aviation Enforcement and Proceedings, or Lisa Swafford-Brooks, Senior Attorney in that office, at (202) 366–9342. If you wish to ascertain whether a particular aircraft operator has DOT air carrier economic authority, you may contact Bill Bertram, Chief of the Air Carrier Fitness Division at (202) 366–1062.

An unofficial electronic version of this document is available on the World Wide Web at *http://dms.dot.gov/reports* and at *http://airconsumer.ost.dot.gov/rules/guidance.htm*

[1] On October 8, 2004, this office issued a notice regarding the lawful role of air charter brokers in the provision of air transportation and our enforcement policy covering such operations. The notice, which was published in the **Federal Register**, provides information on a variety of topics involving air charter brokers, including contracting procedures and marketing. 69 FR 61429, Oct. 18, 2004; erratum published 69 FR 62321, Oct. 25, 2004. The notice may be found on the office's website at: *http://airconsumer.ost.dot.gov/rules/BrokerNoticeFinal.pdf.*

Dated: December 13, 2006.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings.

[FR Doc. 06–9772 Filed 12–14–06; 4:01 pm]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2006–24902]

Final List of Nationally and Exceptionally Significant Features of the Federal Interstate Highway System

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA is issuing this notice to announce the final list of nationally and exceptionally significant features of the Federal Interstate Highway System. The list is available at *http://www.environment.fhwa.dot.gov/histpres/highways.asp.* In developing the final list, the FHWA considered public comments received on the preliminary list of exceptional elements, which was published in the **Federal Register** on June 16, 2006 (71 FR 34988). This notice summarizes those comments. Exemptions of the Interstate Highway System from consideration as historic property under the provisions of section 106 of the National Historic Preservation Act (NHPA) and section 4(f) of the Department of Transportation Act of 1966 [1] will not apply to the elements on this list.

DATES: The final list of nationally and exceptionally significant features of the Federal Interstate Highway System is effective December 19, 2006.

FOR FURTHER INFORMATION CONTACT: MaryAnn Naber, HEPE, (202) 366–2060; Federal Highway Administration; 400 7th Street, SW., Washington, DC 20590; Harold Aikens, Office of the Chief Counsel, HCC–30, (202) 366–0791; Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

[1] Section 4(f) of the Department of Transportation Act of 1966 was technically repealed in 1983 when it was codified without substantive change and 49 U.S.C. 303. A provision with the same meaning is found at 23 U.S.C. 138 and applies only to FHWA actions. We continue to refer to section 4(f) as such because it would create needless confusion to do otherwise; the policies section 4(f) engendered are widely referred to as ''Section 4(f)'' matters.

Electronic Access and Filing

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL) for the Document Management System (DMS) at *http://dms.dot.gov*. The DMS is available 24 hours each day, 365 days each year.

An electronic copy of this document may be downloaded by using the Internet to reach the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov/nara*.

I. Background

As the Dwight D. Eisenhower National System of Interstate and Defense Highways (Interstate System) approached its 50th Anniversary, the potential for vast sections of highway to reach the mark at which resources are often evaluated for historic significance raised the issue of an overwhelming administrative burden for the myriad routine undertakings affecting the Interstate System. Accordingly, on February 18, 2005, the Section 106 Exemption Regarding Effects to the Interstate Highway System was adopted by the Advisory Council on Historic Preservation (ACHP) to minimize the administrative burden on agencies responsible for highway maintenance and improvements.[2] This exemption effectively excluded the majority of the 46,700-mile Interstate System from consideration as a historic property under section 106 of the National Historic Preservation Act (NHPA). In addition, the recently enacted Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) reauthorization legislation (Pub. L. 109–59, August 10, 2005) included a provision (Section 6007) that exempts the bulk of the Interstate System from consideration as an historic property under section 4(f) of the Department of Transportation Act. With these two exemptions in place, all Federal agencies are no longer required to consider the vast majority of the Interstate System as historic property under Section 106 and Section 4(f) requirements. Interstate improvement projects are still subject to these respective processes with regard to those resources listed on or eligible for inclusion on the National Register of Historic Places that are not integral parts of the Interstate System.

[2] The ACHP's approved exemption was published in the **Federal Register** on March 10, 2005, at 70 FR 11928.

Under Section II of the ACHP's Section 106 exemption, certain elements of the Interstate System, such as bridges, tunnels, and rest stops, shall be excluded from the exemption's provisions if they have national and/or exceptional historic significance. Section III of the ACHP's Section 106 exemption set forth the process by which the FHWA was to identify these elements in consultation with stakeholders in each State. Section 6007 of SAFETEA–LU (codified at 23 U.S.C. 103(c)(5)) adopted by reference the same process for identifying exclusions to the Section 4(f) exemption. Under this process, elements of the Interstate System to be excluded from the exemptions were required to meet at least one of the following criteria for significance:

1. National Significance. The element is at least 50 years old and meets the National Register of Historic Places (National Register) criteria [3] for national significance as defined in 36 CFR 65.4. In particular, the quality of national significance is ascribed to resources that possess exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archeology, engineering, and culture and that possess a high degree of integrity.

2. Exceptional Significance. The element is less than 50 years old and meets the National Register criteria consideration for exceptional importance. The first step in evaluating properties of recent significance is to identify the appropriate area(s) of significance: engineering, transportation, social history, or commerce. Then, deliberate and distinct justification for the ''exceptional importance'' of the resource must be made. The phrase ''exceptional importance'' may be applied to the element's extraordinary impact on an event or for the quality of its design or because it may be one of very few survivors of a resource type. Standard design elements, by their very nature, are not exceptional.

3. Listed or Determined Eligible by the Keeper. The element is listed in the National Register or has previously been determined eligible by the Keeper of the National Register.

4. State or Local Significance. At the discretion of the FHWA, elements may be included in the list of excluded elements if they are at least 50 years old, were later incorporated into the Interstate Highway System, and meet the National Register criteria for evaluation as defined in 36 CFR 60.4 at the state or local level of significance.

The FHWA published a notice on June 16, 2006, (71 FR 34988) describing the collaborative process used to identify properties that should be excluded from the Section 106 and Section 4(f) exemptions. The notice also published and requested comments on a preliminary list of properties recommended for exclusion by teams of Federal, State, and local stakeholders within each State.

After reviewing the comments submitted on the preliminary list, the FHWA has revised and finalized the list of exceptional Interstate System elements, as described below. Properties included on this list will continue to be subject to the requirements of Sections 106 and 4(f).

II. Discussion of Comments and Responses

A. Summary of Comments

In response to the June 16, 2006, notice, the FHWA received 55 sets of comments on the preliminary list. Comments were submitted by a variety of individuals and organizations, including: State Department of Transportation (DOT) representatives (18); private citizens (17); transportation-related associations or professional groups (9); State Historic Preservation Office (SHPO) representatives (4); turnpike or toll road authorities (4); city officials (2); and a State legislature (1). Most of the comments addressed the inclusion of elements on the preliminary list, with 26 suggesting that one or more elements be removed, 19 requesting that elements be retained, and three suggesting that elements be added. Such comments addressed 51 unique elements of the Interstate System. The remaining seven comments addressed other issues: a few raised questions about the process of identifying excluded elements with several suggesting the process was too limited and might overlook significant resources while another found the process and resulting list to be over-inclusive. Other comments voiced appreciation for the opportunity to provide input on the list and a few pointed out inaccuracies in the justification statements of particular elements.

B. Response to Comments

After the public comment period ended, the FHWA categorized the comments into two main groups: those that required action and those that did not. Comments requiring action included suggested changes to the list itself (*i.e.*, addition or removal of properties) and questions or statements requiring additional research (*e.g.*, suggested corrections to the justification statements). The FHWA addressed comments that suggested changes to the list via a collaborative process, as detailed below. For comments requiring additional research, the FHWA worked with qualified cultural resource management specialists to locate the information in question and revise justification statements, as appropriate. General comments about approach and methodology are addressed below.

As described in the June 16, 2006, notice, the FHWA engaged representatives from FHWA Division Offices, State DOTs, SHPOs, and other stakeholders (where appropriate) within each of the 50 States and the District of Columbia to identify elements that should remain subject to Section 106 and 4(f) requirements. At the conclusion of the public comment period, the FHWA noted that a number of comments were significant enough to require additional discussion with the ''teams'' of representatives that helped to develop the initial list. Such comments included requests for the removal of certain elements from the list or the addition of new elements to the list. In August and September of 2006, the FHWA convened and participated in a series of conference calls to discuss significant comments on elements in 10 States; invited to participate in each call were the original team of State representatives and all those who submitted comments on the elements in the State. Each call was facilitated by the cultural resource management specialist who worked with the State in developing its initial list and included representation from FHWA Headquarters. The goals of engaging State teams and commenters in this manner were to provide a forum for open communication between stakeholders and FHWA and to attempt to reach consensus on a final list of elements in each State.

While the effort to identify excepted elements to the broad exemptions for the Interstate System references some of the basic principles for determining eligibility to the National Register, the survey of this 47,000-mile resource could not be conducted at a level of great detail, nor was it expected to provide definitive justification for National Register eligibility. The intent of the process was to determine which resources appeared to rise to the national and/or exceptional level in order that they be afforded the

[3] Information on the National Register standards for evaluating the significance of properties and its criteria for listing may be found at the following URL: *http://www.cr.nps.gov/nr/listing.htm*.

consideration of review under Section 106 and Section 4(f), while immediately exempting the vast majority of the Interstate System. This initial look was not intended to apply the same rigor with which a formal determination of eligibility is conducted, but to retain the ability to apply the full 106 and 4(f) processes to those elements which appeared to rise to that level. Application of the Section 106 process would provide additional detailed information regarding eligibility upon which the balance of the review(s) would proceed. It is therefore conceivable that in the course of consideration under the respective reviews, some of the resources included in the final list of exceptional elements of the Interstate may be determined not eligible for inclusion in the National Register. In that case, no further consideration of the specific Interstate element as a historic property is required under either of the statutory provisions. Should a resource be validated as National Register eligible, most improvements would likely be able to be made in a way that does not adversely affect its significant characteristics. In such cases, Section 106 could be completed very simply and Section 4(f) would not apply. In any case, inclusion on the list in no way implies that these resources cannot be maintained and improved to continue to safely serve the traveling public.

Two commenters suggested that there was some inconsistency between the criteria cited in the original Section 106 exemption and the guidance for applying the criteria subsequently distributed in January 2006 by FHWA.[4] However, the guidance was clearly supplemental to the language of the actual Section 106 exemption, which was adopted by SAFETEA-LU Section 6007, and was not intended to supersede it. As the criteria were applied in the course of this process, those resources less than 50 years old apparently meeting the standards of ''exceptional,'' were also deemed to carry national significance within the context of the Interstate Highway System.

III. Changes to List of Exceptionally and Nationally Significant Features

After considering the comments submitted during the public comment period and the views expressed during the subsequent conference calls with teams in several States, the FHWA has made several modifications to the list of exceptional Interstate System features. The final list includes 132 unique features—20 fewer features than the preliminary list contained (152). Specifically, the FHWA has removed 26 elements from and added 6 elements to the list. The final list may be viewed at *http://www.environment.fhwa.dot.gov/histpres/highways.asp*.

Authority: 23 U.S.C. 103(c)(5)(B); Sec. 6007 of Pub. L. 109–59.

Issued on: December 12, 2006.

J. Richard Capka,

Federal Highway Administrator.

[FR Doc. E6–21581 Filed 12–18–06; 8:45 am]

BILLING CODE 4910–22–P

[4] ''Guidance to apply the Criteria for the Identification of Nationally Significant and Exceptionally Significant Elements of the Interstate Highway System'' is available at: *http://www.environment.fhwa.dot.gov/histpres/highways.asp*.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, January 12, 2007.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be held Friday, January 12, 2007, from 9 a.m. Pacific Time to 10:30 a.m. Pacific Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: December 4, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–21570 Filed 12–18–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
December 19, 2006

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to List Penstemon grahamii (Graham's beardtongue) as Threatened With Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU49

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to List Penstemon grahamii (Graham's beardtongue) as Threatened With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), withdraw the proposed rule, published in the **Federal Register** on January 19, 2006 (71 FR 3158), to list *Penstemon grahamii* (Graham's beardtongue) as a threatened species with critical habitat under the Endangered Species Act (Act) of 1973, as amended. We have determined that listing is not warranted because threats to the species as identified in the January 19, 2006, proposed rule are not significant, and available data do not indicate that the threats to the species and its habitat, as analyzed under the five listing factors described in section 4(a)(1) of the Act, are likely to threaten or endanger the species in the foreseeable future throughout all or a significant portion of its range. Our decision to withdraw the proposed rule to list *Penstemon grahamii* also removes the species from candidate status under the Act.

DATES: The proposed rule published at 71 FR 3158, January 19, 2006 concerning Graham's beardtongue is withdrawn effective December 19, 2006.

ADDRESSES: Supporting documentation for this rulemaking is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Utah Field Office, 2369 W. Orton Circle, West Valley City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Larry England, Botanist, at the above address (telephone 801–975–3330, extension 138; fax 801–975–3331; or e-mail *larry_england@fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

In this document, it is our intent to discuss only those topics directly relevant to the listing and designation of critical habitat for *Penstemon grahamii.* For additional information on the species, refer to the proposed rule published in the **Federal Register** on January 19, 2006 (71 FR 3158).

The genus *Penstemon* consists of dicotyledonous plants traditionally placed in the Figwort family (*Scrophulariaceae*). *Penstemon grahamii* was first collected from a site west of the Green River and south of Sand Wash, in southern Uintah County, Utah, on May 27, 1933, and from a site north of Sand Wash on the following day (Graham 1937, p. 332). *P. grahamii* is an herbaceous perennial plant within the sub-genus Cristati (N. Holmgren in Cronquist *et al.* 1984, p. 380). The species is described in detail in the proposed rule (71 FR 3158).

We delineated all known locations with extant populations of *Penstemon grahamii* into 109 occurrences. An ''occurrence'' is defined in this document as: an area with continuous suitable habitat with an extant or historical population of *P. grahamii* delineated on aerial photography (Service 2005, pp. 1–3, 13). We grouped these occurrences into five population habitat units separated by unoccupied gaps in the species' range. A ''population habitat unit'' is defined as continuous groups of occurrences within 5 kilometers (km) (3 miles (mi)) of each other (Service 2005, pp. 4, 7). Available population data information is summarized for the five population habitat units rather than each of the 109 occurrences (Shultz and Mutz 1979b, pp 25–39; Neese and Smith 1982b, pp. 116–140; Borland 1987 p. 1; Franklin 1993, Appendix D; Franklin 1995, Appendix B; Colorado Natural Heritage Program (Colorado NHP) 2005, pp. 1–20; Utah Natural Heritage Program (Utah NHP) 2005, pp. 1–124; Service 2005, pp. 1–13).

The 109 occurrences within 5 population habitat units of *Penstemon grahamii* collectively form the species' known range, which is distributed in a curved band about 10 km (6 mi) wide and about 128 km (80 mi) long. These units extend from the Sand Wash and adjacent Nine Mile Creek drainages near the point where Carbon, Duchesne, and Uintah Counties, Utah, meet; then easterly across southern Uintah County to near the Colorado border; then northerly to a point near the White River where the population band moves into Colorado to Raven Ridge, the eastern terminus of the species' range. The total documented population of *P. grahamii* is estimated at approximately 6,200 individuals (Shultz and Mutz 1979a, pp. 38–42; Shultz and Mutz 1979b, pp. 25–38; Neese and Smith 1982a, pp. 63–66; Neese and Smith 1982b, pp. 115–140; Borland 1987, p. 1; Franklin 1993, Appendix D; Franklin 1995, Appendix B; Colorado NHP 2005, pp. 1–20; Utah NHP 2005, pp. 1–124; Service 2005, pp. 1–13; Decker *et al.* 2006, pp. 3–10). Approximately 60 percent of the species' population is on Bureau of Land Management (BLM) managed land with the remainder on non-Federal lands with State and private ownership. The five population habitat units are described in the following paragraphs.

The westernmost *Penstemon grahamii* population habitat unit, named the Sand Wash Unit (Unit A), occurs in the vicinity of Sand Wash in southwestern Uintah and adjacent Carbon and Duchesne Counties, Utah. This population habitat unit consists of 10 separate occurrences with a population estimated at 135 individuals (Shultz and Mutz 1979b, pp. 37–38; Franklin 1993, Appendix D; Utah NHP 2005, pp. 1–4, 21–24, 45–52, 65–80; Service 2005, pp. 1–13). This unit has relatively small numbers (approximately 2 percent of the species' total) compared to those population habitat units in the center of the species' range. The unit is the most isolated of the species' population habitat units. This portion of the species' population has minor morphological differences from the remainder of its population and may, due to geographic isolation, be genetically divergent from the remainder of the species' population (Shultz and Mutz 1979a, p. 41).

A second population habitat unit, named the Seep Ridge Unit (Unit B), occurs approximately 27 km (17 mi) east of the Sand Wash Unit in the Willow and Bitter Creek drainages in the vicinity of Sunday School Canyon near the Seep Ridge road in south central Uintah County, Utah. This unit consists of 53 separate occurrences with an estimated population of 3,200 individuals (Shultz and Mutz 1979b, pp. 25–39; Utah NHP 2005, pp. 5–20, 25–28, 53–56, 61–64, 85–100; Service 2005, pp. 1–13). This population habitat unit is the species' largest with approximately 52 percent of the species' total population.

A third population habitat unit, named the Evacuation Creek Unit (Unit C), occurs approximately 16 km (10 mi) east of the Seep Ridge Unit in the Asphalt Wash and Evacuation Creek drainages near the abandoned Gilsonite mining towns of Dragon and Rainbow. This unit is in southeastern Uintah County, Utah, and adjacent Rio Blanco County, Colorado, and consists of 31 separate occurrences with an estimated population of 2,550 individuals (Neese and Smith 1982b, pp. 115–133, 137–140; Franklin 1995, Appendix B, Map 3; Utah NHP 2005, pp. 29–32, 37–44, 57–60, 81–84, 113–120; Service 2005, pp. 1–13). This population habitat unit is

the species' second largest with approximately 41 percent of the species' total population.

A fourth population habitat unit, named the White River Unit (Unit D), occurs approximately 8 km (5 mi) north of the Evacuation Creek Unit in Hells Hole and Weaver Canyons immediately south of the White River. This unit is in eastern Uintah County, Utah, and consists of 9 separate occurrences with an estimated population of 115 individuals (Neese and Smith 1982b, pp. 134–136; Franklin 1995, Appendix B, Maps 5–8; Utah NHP 2005, pp. 33–36, 101–112, 121–124; Service 2005, pp. 1–13). This population habitat unit is the species' smallest, with approximately 2 percent of the species' total. The unit is important as a link between the largest population habitat units to the south and southwest and the Colorado population to the northeast.

A fifth population habitat unit, named the Raven Ridge Unit (Unit E), occurs approximately 11 km (7 mi) northeast of the White River Unit along the west flank of Raven Ridge and north of the White River between Raven Ridge and the Utah border in extreme western Rio Blanco County, Colorado. This unit consists of 6 separate occurrences with an estimated population of 200 individuals (Borland 1987, p. 1; Colorado NHP 2005, pp. 1–20; Service 2005, pp. 1–13). The population habitat unit harbors approximately 3 percent of the species' total population and includes virtually the species' entire population in Colorado (a portion of a small population occurs in at the eastern margin of the Evacuation Creek Unit at the Colorado-Utah border). As in the case of the Sand Wash Unit, the Raven Ridge Unit is at the extreme end of the species' range. As such this population is important for its representation of a portion of the full spectrum of the species' genetic diversity.

Penstemon grahamii habitat is a discontinuous series of exposed raw shale knolls and slopes derived from the Parachute Creek and Evacuation Creek members of the geologic Green River Formation. Most populations are associated with the surface exposure of the petroleum bearing oil-shale Mahogany ledge (Cashion 1967, p. 31, Fig. 8; Shultz and Mutz 1979a, pp. 39–40; Neese and Smith 1982a, p. 64; Franklin 1993, Appendix D; Franklin 1995, Appendix B). The trace of the Mahogany bed correlates very closely with the trace of *Penstemon grahamii* sites from the vicinity of Sand Wash near the Green River to Raven Ridge near the White River (Cashion 1967, p. 31, Fig. 8; Shultz and Mutz 1979a, pp. 39–40; Neese and Smith 1982a, p. 64; Decker *et al.* 2006, pp. 3–10).

Penstemon grahamii is associated with a suite of species similarly adapted to xeric growing conditions on highly basic calcareous shale soils. The vascular plant species most commonly associated with *P. grahamii* are listed in the proposed rule (71 FR 3158). The plant community associated with *P. grahamii* forms a distinctive assemblage of plant species dominated by dwarf shrubs and mound-forming perennial herbaceous plants with relatively low plant cover. This plant community forms small patches within the broader plant communities that characterize the southeastern Uinta Basin (Shultz and Mutz 1979a, p. 40; Neese and Smith 1982a, p. 63; BLM 2005, pp. 3–105 to 3–109; Graham 1937, pp. 43–47, 59–71). Pollinators of *Penstemon grahamii* are listed in the proposed rule (71 FR 3158).

The Colorado NHP has assigned *Penstemon grahamii* a global imperilment ranking of G2 and State imperilment ranking of S1. The Utah NHP has assigned *Penstemon grahamii* a global imperilment ranking of G2 and State imperilment rankings of S2. The G2 and S2 rankings mean the species is imperiled at Global and State levels respectively. An S1 ranking means the species is critically imperiled at a State level. These rankings, developed by The Nature Conservancy, and applied by various NHPs associated with State governments, are utilized by the Service in selecting candidate species and by the BLM in selecting ''Special Status Species'' for enhanced conservation actions and resource planning. The International Union for the Conservation of Nature has given the species a ranking of ''Vulnerable.''

Previous Federal Actions

The history of *Penstemon grahamii* as a candidate species under the Act is recounted in detail in the proposed rule (71 FR 3158). It has been a candidate for listing since 1980 (December 15, 1980; 45 FR 82480).

Penstemon grahamii was petitioned three times for listing as endangered or threatened under the provisions of the Act. The first petition was the initial Smithsonian list of 1975 (see above). The second petition was the Fund for Animals' petition of 1990. This petition included 401 species the Service had assigned category 1 status in its previous notices of review. On October 8, 2002, we received a petition specifically for *P. grahamii* from five separate parties—Center for Native Ecosystems, Southern Utah Wilderness Alliance, Utah Native Plant Society, Colorado Native Plant Society, and American Lands Alliance. This ''second'' petition reiterated biological information and information on increased levels of threat that, for the most part, was already in our files.

A court settlement required us to submit a proposed rule to list *Penstemon grahamii* to the **Federal Register** by January 9, 2006. Our proposed rule to list *P. grahamii* as threatened with a proposed designation of critical habitat was published in the **Federal Register** on January 19, 2006 (71 FR 3158). The proposed rule announced a 60-day public comment period ending on March 20, 2006. During the public comment period we received a request for a public hearing and an extension of the public comment period. We announced the reopening of the public comment period and notice of a public hearing in the **Federal Register** on April 13, 2006 (71 FR 19158). The public comment period was extended to May 19, 2006, and a public hearing was held at the Uintah County Building, in Vernal, Utah, on April 26, 2006.

Summary of Comments and Recommendations

During the open public comment periods between January 19 and March 20, 2006, and April 13 and May 19, 2006, we requested all interested parties to submit information pertaining to both the proposed listing and critical habitat. We also sought specific information on any available preliminary results from the recent lease nominations for research, development, and demonstration of oil-shale recovery technologies on BLM lands; success of ongoing oil-shale or tar-sands development projects, particularly in the Green River formation; available economic and technological analyses; and specific information detailing definitive effects of these operations on environmental resources, as primarily related to losses of individual plants, loss or fragmentation of the habitat, and loss or declines in plant pollinators. Similarly, the Energy Policy Act sets the stage for increased oil and gas drilling activities within *Penstemon grahamii* habitat, so we requested information specific to ongoing or proposed actions in these areas.

The BLM provided us with substantial information concerning: current and projected energy development; grazing use and management; off-road vehicle (ORV) use and management; exotic species (weeds) control activities; wildland fire control actions; and the potential for horticultural collection. In addition,

BLM provided planning and regulatory direction it will use to ensure the conservation of the species as a consequence of any future development of oil-shale or tar-sands that may affect the species. As a consequence we have relied heavily on BLM's comments in this final notice withdrawing the proposed rule to list *P. grahamii* as threatened, incorporating the information it provided within our analysis of threats.

Peer Review

In accordance with our July 1, 1994, Interagency Cooperative Policy on Peer Review (59 FR 34270), we requested the expert opinions of six independent specialists regarding pertinent scientific or commercial data and assumptions relating to supportive biological and ecological information in the proposed rule. The purpose of such a review is to ensure that the listing decision is based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

The six experts we requested to review the proposed rule were selected on the basis of their expertise on *Penstemon grahamii* natural history and ecology. We requested that they review the proposed rule and provide any relevant scientific data relating to taxonomy, distribution, population status, or the supporting biological and ecological data used in our analyses of the listing factors. We specifically requested information responding to the following six questions. (1) Is our description and analysis of the biology, population, and distribution of *P. grahamii* accurate? (2) Does the proposed rule provide accurate and adequate review and analysis of the factors relating to the threats to the *P. grahamii* (A. The present or threatened destruction, modification, or curtailment of its habitat, B. Overutilization for commercial, sporting, scientific, or educational purposes, C. Disease and predation, D. Adequate regulatory mechanisms, and, E. Any other natural or man made factors affecting is continued existence)? (3) Are our assumptions and definition of suitable habitat logical and adequate? (4) Is our delineation and proposal of critical habitat for this species appropriate? (5) Are the conclusions we reach logical and supported by the evidence we provide? (6) Did we include all the necessary and pertinent literature to support our assumptions/arguments/conclusions?

Three of the six provided comments during the initial peer review process. All three provided information to correct, clarify, or support statements contained in the proposed rule. We have incorporated their comments into the final determination, as appropriate. The three responding peer reviewers stated that all six of the questions asked were adequately addressed in the proposed rule. One reviewer noted that our proposed critical habitat included only existing populations, and therefore provided a conservative estimate of potential habitat. This same reviewer also agreed that current oil and gas activity appears to provide little adverse affect to the species, but future increase in the density of conventional oil and gas wells and the inevitable development of oil-shale extraction projects would be problematic.

Another peer reviewer stated that *Penstemon grahamii* is clearly a narrowly restricted, globally rare species, but most of the information on the species in Colorado is not current. A lack of recent surveys has resulted in uncertainty about its distribution and population size. He concluded that even if future surveys revealed robust populations, the types of threats faced by the species would result in a need for habitat protection.

The third peer reviewer stated that, in her opinion, ''* * * the effect of livestock grazing is an additional source of stress for a species already grappling with a stressful environment.'' Therefore, studies of the effects of livestock and wildlife exclosures on plant vigor and reproduction should be a high priority if the species is listed. She also felt that the degree of protection provided to *Penstemon grahamii* by BLM's Area of Critical Environmental Concern designations is variable and inconsistent.

Although the peer reviewers felt that our proposed listing rule justified listing, based on the new scientific and commercial information concerning the species' status received during the comment period, we have determined that *Penstemon grahamii* does not currently warrant protection under the Act.

Summary of Public Comments and Recommendations

During the public comment periods, we received written comments from 37 entities. Twenty-two entities advocated listing of the species, 12 entities advocated not listing the species, and 3 entities did not advocate either listing position. The public comments received and our responses are summarized below. Comments that contained new, updated, or additional information were thoroughly considered in this final determination. We received a large number of identical or similar comments, and we consolidated those into several categories.

Comments Related to Energy Development Impacts to the Species and Its Habitat

Comment 1—No overlap exists between current, proposed, and potential future oil-shale/tar-sands development and species' habitat.

Our Response—We evaluated the potential for oil-shale and tar-sands development to impact *Penstemon grahamii* based largely on the plant's dependence on oil-shale geologic strata. There are no ongoing commercial oil-shale or tar-sands activities on Federal lands in the Uinta Basin, Green River formation. We acknowledge that the exact location and extent of future oil-shale or tar-sands commercial development in the Uinta Basin is unknown, and we have considered information from BLM regarding—1) the higher likelihood that oil-shale would progress, at least initially, in the Piceance Basin, Colorado, approximately 30 miles east of known *P. grahamii* occurrences and 2) geologic information depicting mineral development potential compared to known *P. grahamii* habitats. Approved nominations under the BLM oil-shale Research, Development, and Demonstration (RD&D) program also do not overlap known *P. grahamii* habitat.

Comment 2—A high level of technological and economic uncertainty exists for future oil-shale and tar-sands development.

Our Response—We acknowledge there is a high level of technological and economic uncertainty, and that commercial oil-shale or tar-sands development is only a potential future prospect, likely many years away. We have included this information in our analysis.

Comment 3—Even if industry's interest in oil-shale mining eventually moved near *Penstemon grahamii* occurrences, experience shows that industry would likely propose underground mining techniques, or one or more of various in-situ recovery processes. There is considerable flexibility in siting access shafts and supporting surface facilities for an underground mine or in-situ development and they can easily be placed to avoid critical surface resource areas.

Our Response—We acknowledge that there is a high level of technological uncertainty regarding commercial oil-shale development. Until more specific technological decisions are made, it is not feasible for us to make conclusions

regarding the actual effects oil-shale mining may have on *Penstemon grahamii* and its habitat. The different mining technologies are discussed in our analysis. However, we strongly recommend that BLM continue to evaluate technological processes and devise appropriate conservation measures if commercial development progresses in the future.

Comment 4—The GIS analysis supports the concept that engineering and economics generally keep oil and gas wells out of *Penstemon grahamii* habitat. In addition, BLM and industry have implemented species inventories and avoid special status plant species and their habitats.

Our Response—Our evaluation concluded that oil and gas wells, to date, have not been located directly on known *Penstemon grahamii* locations. We encourage BLM and the energy industry to implement appropriate technologies and conservation measures to avoid development that may threaten the species and its habitat in the future.

Comment 5—Several conventional oil and gas exploratory and field development projects are proposed or underway in or near occupied *Penstemon grahamii* habitat, including—the Resource Development Group, GASCO, Dominion Kings Canyon project, Enduring Resource Big Pack project, MakJ Little Canon/Bick Pack Mountain field development project, Pioneer Park Ridge 3D Seismic project, and Columbine 3D seismic project.

Our Response—We have included an evaluation of these projects in our analysis and concluded that they do not significantly affect *Penstemon grahamii* or its occupied habitat. See our discussion of the impacts of oil and gas exploration and development in the Summary of Factors Affecting the Species section.

Comment 6—Industry has historically demonstrated no interest in surface mining the Mahogany outcrops. There is no evidence that potential, foreseeable oil-shale development would occur in the vicinity of the Mahogany ledge outcrops.

Our Response—We have evaluated the information presented and agree that there is no current active interest, to date, for oil-shale development along the Mahogany zone in *Penstemon grahamii* habitat. Technological and economic uncertainties exist to the extent that we cannot conclude that there is a certainty of future threats in this area.

Comment 7—Most *Penstemon grahamii* are located on a bed of petroleum bearing oil-shale in Utah and Colorado. Ninety-eight percent of *P. grahamii* individuals are located in the Parachute Creek member of the Green River formation. The Parachute Creek member is the most important area in regard to oil-shale. The entire range of *P. grahamii* also is sitting on deposits of natural gas.

Our Response—We have analyzed the distribution of *Penstemon grahamii* relative to the potential for energy development. Significant economic questions remain concerning the development of the Green River formation oil-shale and tar-sands. There are currently no development projects for this resource proposed anywhere within the known range of *P. grahamii*, or anywhere else in the United States. We have included a detailed analysis of potential impacts of oil-shale and tar-sands development, and the current and future impacts of conventional natural gas drilling and production in the Summary of Factors Affecting the Species section.

Comment 8—Oil-shale processing has been attempted many times all over the world with the same result—failure. The processing of oil-shale is far too expensive to be economical. Although the technology for the oil-shale processing may not be quite ready, the potential for it is very real.

Our Response—We acknowledge the technological and economic uncertainty associated with oil-shale development. Until and unless technology advances and commercial oil-shale development plans are proposed, it is inappropriate for us to speculate on the potential scale and distribution of commercial oil-shale development.

Comment 9—Commenters provided information regarding the current and projected future increases in oil and gas development in the Vernal BLM Field Office area respective to the proposed critical habitat units.

Our Response—We have evaluated ongoing and proposed energy development and potential impacts to *Penstemon grahamii* in our finding. We acknowledge the current and projected increases in oil and gas exploration and development in the Uinta Basin. We have addressed energy exploration and development in our final rule. Our analysis of the best available scientific and commercial data reveals that *P. grahamii* is not warranted for listing under the Act.

Comment 10—Shell's Mahogany Project in the Piceance Basin provides a glimpse of what surface impacts using in-situ methods would look like—100 percent surface disturbance. Images posted on the SkyTruth.org Web site show impacts at an oil-shale operation in Australia that show complete surface disturbance.

Our Response—We acknowledge the potential impacts of oil-shale mining to *Penstemon grahamii* habitat, if this mining occurs in habitat occupied by the species. However, we do not have information to conclude that oil-shale mining will occur in *P. grahamii* habitat.

Comment 11—The Department of the Interior may attempt to argue that until oil-shale development is shown to be technically and economically viable on a commercial scale, it should not be considered a real threat. However, this ignores the fact that members of Congress are actively interested in forcing the BLM to lease large portions of the oil-shale resource now before RD&D projects begin, and that any analysis of economic feasibility must factor in the possibility that the government may be willing to heavily subsidize this experiment. The Service must recognize that interest in oil-shale will not go away as long as oil is valuable. The Service must list now because oil-shale poses an extremely high magnitude threat to *Penstemon grahamii* and Congress has made that threat more imminent today than it has been in the past decades.

Our Response—We acknowledge the potential impacts of oil-shale mining to *Penstemon grahamii* if this mining occurs in habitat occupied by the species. However, we do not have information to conclude that oil-shale mining will occur in *P. grahamii* habitat.

Comment 12—Several comments described the direct, indirect, and cumulative environmental impacts associated with oil-shale mining.

Our Response—We acknowledge the potential effects of oil-shale development on *Penstemon grahamii*. We have evaluated the threat of oil-shale mining in our finding.

Comment 13—Shell Frontier Oil and Gas Corporation's proprietary In-situ Conversion Process (ICP) uses subsurface heating to convert kerogen contained in oil-shale into ultra-clean transportation fuels and gas. Shell's ICP is more environmentally friendly and more efficient than previous oil-shale efforts. It recovers the resources without conventional mining, uses less water, and does not generate large tailing piles.

Our Response—Our finding discusses various technologies for commercial oil-shale mining. Certainly any processes that also provide environmental protections are preferred. We also acknowledge that technologies are still being developed for oil-shale mining and the location and extent of

commercial oil-shale mining is still uncertain.

Comment 14—The proposed rule, if finalized, will impede, if not completely proscribe, oil-shale development in areas occupied by *Penstemon grahamii*.

Our Response—Our determination that this species does not warrant listing under the Act is based on our assessment of the threats to the species, as they are known at the time of the decision, not the potential land management implications of listing. We have evaluated the potential impacts of oil-shale mining in this finding.

Comment 15—There are no present threats to the viability of the species, either listed in the proposed rule or otherwise known. The threats listed in the proposed rule are all perceived future threats, not current activities.

Our Response—We concur that potential threats to *Penstemon grahamii* from oil-shale and tar-sands development described in the proposed rule were speculative, although based on the best information available to the Service. Our analysis in this final rule, based on information received after publication of the proposed rule, recognizes that current impacts to the species from oil and gas development do not rise to level to warrant listing now or for the reasonably foreseeable future.

Comment 16—Destruction of *Penstemon grahamii* habitat is irrevocable. We should not take irrevocable action for the sake of short-term economic benefit.

Our Response—We have evaluated threats to *Penstemon grahamii* and its habitat in our finding. Our determination as to whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species as they are known at the time of the decision.

Comment 17—Boom and bust energy cycles have occurred in Uintah County for the past 75 years. *Penstemon grahamii* has continued to flourish.

Our Response—Our finding has taken into consideration the known species' population status and trends, as well as the potential threat of energy development.

Comments Related to Inadequacy of Existing Regulatory Mechanisms

Comment 18—Existing regulatory mechanisms, including the Energy Regulatory Act of 2005, are available to protect *Penstemon grahamii* from mineral development as well as other land use activities.

Our Response—We acknowledge that regulatory mechanisms and policies exist to incorporate conservation measures for this species in oil-shale or tar-sands commercial leasing programs. Regulatory mechanisms and policies also are available for other land-use activities.

Comment 19—Combined hydrocarbon leases (e.g., conventional oil and gas along with tar-sands) have been issued to some extent prior to the Energy Policy Act of 2005. There was no real restriction to leasing in these areas as portrayed in the Service's proposed rule (71 FR 3158).

Our Response—We acknowledge there was some opportunity for oil and gas leasing prior to the Energy Policy Act of 2005. Energy Policy Act provisions alleviate some of the prior restrictions of oil and gas leasing in the tar-sands areas.

Comment 20—Without listing, the BLM can only require that proposed facilities be moved 200 meters (m) (656 feet (ft)) or less, unless special stipulations have been attached to the lease. Even if one were able to preclude direct habitat loss under the 200-m (656-ft) limitation, substantial cumulative indirect effects and habitat fragmentation are likely to occur if one is simply shuffling disturbance around well by well, rather than actively conserving critical habitat.

Our Response—We have considered existing regulatory mechanisms and management activities in this finding, and determined that conventional oil and gas development lease stipulations provide sufficient conservation measures to prevent extinction of *Penstemon grahamii*.

Comment 21—The State of Utah supports the implementation of a Conservation Agreement for the Graham's beardtongue. Implementation of a Conservation Agreement will allow for better species' inventory, the opportunity to protect important habitats, and the opportunity to reduce potential threats to the species.

Our Response—Our analysis of the best available scientific and commercial data indicates that listing *Penstemon grahamii* under the Act is not warranted at this time. Therefore, it was not necessary to further evaluate conservation efforts associated with a Conservation Agreement. We encourage continued development and implementation of conservation measures and a Conservation Agreement to protect and enhance *P. grahamii* and its habitat.

Comments Related to Other Threat Factors

Comment 22—Information was provided regarding evaluations and conservation measures applied to grazing allotments in *Penstemon grahamii* habitat.

Our Response—We concluded that grazing does not appear to be a species level threat to *Penstemon grahamii*, and our rationale is presented in the Summary of Factors Affecting the Species section. We encourage continued monitoring and conservation efforts to ensure grazing effects remain minimal in the future.

Comment 23—Information was provided regarding off-road vehicle (ORV) use and available conservation measures to avoid and minimize impacts to *Penstemon grahamii*.

Our Response—We have no information to indicate that ORV use is a threat to *Penstemon grahamii* or its habitat. To date, little ORV use has been observed in the species' range. We encourage continued monitoring and conservation efforts to ensure ORV effects remain negligible in the future.

Comment 24—Overexploitation for horticultural purposes is a threat to *Penstemon grahamii*.

Our Response—We acknowledge that the rarity and beauty of this species makes collection a potential concern. However, we have no information to conclude that collection is impacting wild populations in the species' native habitat. We encourage continued monitoring and conservation efforts to ensure horticultural collection remains a negligible impact in the future.

Comment 25—*Penstemon grahamii* may be at greater risk because of a reduced ability to form a large seed bank to act as a buffer in the face of population decline, whether this decline is weather-related or caused by anthropogenic disturbance.

Our Response—Information pertaining to the status, life history, and distribution of *Penstemon grahamii* has been reviewed and incorporated into our analysis. We have noted the presence of small population sizes at specific locations, but we do not believe that the threats to the species rise to a level that listing is warranted.

Comment 26—Other concerns of increased energy development activities in *Penstemon grahamii* habitat are the incidental spread of noxious and exotic weeds and soil erosion, leading to decreased plant and insect (pollinator) biodiversity.

Our Response—We acknowledge the presence of exotic weeds within occupied *Penstemon grahamii* habitat, including *Bromus tectorum* (cheatgrass) and *Halogeton glomeratus* (halogeton). Habitat disturbances associated with future energy development activities could exacerbate the situation. We encourage the development and

implementation of conservation efforts to minimize the invasion of exotic weed species.

Comment 27—The notice fails to provide any scientific evidence that disease and predation are threats to the species.

Our Response—We have identified that grazing may affect certain populations of *Penstemon grahamii* (see discussion in Factor A in the Factors Affecting the Species section), but we determined that grazing is not a threat to the species as a whole. Therefore, we determined that disease and predation do not constitute threats to the continued existence of *P. grahamii*.

Comment 28—The species responds to cultivation and proliferates in habitats other than its natural habitat and, therefore, is capable of being cultivated for use in reclamation and revegetation.

Our Response—It is true that the species has been cultivated as a garden plant, and is available for sale in catalogs and on the Internet. Propagation in the wild may be explored at a future date, but on an experimental basis. We do not have information at this time to conclude that populations propagated in the wild will be viable in the long-term. Until this information is available, we would not rely on restoration or revegetation of this species from a cultivated source.

Comments Related to the Biology of the Species

Comment 29—Green River outcrops support a number of rare species of special concern. The edaphic features of Green River outcrops are natural laboratories of evolution and endemism, and should be preserved.

Our Response—We concur that the Green River outcrops have significant ecological and evolutionary values. However, our evaluation of threats under the Act's criteria is restricted to *Penstemon grahamii*. This final rule does not evaluate other species associated with the Green River formation.

Comment 30—The limited distribution and highly specific habitat requirements of this species make it a valuable component of the Utah flora and highly vulnerable to disturbance.

Our Response—We concur that this species is a valuable component of the Utah flora. We considered the habitat requirements and threats to this species in our finding, and determined that the level of threats to *Penstemon grahamii* were insufficient to warrant listing.

Comment 31—*Penstemon grahamii* habitat requirements make restoration/reclamation of the species extremely difficult, if not impossible, if energy developments were to impact any of the known populations.

Our Response—Our finding has evaluated the potential threats of energy development to *Penstemon grahamii*.

Comment 32—Listing under the Act results in important protections for listed species threatened with development. Unlisted species may receive some consideration, but no real protection in the face of pressure to develop energy resources.

Our Response—Our decision regarding *Penstemon grahamii* is based on the best available scientific and commercial data, as required by the Act. Our determination regarding whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species at the time of the decision. We evaluated the threat of energy development, and the effectiveness of regulatory mechanisms in this finding.

Comment 33—A few comments expressed concern about *Penstemon grahamii's* low population numbers and low and declining seed set numbers, as a result of substantial herbivory and livestock trampling. The Nature Conservancy's eco-regional assessments confirm that *P. grahamii*, with very low natural population numbers and restricted distribution, is at risk.

Our Response—Information pertaining to the status, life history, and distribution of *Penstemon grahamii* has been reviewed and incorporated in our analysis. We have noted the presence of small population sizes at specific locations, and the potential for threats to have negative impacts if they occur. The referenced study sites are small, and do not provide sufficient information on threats to conclude that *Penstemon grahamii* warrants listing. Although additional studies may be desirable, we have made our decision based on the best available scientific and commercial data, as required by the Act.

Comment 34—The extinction of *Penstemon grahamii* would undoubtedly affect the only specialist wasp, *Pseudomasaris vespoides*, which feeds its offspring exclusively on *Penstemon* pollen. This wasp should be the subject of further study.

Our Response—Our evaluation is restricted to *Penstemon grahamii*, which we have determined does not warrant listing under the Act. The wasp is a specialist on most species of *Penstemon*. Other *Penstemon* species occur within the range of *P. grahamii* and are apparently supporting *Pseudomasaris vespoides* populations.

Comment 35—This species may be valuable for a cure to cancer or some other disease.

Our Response—Many plant species have provided important advances in medicine. However, our determination regarding whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, as they are known at the time of the decision.

Comment 36—Current and historic population trend data do not show any decline in the population of *Penstemon grahamii*.

Our Response—We evaluated available population status and trend information for the species in this finding.

Comment 37—*Penstemon grahamii* habitat is not dependent on oil-shale as represented. The association with oil-shale may be coincidental, and there is a substantial likelihood that the species' distribution is more widespread than presented in the proposed rule.

Our Response—We cite several sources that indicate *Penstemon grahamii* is associated with oil-shale outcrops. We are not aware of any data indicating that the species is more widely distributed than as we described in the proposed rule and this document.

Comment 38—Oil and gas operations are typically able to avoid individual plants.

Our Response—Our finding has evaluated the threat of energy development to *Penstemon grahamii*. We encourage development and implementation of conservation efforts to avoid impacts to *P. grahamii* and its habitat.

Comment 39—There is no clear evidence that the species' environment is as fragmented as is implied by the delineation of the units.

Our Response—Our decision regarding *Penstemon grahamii* is based on the best available scientific and commercial data, as required by the Act. We have described the species' known distribution and provided citations for this information in our finding.

Comment 40—There are areas in Uintah County that have shown no previous signs of this plant. However when the ground has been disturbed, followed by a rainfall, the plant has flourished. Listing this plant to prevent disturbance in the area, seems to defeat the natural course of growth, which includes ground disturbance and water.

Our Response—To our knowledge the potential for land disturbance to facilitate *Penstemon grahamii* conservation has not been studied. However, we have no documentation of this species responding favorably to

disturbance as described above. Observations of biologists studying this species have not shown any such response to surface disturbance, and we provide a detailed description of the species' habitat requirements in the Background section of this document.

Comment 41—*Penstemon grahamii* must be considered extremely rare whether considered at the global, national, State, or county level.

Our Response—Rarity in and of itself does not automatically lead to listing. Our determination of whether or not listing this species under the Act is warranted must be based on our assessment of the threats to the species, as they are known at the time of the decision.

Comments Related to General Listing Issues Under the Act

Comment 42—The various **Federal Register** notices are deficient in that they do not identify, other than by author, name, and year, the references on which they rely. The Administrative Procedures Act and other authorities require a reasonable opportunity to comment on proposed rules. The publications and page numbers at which the references appear could easily have been included in one of the notices.

Our Response—We have included page numbers with citations in this notice, and the list of references and the references themselves are available for inspection at our Utah Field Office (see **ADDRESSES** section).

Comment 43—Several commenters supported the proposal to list *Penstemon grahamii* and designate critical habitat, based on the species' status and the threats analysis presented in the proposed rule.

Our Response—We have reevaluated the best available scientific and commercial data, based on information received during the public comment period, and have determined that the threats to *Penstemon grahamii* described in the proposed rule are not sufficient to warrant listing under the Act at this time. Our analysis is presented in the Summary of Factors Affecting the Species section.

Comment 44—A commenter felt that listing of this species is not warranted.

Our Response—We have considered all factors potentially affecting *Penstemon grahamii* in our decision and determined that the listing is not warranted. We have made our decision based on the best available scientific and commercial data, as required by the Act.

Comment 45—*Penstemon grahamii* meets all five requirements to be listed as a threatened species.

Our Response—Our analysis of the best available scientific and commercial data determined that listing *Penstemon grahamii* is not warranted at this time. Our analyses and conclusions are described in detail in the Summary of Factors Affecting the Species section.

Comment 46—The U.S. House of Representatives has passed House Bill 3824, which will amend the Act and repeal critical habitat requirements. The Service should delay any listing decisions until a final determination is made on this legislation.

Our Response—The Act requires that we finalize proposed listings within 12 months of publication. In this case, we also are responding to a court-approved settlement agreement to complete a listing determination by December 8, 2006. Therefore, we are unable to postpone completion of this listing decision.

Comment 47—Listing *Penstemon grahamii* now could protect against the most damaging projects in its habitat, and allow for recovery.

Our Response—Our decision regarding *Penstemon grahamii* is a listing, not a recovery decision. Our determination of whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, as they are known at the time of the decision, not the potential for recovery under the Act.

Comment 48—If listing is denied, the little extra attention that *Penstemon grahamii* has received based on its candidate status will disappear.

Our Response—Candidate species are plants and animals for which the Service has sufficient information on their biological status and threats to propose them as endangered or threatened under the Act, but for which a proposed listing regulation is precluded by other higher priority listing activities. Candidate species receive no statutory protection under the Act. The BLM has designated *Penstemon grahamii* as a ''special status species'' and as such will provide strong consideration for the species in its land use planning and will implement measures to conserve the species and protect its habitat. The BLM has made an explicit commitment to conserve this species into the future, regardless of any energy or other development action within the species range (BLM 2001, 2006a p. 1–2). We encourage the formation of partnerships to conserve these species because they are, by definition, species that warrant future protection under the Act. Our decision not to list *Penstemon grahamii* removes the species from candidate status. However, *P. grahamii* retains its status as a BLM special status species. In addition, we are partnering with Federal and State agencies to develop and implement a Conservation Agreement for *P. grahamii*. This Conservation Agreement is not the basis for this withdrawal.

Comment 49—If the plant is listed as threatened, the Service should adopt a special rule under section 4(d) of the Act that would provide that any energy development projects undertaken in accordance with BLM-mandated terms and conditions would not constitute a violation of any of the Act's plant-related prohibitions.

Our Response—Our analysis of the best available scientific and commercial data determines that *Penstemon grahamii* is not warranted for listing under the Act.

Comment 50—The proposed rule pays little attention to the best commercial data which, if considered, would provide both an estimate of the magnitude of the potential threats, and the adverse economic impact of listing *Penstemon grahamii*.

Our Response—This final rule includes our analysis of the magnitude of potential threats to this species, and we have determined that these threats are not sufficient to warrant listing the species under the Act at this time. The Act does not include economic considerations as a factor in listing decisions.

Comment 51—Listing under the Act ensures benign neglect of a species; it does nothing to proactively ensure proliferation of a species.

Our Response—Our determination of whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, as they are known at the time of the decision, not whether listing would ensure the species' recovery.

Comment 52—Costs to the Nation's economy and energy security can be avoided by withdrawal of the proposed rule, as warranted by the scientific and commercial evidence.

Our Response—Our determination as to whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, as they are known at the time of the decision. The Act provides for evaluating economic considerations when designating critical habitat, but not when making listing determinations.

Comment 53—A commenter disagreed with the statement on page 3173 that the action is not a significant energy action.

Our Response—Our analysis of the best available scientific and commercial data indicates that listing *Penstemon*

grahamii is not warranted at this time. Therefore, it was not necessary to further evaluate significant energy effects, or prepare an economic analysis for the designation of critical habitat.

Comment 54—It appears that no attempt is being made to designate or restore all original habitats once occupied by this species.

Our Response—The Act does not require restoration of all historic habitat for a listed species, nor does it require designation of all historic range as critical habitat. By determining that this species does not warrant listing we indicate that it is not in danger of becoming extinct throughout all or a significant portion of its range, or likely to become so in the foreseeable future.

Comment 55—A recovery plan is not a part of the current proposal.

Our Response—Recovery Plans are only completed for listed species under the Act. This current finding has determined that listing *Penstemon grahamii* under the Act is not warranted.

Comments Related to Agency Management of the Species

Comment 56—The Energy Policy Act strengthens the BLM and Service capability to protect this species.

Our Response—The 2005 Energy Policy Act resulted in increased staffing and funding levels for pilot project offices, including the Vernal BLM Field Office. We strongly encourage BLM to utilize these available resources to ensure long-term, successful conservation efforts for *Penstemon grahamii* and other listed and sensitive species during energy project planning and implementation.

Comment 57—The BLM has done a poor job of protecting plant communities from rapid industrialization and lawless ORV use.

Our Response—We considered potential threats, such as increased energy development and ORV use, in our finding, but we were unable to document threats from these activities that would warrant listing *Penstemon grahamii*.

Comment 58—There is no assurance at this point that the BLM, through the Vernal Resource Management Plan (RMP), will provide adequate protection for *Penstemon grahamii*.

Our Response—Our determination of whether or not this species warrants listing under the Act must be based on our assessment of the threats to the species, as they are known at the time of the decision. We understand that all action alternatives within the BLM's draft Vernal RMP commit the BLM to protect the populations and habitat of Special Status Species, including *P. grahamii*.

Comment 59—The Act provides no authority to protect this plant on State or private lands. Therefore, it is that much more important to protect them on Federal lands.

Our Response—Existing regulatory mechanisms were evaluated for our finding. We encourage Federal land management agencies to continue conservation efforts for *Penstemon grahamii* and its habitat. In addition we will work with both the State of Utah and private landowners to encourage voluntary measures to conserve viable populations of the species and its habitat on their properties.

Comment 60—BLM has recently initiated survey and life history studies for *Penstemon grahamii*. Life history and survey data are out of date and may not accurately portray the species' distribution and abundance. Lack of information may affect the Service's decisions regarding critical habitat designation.

Our Response—We agree that additional population status, distribution, and life history information would be useful to determine the status of the species and identification of critical habitat. However, as required by the Act, we have used the best scientific and commercial information available when making the determination on whether to list *Penstemon grahamii*.

Comment 61—All action alternatives in the draft BLM Vernal RMP would lead to *Penstemon grahamii* being more imperiled.

Our Response—The BLM has provided its commitment to continue implementation of effective conservation measures through the RMP to ensure long-term conservation of *P. grahamii*. Our analysis of the best available scientific and commercial data reveals that *P. grahamii* is not warranted for listing under the Act. We have evaluated existing regulatory mechanisms in our finding. All action alternatives within the BLM's draft RMP commit the BLM to protect the populations and habitat of Special Status Species, including *P. grahamii*. We have identified specific protective measures for the protection of *P. grahamii* which BLM will include in the final RMP and as stipulations in all subsequent mineral leases. (See discussion under listing Factors A and D below.)

Comment 62—The BLM Vernal Field Office has continued to offer oil and gas lease parcels even though it is in the midst of a Plan revision, and the Service must consider that the areas unleased because of tar-sands development potential could be offered in any upcoming sale.

Our Response—Our analysis assumes that leasing will occur in suitable tar-sands areas and other areas in the Uinta Basin. Leasing does not necessarily mean that an area will be developed for oil and gas. We have addressed the potential impacts of energy development to *Penstemon grahamii* in our finding, and determined that those impacts now and in the foreseeable future do not rise to the level that would warrant listing of the species.

Comment 63—In the Castle Peak Environmental Impact Statement, the BLM was quite frank about not being able to impinge on valid, existing lease rights, and openly refused to require No Surface Occupancy within the Pariette Wetlands Area of Critical Environmental Concern (ACEC), even though (1) that was one of the expectations set forth in the biological opinion, and (2) Uinta Basin hookless cactus' (*Sclerocactus glaucus*) listed status should have allowed the agency to place additional constraints on those leases. The BLM White River Field Office also has permitted pipelines through ACECs designated for the Dudley Bluffs plants, in what appears to be direct contravention of the White River RMP.

Our Response—This finding pertains to *Penstemon grahamii*, not other plant species in the area. Our analysis of the best available scientific and commercial data indicates that *P. grahamii* is not warranted for listing under the Act. We have considered existing regulatory mechanisms and management activities in this finding. The Service encourages the successful development and implementation of conservation measures for *P. grahamii* to maintain the species' status in the long-term.

Comment 64—The BLM has provided very little in the way of conservation measures for *Penstemon grahamii*, despite its candidate status.

Our Response—We have considered existing regulatory mechanisms and management activities in this finding, and determined that the impacts to *Penstemon grahamii* populations and habitat are not sufficient to warrant listing under the Act. This species has been a listing candidate for decades, and we have no evidence to indicate that current BLM management is resulting in serious impacts to populations of this species.

Comments Related to Critical Habitat

Comment 65—There were numerous comments regarding the importance,

extent, and boundary lines regarding the proposed critical habitat designation.

Our Response—We considered all factors potentially affecting *Penstemon grahamii* in our decision and we have determined that the listing is not warranted. Therefore, we are withdrawing our proposed critical habitat designation.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to Federal lists. We analyzed the threats applicable to the species in the present and foreseeable future to determine whether the species as a whole meets the definition of endangered or threatened due to one or more of the five factors described in section 4(a)(1). The five factors considered and their application to *P. grahamii* are as follows:

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

Energy Resources

Our proposed rule concluded that recent Federal policy direction, technological advances, world oil demand, and economics have renewed the desirability to invest in renewed energy development in Utah and Colorado. However, based on comments received on the proposed rule, it appears that the development of oil-shale and tar-sands resources in *Penstemon grahamii* habitat is not likely to occur, if it occurs at all, until at least 20 years into the future.

Penstemon grahamii has been listed as a candidate species since 1980, in part due to the potential threat of increased energy development (Service 2004). The habitat of *P. grahamii* is a series of knolls and slopes of raw oil-shale derived from the Green River geologic formation (Shultz and Mutz 1979a, pp. 38–42; Shultz and Mutz 1979b, pp. 25–38; Neese and Smith 1982a, pp. 63–66; Neese and Smith 1982b, pp. 115–140; Borland 1987, p. 1; Franklin 1993, Appendix D; Franklin 1995, Appendix B; Colorado NHP 2005, pp. 1–20; Utah NHP 2005, pp. 1–124; Service 2005, pp. 1–13; Decker *et al.* 2006, pp. 3–10). Oil-shale resources associated with the Green River formation underlie approximately 41,440 km^2 (16,000 mi^2) and represent the largest known concentration of oil-shale in the world with potential recoverable reserves in excess of 1 trillion barrels (Bartis *et al.* 2005, pp. 5–7; Bunger *et al.* 2004 p. 1; Dyni 2003, pp. 241–245; Lonnie 2005, pp. 1–3). *P. grahamii* only grows directly on weathered surface exposures of the oil-shale bearing strata in the Parachute member and closely associated strata, making the species vulnerable to impacts if that oil-shale strata is exploited in the future (Bartis 2005, pp. 35–37; Cashion 1967, p. 31, Fig. 8; Johnson *et al.* 2004b. pp. 3–5; Service 2005, p. 21; Shultz and Mutz 1979a, p. 42; Neese and Smith 1982a, pp. 64–66).

One hundred five of 109 (96 percent) *Penstemon grahamii* occurrences are in the Parachute Creek member of the Green River formation; the remaining 4 sites are in oil-shale strata of the Evacuation Creek member of the Green River formation (Service 2005, p. 21; Shultz and Mutz 1979a, p. 39; Neese and Smith 1982a, p. 64). Oil-shale beds are most numerous and important in the Parachute Member of the Green River formation (Cashion 1967, p. 13), but the underlying Evacuation Creek member also contains a few beds of oil-shale (Cashion 1967, p. 17). The 105 occurrences in the Parachute Creek member harbor an estimated 6,100 individuals or 98 percent of the species' estimated population of 6,200 (Shultz and Mutz 1979a, pp. 38–42; Neese and Smith 1982a, pp. 63–66).

There are no oil-shale or tar-sand development projects currently in operation or proposed within the known occupied habitat of *Penstemon grahamii*, or anywhere else in the United States (BLM 2006a, p. 13). The BLM projects that the oil-shale industry will focus its earliest commercial production efforts in the Piceance Basin, Colorado, about 48.3 km (30 mi) from the nearest known *P. grahamii* occurrence (BLM, 2006, pp. 14, 36). The Piceance Basin contains larger oil-shale deposits than the Uinta Basin in Utah. Deposits are more than 305 m (1,000 ft) thick in parts of the Piceance Basin and continuous across 311 km^2 (120 mi^2) (BLM, 2006, p. 14).

Initial industry interest appears to support BLM projections. In 2005, the BLM received 20 proposals and applications for oil-shale Research, Development, and Demonstration (RD&D) leases on Federal lands in Colorado and Utah. None of these RD&D lease applications are within the occupied habitat of *Penstemon grahamii* (BLM 2006a, pp. 6, 12–13). The nearest is about 3.2 km (2 mi) southeast of known occurrences (on Green River shale barrens). Of the 20 RD&D lease application proposals, the BLM selected 6 for further consideration—5 are in Colorado in the Piceance Basin about 50 km (30 mi) east of the *P. grahamii*'s population at Raven Ridge. The one Utah RD&D application still under review is located about 8 km (5 mi) west and 13 km (8 mi) north of the nearest *P. grahamii* occurrences in habitat not suitable for the species (BLM 2006a, pp. 12–13, 15, 18–19, 34).

Any future oil-shale development within the Uinta Basin nearest the range of *Penstemon grahamii* is expected to be associated with the thickest deposits of oil-shale, which occur about 8 km (5 mi) from the nearest occurrence of *P. grahamii* (BLM 2006a, pp. 12–13). These deposits occur in the vicinity of the aforementioned Utah RD&D proposal. We do not have information to indicate that oil-shale development, if it occurs at commercial levels, will overlap known *P. grahamii* occurrences.

Oil-shale and tar-sands development has failed to materialize due largely to technological problems and unfavorable economics. The first interest in oil-shale extraction occurred in the latter years of and immediately following World War I. However, limited accessibility and low economic viability resulted in declining interest. More recently in the 1970–1980s, BLM made oil-shale resources on public lands available through the Oil Shale Prototype Program, which was designed to allow companies to develop and refine the technology for extracting oil from oil-shale. Since then, during the mid-1980s and 1990s, interest in oil-shale development lagged because of declining petroleum prices (Bartis *et al.* 2005, p. 1; Lonnie 2005, pp. 1–3).

Significant economic questions remain concerning the development of the Green River formation oil-shale and tar-sands (Bartis *et al.* 2005, pp. 15, 53; BLM 2006a, pp. 7, 15–19, 31, 34–36). The cost associated with an enormous and essentially new industry using new and innovative technologies is likely to be great. Economic success of oil-shale and tar-sands derived petroleum will depend on continuing and stable petroleum prices at a level of $70 to $95 per barrel. Due to past fluctuation of petroleum prices, private industry has exhibited a reluctance to proceed with research, development, and subsequent commercial production of oil-shale. This situation will likely continue unless the petroleum industry is convinced that petroleum prices will remain high well into the future (Bartis *et al.* 2005, pp. 59–61; Bunger *et al.* 2004, pp. 7–9).

Various technologies for oil-shale extraction and processing into synthetic petroleum have been explored. The traditional approach is mining the oil-shale either by surface mining (i.e., removing the surface non oil-shale bearing material from the underlying

oil-shale ore body then removing the oil-shale itself for further processing) or underground mining (i.e., digging a vertical shaft through the surface non oil-shale bearing material to the underlying oil-shale ore body, or where possible digging a horizontal shaft into the oil-shale ore body, then removing the oil-shale by various underground mining techniques for further processing) (Bartis *et al.* 2005, pp. 11–13; BLM 2006a, pp. 14, 32–33). Raw oil-shale is then retorted by heating to vaporize the carbon containing kerogen (shale oil) and then hydrolyzed, by the adding of hydrogen, to form synthetic petroleum which then can be refined by traditional methods into hydrocarbon fuels and other products (Bartis *et al.* 2006, pp. 13–14). Mining techniques are centuries old and are an effective direct approach to accessing ore bodies including oil-shale. Recent new technologies involve in-situ removal of kerogen directly from oil-shale by drilling wells into the oil-shale ore body and heating the underground oil-shale ore body and then extracting the liquefied kerogen for further processing (Bartis *et al.* 2005, p. 17; BLM 2005, pp. 32–33). There have been several variations of in-situ oil-shale recovery proposed and investigated (Bartis *et al.* 2005, pp. 17–20; BLM 2006a, pp. 32–33).

Surface mining is potentially the most damaging process to the environment. In-situ oil-shale recovery may be much less destructive to the environment. There is still great uncertainty as to the procedures that may be used in future oil-shale development, including within the range of *Penstemon grahamii* where there are no current proposals for oil-shale development.

Even if economic and technological conditions favor oil-shale and tar-sand development, it would be at least 20 years before any production would begin in or near *Penstemon grahamii* occupied habitat, if it occurs in those locations at all. Indications are that initial oil-shale development will take place at existing RD&D sites in the Piceance Basin of Colorado and immediately south of the White River in the Uinta Basin of Utah (BLM 2006a, pp. 6, 38–40). None of the sites are within the range of *P. grahamii*, nor does suitable habitat exist for the species at those sites. At present there are no tar-sand development projects proposed for the PR springs tar-sand area which underlies portions of *P. grahamii*'s range (BLM 2006a, p. 33).

The entire range of *Penstemon grahamii* also is underlain with deposits of traditional petroleum resources, primarily natural gas. Impacts to *P. grahamii* from energy development have been largely avoided to date because surface disturbance within the species' habitat has been minimal. For example, under the existing development situation, only 5 of the known occurrences (4.6 percent) have oil and gas wells located within them (Service 2005 , p. 17). Thirty-nine active wells are within 1.6 km (1 mi) of *P. grahamii* occupied habitat, and future oil and gas development within *P. grahamii* habitat is likely. Of the 109 occurrences of *P. grahamii*, 69 (63 percent) are currently leased for oil and gas drilling, or are within established oil and gas fields that have active resource extraction programs. Ninety-six of the species' 109 known occurrences (88 percent) are within active seismic exploration areas (BLM 2003).

The BLM reports that conservation stipulations for *Penstemon grahamii* near well locations have prevented adverse impacts to the species' habitat and possible loss of *P. grahamii* individuals (BLM 2005, pp. 2–29, 2–30, 3–94, 4–233; Specht 2005). Conservation measures include moving well pad and pipeline locations to avoid direct impacts to the species. The BLM considers these measures to be effective protection mechanisms (Specht 2005). The BLM, as part of its sensitive species program outlined in its Administrative Manual 6840, will continue to provide protection to the species and its habitat through land use planning and implementation of conservations measures for oil and gas development (BLM 2005, pp. 2–29, 2–30, 3–94, 4–233; BLM 2006a, p. 43).

The BLM has stressed its commitment to develop appropriate regulations for the leasing program, and to develop conservation measures for *Penstemon grahamii* and other plant species within future Federal oil-shale and tar-sand lease areas in Utah and Colorado (BLM 2006b). These conservation measures are intended to eliminate significant potential threats to *P. grahamii* from oil-shale and tar-sand development, and will be applied to lease stipulations for oil-shale and tar-sands when and if they are issued (BLM 2000, p. 8). Additional mitigation measures to conserve *P. grahamii* also will be developed at the operational stage (BLM 2006a, pp. 24–27). Because these conservation measures have not yet been developed, we are not basing this withdrawal on their potential implementation. However, we expect development and implementation of sufficient conservation measures to help ensure long-term protection of the plant if oil-shale development becomes economically and technologically feasible.

Approximately 60 percent of the species' population and 75 percent of the species' occupied habitat is on Bureau of Land Management (BLM) managed land with the remainder on non-Federal lands under State or private ownership (USFWS 2005). These State and private lands are intermingled within a broad mosaic of land ownerships dominated by Federal (BLM) lands. With this ''checkerboard'' spatial pattern of ownerships, large-scale development on non-Federal lands would, at a minimum, require coordination with the BLM. In most cases, development of these lands would only be possible via consolidation of Federal and non-Federal lands into economically viable development units (Bunger 2006), which would require extensive review under the National Environmental Policy Act (NEPA) among other Federal laws.

Biological studies specific to *Penstemon grahamii* and sympatric species are in their beginning phase (Lewinsohn *et al.* 2005).

At this time, we have no information demonstrating population declines, range contraction, or significant habitat impacts for *P. grahamii* because of energy development (which includes current traditional oil and gas exploration, drilling and production, and potential oil-shale and tar-sand development). Therefore, we conclude that energy development within the range of *P. grahamii* is not currently a threat to the species, nor is it likely to become a significant threat in the foreseeable future, such that listing under the Act is warranted.

Other Activities

Grazing may have localized effects on *Penstemon grahamii*, and one occurrence of the species is believed to have been eradicated by livestock trampling. The Dragon Sheep bed site first recorded in a 1982 survey (Neese and Smith 1982b, p. 137) has not been relocated in recent years. This is an area of heavy sheep grazing and trampling, which is thought to have caused the possible extirpation of this occurrence (England 2003). Lewinsohn (2005 pp. 1, 12–14) reported a general decline in the species at one study area due to overgrazing. However, no research has been conducted to document effects of grazing on *P. grahamii* populations or habitat, and we have no information indicating that grazing impacts threaten the continued existence of the species throughout all or a significant portion of its range.

To date little ORV use has been observed in the species' range. Federal and energy industry personnel are increasingly utilizing ORVs in oil and gas field survey and site location development prior to the establishment of oil field road networks (Specht 2005). However, we do not have any information indicating that ORV use is a threat to *Penstemon grahamii* or its habitat.

Based on our analysis of the best available scientific and commercial information, we conclude that the present or threatened destruction, modification, or curtailment of *Penstemon grahamii* habitat or range is not currently a threat to the species, nor is it likely to become a significant threat in the foreseeable future, such that listing under the Act is warranted.

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

Penstemon grahamii is a species of horticultural interest. The species is advertised on the internet and plants and seed are available. In 2004, a *Penstemon* collector approached Red Butte Garden (the Utah State botanical garden located at the University of Utah) inquiring how to obtain seeds of *P. grahamii* (Lewinsohn 2004). Several internet sites identify *P. grahamii* as a desirable plant for gardens or horticultural exhibitions. However, we do not have any information indicating that collection from the wild is occurring or if it is occurring, the level of collection or the impact of collection on wild populations.

Based on our analysis of the best available scientific and commercial information, we conclude that overutilization of *Penstemon grahamii* for commercial, recreational, scientific, or educational purposes habitat or range is not currently a threat to the species, nor is it likely to become a significant threat in the foreseeable future, such that listing under the Act is warranted.

C. Disease or Predation

Penstemon grahamii is grazed by wildlife, including rodents, rabbits, antelope, deer, elk, and insects (Shultz and Mutz 1979a, pp. 37–42; Neese and Smith 1982a, pp. 63–66; England 1979; Specht 2005; Lewinsohn *et al.* 2005, pp. 2, 12–14, 17). The species also is grazed by livestock, primarily sheep. There are some anecdotal reports of the possible impacts of grazing on *P. grahamii*. For example, recent attempts to establish pollination studies and population monitoring plots for the species were complicated by overgrazing, which resulted in the loss of flowers before seeds set, resulting in no reproduction (Lewinsohn *et al.* 2005, p. 17). Lewinsohn also reported that all sites visited in southern Uintah County were either too small or too heavily grazed to conduct suitable pollination studies. However, there are no specific studies on the effects of grazing on this species.

Based on our analysis of the best available scientific and commercial information, we conclude that disease or predation are not currently threats to *Penstemon grahamii*, nor are they likely to become significant threats in the foreseeable future, such that listing under the Act is warranted.

D. The Inadequacy of Existing Regulatory Mechanisms

No Federal or State laws or regulations specifically protect *Penstemon grahamii*. The species is not protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Some populations occur on private lands, which were given mineral entry patents during the 1920s specifically because of oil-shale values. There is no regulatory protection for *Penstemon grahamii* on non-Federal lands.

The majority of *Penstemon grahamii* populations occur on lands administered by the BLM. The BLM administratively recognizes rare and potentially imperiled plant species for special management consideration through its 6840 Manual for special status species, which includes *P. grahamii*. Because *P. grahamii* will be classified as a special status species, BLM will continue to provide conservation protection to the plant (BLM 2006b, pp. 1–2). The BLM, through existing land management regulations, land use planning, and specific lease and use stipulations (BLM 2006a, pp. 43–70), has considerable regulatory authority to manage lands and resources under its jurisdiction. These include oil and gas leasing regulatory mechanisms such as: land use planning guidance; lease sale stipulations; exploration and field development analysis and planning guidance for oil and gas fields and geophysical exploration; an individual oil and gas well review and approval (Applications for Permit to Drill (APD)) process; and on-the-ground inspection processes for compliance with lease and APD stipulations (BLM 2005; BLM 2006a, pp. 45–53, 60, 67–69).

Oil-shale and tar-sand regulatory mechanisms are under development, but will follow a similar environmental protection direction (BLM 2006a, p 45). These measures will only be necessary if oil-shale development occurs in the future in habitat for *Penstemon grahamii*. In addition, the BLM has significant authority to regulate and manage grazing on lands under its jurisdiction (BLM 2005; BLM 2006a, pp. 54–56, 60); ORV use (BLM 2005; BLM 2006a, pp. 58, 60); and collection of plant materials for horticultural and other uses (BLM 2006a, pp. 56–58).

We conclude that BLM has the necessary regulatory mechanisms in place to provide for the conservation of *Penstemon grahamii* and the protection of its habitat.

Based on our analysis of the best available scientific and commercial information, we conclude that the inadequacy of existing regulatory mechanisms is not currently a threat to *Penstemon grahamii*, nor is it likely to become a significant threat in the foreseeable future, such that listing under the Act is warranted.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

We note the presence of exotic weeds within occupied *Penstemon grahamii* sites, including *Bromus tectorum* (cheatgrass) and *Halogeton glomeratus* (halogeton) (England 2003). These invasive exotic species are most abundant along roads and well site locations (Specht 2004). These species may compete with *P. grahamii*, thus further degrading habitat quality. However, we have no information to indicate that exotic weeds threaten the existence of *P. grahamii*.

Little is known concerning the species' pollination biology. The BLM is currently funding pollination biology studies (Bolander 2005; Lewinsohn *et al.* 2005, pp. 12–14, 17). Collections and observations of pollinators to the flowers of *Penstemon grahamii* have been limited over the past two flowering seasons because of the paucity of flowering plants. The most consistent pollinator of this species is likely to be the wasp *Pseudomasaris vespoides* (Lewinsohn *et al.* 2005, p. 17). Because flowers of *P. grahamii* appear to be very scarce, this plant species may be unable to support a viable population of *P. vespoides*. Successful reproduction by *P. grahamii* may depend on the occurrence of other concurrently blooming *Penstemon* species which support and keep abundant populations of *P. vespoides* in the area.

Low population numbers and habitat fragmentation pose a threat to rare plant species' genetic potential to adapt to changing environmental conditions (Lienert 2002, pp. 62, 63, 66; Matthies *et al.* 2004, pp. 481, 486). Three of *Penstemon grahamii*'s 5 population habitat units have 200 or fewer

individuals. In addition, 8 smaller occurrences with populations of 20 or fewer individuals are isolated, and 10 km (6 mi) or more from the core area of the 5 *P. grahamii* population units. These smaller occurrences of *P. grahamii* may not be at levels that would ensure the species' long-term demographic stability and genetic viability. The effects of habitat degradation and fragmentation caused by human activities in concert with the effects of deleterious natural phenomena, such as drought, may lead to the extirpations of small, localized populations. At present there are no studies or information on these threats relative to *P. grahamii*, and we have no information to indicate that low population levels and habitat fragmentation have range-wide effects on the species.

Based on our analysis of the best available scientific and commercial information, we conclude that there are no other natural or manmade factors affecting the continued existence of *Penstemon grahamii* such that listing under the Act is warranted.

Listing Determination

We have carefully assessed the best scientific and commercial information available regarding threats to *Penstemon grahamii*. After a review of additional information provided during the public comment period, we have determined that existing and potential threats to *P. grahamii* and its habitat are not sufficient to warrant listing the species as threatened or endangered under the Act. No documented decreases in population numbers or range of distribution have been documented for *P. grahamii*. Potential threats to the species' habitat from energy development, including traditional oil and gas exploration, field development, and production, have been adequately addressed and mitigated by BLM policies, land use planning, and on-the-ground protective measures. Oil-shale development has the potential to cause increased habitat loss and fragmentation in areas of occupied *P. grahamii* habitat. However, there is great uncertainty over the technological and economic viability of commercial production, and, therefore, over timing and eventual location of oil-shale extraction. Based on the best available information, we conclude that there may never be a significant impact to the species from oil-shale or tar-sand energy development, and if there is it will not occur for at least the next 20 years. No significant habitat threats from livestock grazing or ORV use are presently affecting the species. Overutilization for horticultural use is not known to be negatively impacting populations.

Because we have determined there are no significant threats that warrant listing this species under the Act, we withdraw our proposed listing rule and proposed critical habitat designation for *Penstemon grahamii*, as published in the **Federal Register** of January 19, 2006 (71 FR 3158). We are taking this action under section 4(b)(6)(A)(i)(IV) of the Act. Our decision to withdraw the proposed rule to list *Penstemon grahamii* also removes the species from candidate status under the Act.

In making this finding, we recognize there are potential future threats to the species from energy development, particularly if oil-shale and tar-sands development is commercialized in the Uinta Basin. We further conclude that additional population inventory, habitat and population monitoring, and life history studies are needed for *P. grahamii*. If realization of any potential threats occurs, we will reexamine the status of *P. grahamii*.

References Cited

A complete list of all references cited is available at the Utah Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** above).

Author

The primary author of this document is John L. England of the Utah Fish and Wildlife Service Field Office (see **ADDRESSES** above).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 6, 2006.

Marshall Jones,

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

[FR Doc. E6–21260 Filed 12–18–06; 8:45 am]

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Federal Register

Tuesday,
December 19, 2006

Part III

Department of Transportation

Federal Highway Administration

Publication of Interim Guidance on the Congestion Mitigation and Air Quality Improvement (CMAQ) Program; Notice

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2006–26383]

Publication of Interim Guidance on the Congestion Mitigation and Air Quality Improvement (CMAQ) Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of publication of interim guidance; request for comments.

SUMMARY: The purpose of this notice is to: (1) Announce the publication of interim CMAQ guidance; and (2) solicit public comment on the contents of the interim guidance. Sections 1101, 1103 and 1808 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, Aug. 10, 2005) amended the Congestion Mitigation and Air Quality Improvement (CMAQ) Program, and authorizes $8.6 billion to support the CMAQ program in 2005–2009. The interim guidance went into effect October 31, 2006; however, we will review all comments submitted to the docket and will modify the guidance as necessary or appropriate.

DATES: Comments must be received on or before February 20, 2007.

FOR FURTHER INFORMATION CONTACT: Mike Koontz, Office of Natural and Human Environment, (202) 366–2076, *michael.koontz@dot.gov*; or Diane Liff (202) 366–6203 or Harold Aikens (202) 366–1373, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may submit or retrieve comments online through the U.S. Department of Transportation's Document Management System (DMS) at: *http://dms.dot.gov/submit*. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.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 a **Federal Register** published on April 11, 2000 (70 FR 19477), or you may visit *http://dms.dot.gov.*

An electronic version of the interim CMAQ guidance may be downloaded from the FHWA Web page at: *http://www.fhwa.dot.gov/environment/cmaq06gm.htm*. It is also attached for reference below.

Background

The CMAQ program was created by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, Dec. 18, 1991) and continued under the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178; Oct. 1998). Through 2005, the program supported nearly 16,000 transportation projects across the country. In the most recent authorization of the Federal-aid highway program, Congress amended the CMAQ program, and authorized funding to support the CMAQ program in 2005–2009 (sections 1101, 1103 and 1808 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, Aug. 10, 2005). More than $8.6 billion are authorized over the five-year program (2005–2009), with annual authorization amounts increasing each year during this period. This interim guidance updates and replaces previous program guidance issued in 1999. It focuses primarily on project eligibility provisions, and identifies the types of projects that are eligible for CMAQ support. It also provides information on how CMAQ apportionments are calculated and the geographic areas where CMAQ funds can be used, discusses the project selection process and requirements for analyzing emissions benefits from potential projects as part of the selection process, and examines Federal, State and Metropolitan Planning Organization (MPO) program administration responsibilities. The interim guidance went into effect October 31, 2006; however, we will review all comments submitted to the docket and will modify the guidance as necessary or appropriate.

This interim guidance includes comprehensive discussions and direction on a host of new or highlighted areas under SAFETEA–LU, and in particular emphasizes diesel engine retrofits and cost-effective congestion mitigation activities as priorities for CMAQ expenditures. It also provides relative cost-effectiveness data on various eligible project types to help inform the CMAQ project selection process.

We invite the public to submit comments on this interim guidance. We plan to issue a final guidance after we have evaluated all the comments received on this interim guidance.

(Authority: Sections 1101, 1103 and 1808 of Pub. L. 109–59)

Issued on: December 7, 2006.

J. Richard Capka,

Federal Highway Administrator.

The Congestion Mitigation and Air Quality (CMAQ) Improvement Program under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users; Interim Program Guidance

October 31, 2006.

The guidance contained in this document is intended to be nonbinding, except insofar as it references existing statutory requirements, and should not be construed as rules of general applicability and legal effect or notices of proposed rulemaking.

I. Introduction

The CMAQ program was created under the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, continued under the Transportation Equity Act for the 21st Century (TEA–21), and reauthorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).[1] Over $8.6 billion is authorized over the five-year program (2005–2009), with annual authorization amounts increasing each year during this period. Through 2005, the program has supported nearly 16,000 transportation projects across the country.

This guidance replaces the April 1999 version and provides information on the CMAQ program, including:

- Authorization levels and apportionment factors specific to the SAFETEA–LU
- Flexibility and transferability provisions available to States
- Geographic area eligibility for CMAQ funds
- Project eligibility information
- Project selection processes
- Program administration

Appendices 1–3 provide updated statutory language relating to the CMAQ program. Appendix 4 illustrates the comparative cost-effectiveness of potential CMAQ projects. Appendix 5 provides supplemental information on diesel retrofit projects.

[1] Pub. L. 109–59, 119 Stat. 1144 (Aug. 10, 2005).

Information on the current annual apportionment to each State and an electronic version of this guidance are available at *http://www.fhwa.dot.gov/environment/cmaqpgs/index.htm*.

II. Program Purpose

The purpose of the CMAQ program is to fund transportation projects or programs that will contribute to attainment or maintenance of the national ambient air quality standards (NAAQS) for ozone, carbon monoxide (CO), and particulate matter (PM).

The CMAQ program supports two important goals of the Department of Transportation: Improving air quality and relieving congestion. While these goals are not new elements of the program, they are strengthened in a new provision added to the CMAQ statute by SAFETEA–LU, establishing priority consideration for cost-effective emission reduction and congestion mitigation activities when using CMAQ funding.

Reducing pollution and other adverse environmental effects of transportation projects and transportation system inefficiency have been long-standing objectives of the Department of Transportation. The strategic plans for the Department of Transportation and for the Federal Highway Administration both include performance measures specifically focused on reducing air pollution from transportation facilities. The CMAQ program provides funding for a broad array of tools to accomplish these goals. By choosing to fund a CMAQ project, a State or local government can improve air quality and make progress towards achieving attainment status and ensuring compliance with the transportation conformity provisions of the Clean Air Act.

Reducing congestion is also a key objective of the Department of Transportation, and one that has gained increasing attention in the past several years. The cost of congestion, which negatively affects the U.S. economy, quality of life, and air quality, has risen dramatically in the last 25 years despite record levels of transportation investment. Some economists estimate that the overall cost of congestion to the U.S. economy approaches $200 billion a year. As a result, the Secretary of Transportation recently issued a *National Strategy to Reduce Congestion on America's Transportation Network* that aims to meaningfully reduce the economic and social costs of congestion on our nation's highways and in other transportation facilities. This strategy can be found at: *http://isddc.dot.gov/OLPFiles/OST/012988.pdf*.

Since congestion relief projects also reduce idling, the negative emissions impacts of ''stop and go'' driving, and the number of vehicles on the road, they have a corollary benefit of improving air quality. Based on their emissions reductions, these types of projects, including investments in improved system pricing and operations, are eligible for CMAQ funding. The Department believes State and local governments can simultaneously reduce the costly impacts of congestion while also improving air quality.

III. Authorization Levels Under the SAFETEA–LU

A. Authorization Levels

Table 1 shows the SAFETEA–LU CMAQ authorization levels by fiscal year. The CMAQ funds will be apportioned to States each year based upon the apportionment factors discussed in Section V.

TABLE 1.—SAFETEA–LU CMAQ AUTHORIZATION LEVELS

Fiscal year authorization	Amount authorized (dollars)
FY 2005	1,667,255,304
FY 2006	1,694,101,866
FY 2007	1,721,380,718
FY 2008	1,749,098,821
FY 2009	1,777,263,247

B. Equity Bonus

Similar to the minimum guarantee under the TEA–21, the Equity Bonus in SAFETEA–LU provides additional funding beyond the authorized levels so that each State receives a minimum percentage of its gas tax receipts back in the form of Federal-aid funds.[2]

C. Transferability of CMAQ Funds

Since transportation and environmental program priorities fluctuate, States may choose to transfer a limited portion of their CMAQ apportionment to the following Federal-aid highway programs: Surface Transportation Program (STP), National Highway System (NHS), Highway Bridge Program (HBP), Interstate Maintenance (IM), Recreational Trails Program (RTP), and the Highway Safety Improvement Program (HSIP). States may transfer CMAQ funds according to the following provision: An amount not to exceed 50 percent of the quantity of the State's annual apportionment less the amount the State would have received if the CMAQ program had been authorized at $1,350,000,000.[3] For example, if the annual national apportionment is $1.75 billion and a State receives $10 million more than it would have received if the national apportionment had been $1.35 billion, the State can transfer up to $5 million to other programs. Any transfer of such funds must still be obligated in nonattainment and maintenance areas. The amount of transferable funds will differ each year and by State, depending on overall authorization levels. Each year, the FHWA will inform States how much, if any, CMAQ funding is transferable and will track this movement of CMAQ funds.[4]

States also may transfer CMAQ funds to other Federal agencies. The SAFETEA–LU provides additional flexibility to complete such transfers when the receiving Federal agency has entered into an agreement with the State to undertake an eligible Federal-aid project.[5] These opportunities apply to projects that have met all CMAQ eligibility requirements prior to the transfer.

D. CMAQ and Innovative Finance: State Infrastructure Bank (SIB) and Section 129 Loans

Projects with dedicated repayment streams, i.e., a consistent source of revenue, may be financed with loans through DOT's innovative finance program as an alternative or supplement to CMAQ funding.

State Infrastructure Banks are State-directed programs that allow Federal-aid funds to be lent to sponsors of eligible Federal-aid projects (any project under Title 23 or 49 is eligible). SIBs may be capitalized with several Federal-aid highway apportionments including the National Highway System Program, the Surface Transportation Program, the Highway Bridge Program, and the Equity Bonus program. (**Note:** CMAQ may not be used to capitalize a SIB, but SIB funds may be used to finance CMAQ projects). State funds also may be used to capitalize the SIB. The State then receives repayments over time that can be directed toward other transportation projects. For example, New York State was successful in utilizing its SIB to implement two truck stop electrification projects along the New York State Thruway.

Section 129 loans (23 U.S.C. 129(a)(7)) allow states to use Federal-aid highway apportionments to make loans for projects with dedicated revenue streams (this is only applicable to highway,

[2] 23 U.S.C. 105 (SAFETEA–LU section 1104).

[3] 23 U.S.C. § 126.

[4] 23 U.S.C. § 110(c).

[5] 23 U.S.C. § 132(a) (SAFETEA–LU section 1119).

bridge, tunnel, ferry boat, and ferry terminal projects). A Section 129 loan may be used to construct a truck stop electrification facility if the facility is located on the Interstate right-of-way.[6]

The SAFETEA–LU establishes a new SIB program under which all States are authorized to enter into cooperative agreements with the U.S. DOT to establish infrastructure revolving-funds eligible to be capitalized with Federal transportation funds.[7] The key difference between a Section 129 loan and a SIB is that a Section 129 loan usually provides financing to an individual project and funding a SIB capitalizes a financial entity that can assist multiple projects. The two loan programs have similar maximum allowable terms established by Federal law:

- Both public and private entities are eligible to be project sponsors
- Repayments must begin within 5 years of project completion
- Maximum loan term is 30 years after project authorization (Section 129) or 30 years after first repayment (SIB)
- Interest rate may be set by State, at or below market rates
- Loans can only be made up to 80 percent of eligible project costs (Section 129). For SIBs, loans can be made up to 100 percent of eligible project costs (although when the State first creates a SIB, it is required to contribute a non-Federal match of 20 percent)

These innovative loan programs can increase the efficiency of States' transportation investments and significantly leverage Federal resources by attracting non-Federal public and private investment, and provide greater flexibility to the States by allowing other types of project assistance in addition to grant assistance. This type of financing is important for new technologies or start-up businesses that may have difficulty finding financing in the private capital markets. In addition to SIBs and section 129 loans, the FHWA also administers the Transportation Infrastructure Finance and Innovation Act (TIFIA) program, which provides Federal credit assistance to large-scale projects greater than $50 million.

The following example illustrates how a Section 129 loan could work to construct an idle-reduction facility on an Interstate right-of-way. A private party intends to build a stationary idle-reduction facility, and seeks grant funding for it from the State DOT. The idle reduction facility will eventually earn a profit by charging user fees, but since the capital costs are high, the private party needs assistance with financing the initial construction. Instead of providing an outright grant, the State could offer a loan of Federal-aid funds with flexible repayment terms. If the facility required $1 million for initial construction, the State could make a loan at five percent over fifteen years. The State could accelerate the payments if the facility were more successful than expected, and delay repayment if the facility failed to meet revenue targets. The State could also build in credits for additional emissions reductions, providing incentives for additional loans or grants to idle reduction projects. More information on the DOT's innovative finance program is available at *http://www.fhwa.dot.gov/innovativefinance/*.

IV. Priority for Use of CMAQ Funds

The SAFETEA–LU directs States and MPOs to give priority to two categories of funding. First, to diesel retrofits, particularly where necessary to facilitate contract compliance, and other cost-effective emission reduction activities, taking into consideration air quality and health effects. Second, priority is to be given to cost-effective congestion mitigation activities that provide air quality benefits.[8] Appendix 4 illustrates the comparative cost-effectiveness of several potential CMAQ projects. Other projects also may be cost-effective. The priority provisions in the statute apply to the portion of CMAQ funds derived from the application of Sections 104(b)(2)(B) and 104(b)(2)(C), i.e., the CMAQ apportionment formula. They do not apply to areas where CMAQ funding has been derived from the minimum apportionment provisions.

Though the SAFETEA–LU establishes these CMAQ investment priorities, it also retains State and local agencies' authority in project selection. The law maintains the existing roles and authorities of public agencies, and substantial shifts in local procedures are not required by the SAFETEA–LU.[9] However, project selection should reflect the positive cost-effectiveness relationships highlighted in Appendix 4. State and local transportation programs that implement a broad array of these cost-effective measures may record a more rapid rate of progress toward their clean air goals, since many of these endeavors generate immediate benefits. Local procedures that elevate the importance of these efforts in project selection—and rate them accordingly—may accelerate the drive to air quality attainment.

In addition to the SAFETEA–LU priority on cost-effectiveness, Section 176(c) of the Clean Air Act[10] (CAA) requires that the FHWA and FTA ensure timely implementation of transportation control measures (TCMs) in applicable State Implementation Plans (SIPs). These and other CMAQ-eligible projects identified in approved SIPs must receive funding priority.

The FHWA recommends that States and MPOs develop their transportation/air quality programs using complementary measures that provide alternatives to single-occupant vehicle (SOV) travel while improving traffic flow through operational strategies and balancing supply and demand through pricing, parking management, regulatory, or other means.

V. Annual Apportionments of CMAQ Funds to States

A. CMAQ Apportionments

Federal CMAQ funds are apportioned annually to each State according to the severity of its ozone and CO problem (see Appendix 2). The population of each county (based upon Census Bureau data) that is in a nonattainment or maintenance area for ozone and/or CO is weighted by multiplying by the appropriate factor listed in Table 2. PM nonattainment and maintenance areas and former 1-hour areas, except those few 1-hour maintenance areas participating in Early Action Compacts, are not included in the apportionments.

Note: CMAQ apportionments and CMAQ eligibility are two different things. Some areas in which CMAQ funds may be spent are not included in the apportionments (see Section VI.).

[6] 23 U.S.C. 111(d) (SAFETEA–LU section 1412).

[7] 23 U.S.C. 190 (SAFETEA–LU section 1602).

[8] 23 U.S.C. 149(f)(3) (SAFETEA–LU section 1808(d)).

[9] 23 U.S.C. 149(f)(3)(B) (SAFETEA–LU section 1808(d)).

[10] 42 U.S.C. 7506 Section 176(c)(2)(B).

TABLE 2.—SAFETEA–LU CMAQ APPORTIONMENT FACTORS [11]

Pollutant	Classification at the time of annual apportionment	Weighting factor
Ozone (O_3) or (CO)	Maintenance (these areas had to be previously eligible as nonattainment areas—See Section VI.).	1.0.
Ozone	Subpart 1 ("Basic")	1.0.
Ozone	Marginal	1.0.
Ozone	Moderate	1.1.
Ozone	Serious	1.2.
Ozone	Severe	1.3.
Ozone	Extreme	1.4.
CO	Nonattainment	1.0.
Ozone and CO	Ozone nonattainment or maintenance and CO nonattainment or maintenance.	1.2 × O_3 factor.
All States—minimum apportionment	½ of 1 percent total annual apportionment of CMAQ funds	N/A.

CMAQ apportionments are calculated based on the nonattainment and maintenance areas that exist at the time of apportionment. Generally, apportionments are calculated prior to the beginning of each fiscal year.

B. Area Designations: Attainment vs. Nonattainment

Each State is guaranteed a minimum apportionment of one-half percent of the year's total program funding, regardless of whether the State has any nonattainment or maintenance areas. These flexible funds or minimum apportionment funds can be used anywhere in the state for projects eligible for either CMAQ or the Surface Transportation Program (STP).[12]

The FHWA Budget Division identifies annual apportionments of CMAQ funds as either *mandatory* or *flexible*. All funding is considered mandatory for states with weighted populations yielding one-half percent or more of the authorized funds (based on the table above). Annual CMAQ funding apportioned through the application of Sections 104(b)(2)(B) and 104(b)(2)(C) must be used for projects in nonattainment/maintenance areas.

States with weighted populations yielding at least some apportioned value but less than one-half percent of the authorized funds receive both mandatory and flexible funds to reach the minimum apportionment. For example, if a State's weighted population yields two tenths of one percent of the authorized funds, it would receive two tenths of one percent of the national funds as mandatory funds, and three tenths of one percent as flexible funds. Thus, 40 percent of the State's funds would be mandatory and 60 percent would be flexible.

For States with no areas applicable to the apportionment table, their minimum apportionment, one-half percent, is all flexible funding. The FHWA reports the breakdown of mandatory and flexible funds by State in its fiscal year apportionment tables.

C. Apportionments and State Allocation

Notwithstanding the statutory formula for determining the apportionment amount, the State may use its CMAQ funds in any ozone, CO, or PM nonattainment or maintenance area. A State is under no statutory obligation to allocate CMAQ funds in the same way they are apportioned. States are encouraged to consult affected MPOs to determine regional and local CMAQ priorities and work with them to allocate funds accordingly.

D. Federal Share and State/Local Match Requirements

The Federal share for most eligible projects is generally 80 percent (90 percent for projects on the Interstate System). Activities identified in 23 U.S.C. 120(c) (See Appendix 3), including traffic control signalization, commuter carpooling and vanpooling, and signalization projects to provide priority for transit vehicles, may be funded at up to 100 percent Federal share if they meet the conditions of that section.

Although not required for public-private partnerships (PPP) under the CMAQ program, State and local officials have the discretion to request a higher local match from the private sector partner. For example, project sponsors may find that a CMAQ PPP requiring a 50 percent local match contribution is more appropriate than the standard 20 percent required under Federal law. In addition, higher local matches for these efforts can leverage CMAQ funding and extend the program to a greater pool of projects.

VI. Geographic Areas That Are Eligible To Use CMAQ Funds

A. Eligible Areas

CMAQ funds may be invested in all 8-hour ozone, CO, and PM nonattainment and maintenance areas. Funds also may be spent in the few remaining1-hour ozone maintenance areas (these counties also have Early Action Compacts in place), since the 1-hour standard remains in effect for these areas.

Funds also may be used for projects in proximity to nonattainment and maintenance areas if the benefits will be realized primarily within the nonattainment or maintenance area. The delineation of an area considered "in proximity" should be discussed with the FHWA and FTA field offices and elevated to headquarters if necessary.

B. Maintenance Areas

CMAQ funds may be invested in maintenance areas that have approved maintenance plans under CAA section 175A. In States with ozone or CO maintenance areas but no nonattainment areas, mandatory CMAQ funds must be used in the maintenance areas.

C. Maintenance Plan Requirement, SAFETEA–LU

CMAQ funds may be invested in former 1-hour ozone areas that were not designated under the 8-hour standard but where the 1-hour standard has been revoked. Since these areas are required to file maintenance plans, they are considered eligible for CMAQ funding under provisions of the SAFETEA–LU.[13]

D. Flexible Funds in PM Areas

While States may use flexible CMAQ funding anywhere and for any CMAQ- or STP-eligible project (see V.B. on

[11] 23 U.S.C. 104(b)(2) (SAFETEA–LU section 1103(d)).

[12] 23 U.S.C. 149(c).

[13] 23 U.S.C. 149(b) (SAFETEA–LU section 1808(a)).

minimum apportionment), the FHWA encourages States and MPOs to evaluate the cost-effectiveness and benefits to public health of targeting flexible CMAQ funding to projects that reduce PM. Examples of such projects include implementing a diesel retrofit or idle reduction program, constructing freight/intermodal transfer facilities, traffic signalization, or ITS projects that reduce congestion; paving dirt roads, and purchasing street sweeping equipment. See Appendix 4 for further cost-effectiveness comparisons.

VII. Project Eligibility Provisions

A. Project Eligibility: General Conditions

To be eligible for CMAQ funds, a project must be included in the MPO's current transportation plan and TIP (or the current STIP in areas without an MPO). In nonattainment and maintenance areas, the project also must meet the conformity provisions contained in Section 176(c) of the Clean Air Act and the transportation conformity rule.[14] In addition, all CMAQ-funded projects need to complete National Environmental Policy Act (NEPA) requirements and meet basic eligibility requirements for funding under titles 23 and 49 of the United States Code.

The following should guide CMAQ eligibility decisions:

1. Capital Investment

CMAQ funds may be used to establish new or expanded transportation projects or programs that reduce emissions, including capital investments in transportation infrastructure, congestion relief efforts, diesel engine retrofits, or other capital projects.

2. Operating Assistance

There are several general conditions that must be met for operating assistance to be eligible under the CMAQ program.

a. Operating assistance is limited to new transit services, intermodal facilities, and travel demand management strategies (including traffic operation centers); and the incremental cost of expanding existing transit services.

b. In using CMAQ funds for operating assistance, the intent is to help start up viable new transportation services that can demonstrate air quality benefits and eventually cover their costs as much as possible. Other funding sources should supplement and ultimately replace CMAQ funds for operating assistance, as these projects no longer represent additional, net air quality benefits but have become part of the baseline transportation network.

c. Operating assistance includes all costs of providing new transportation services, including, but not limited to, labor, fuel, administrative costs, and maintenance.

d. When CMAQ funds are used for operating assistance, non-Federal share requirements still apply.

e. With the focus on start-up costs only, operating assistance under the CMAQ program is limited to three years. The provisions in 23 U.S.C. § 116 place responsibilities for maintenance on States.[15] Since facility maintenance is akin to operations, three years of CMAQ assistance provides adequate incentive and flexibility while not creating a pattern of excessive or even perpetual support. Exceptions are listed below under VII.D.7 Travel Demand Management, VII.D.8 Public Education, and VII.D.10 Carpooling and Vanpooling.

3. Emission Reduction

Air quality improvement is defined by several distinct terms in 23 U.S.C. § 149. These terms include contribution to attainment, reduction in pollution, air quality benefits, and others. For purposes of this guidance, the FHWA uses *emission reduction* to represent this group of terms. CMAQ-invested projects or programs must reduce CO, ozone precursor (NO_X and VOCs), PM, or PM precursor (e.g., NO_X) emissions from transportation. These reductions must contribute to the area's overall clean air strategy and can be demonstrated by the assessment that is required under this guidance. States and MPOs also may consider the ancillary benefits of eligible projects, including greenhouse gas reductions, congestion relief, safety, or other elements, when programming CMAQ funds, though such benefits do not alone establish eligibility.

4. Planning and Project Development

Activities in support of eligible projects also may be appropriate for CMAQ investments. Studies that are part of the project development pipeline (*e.g.*, preliminary engineering) under the National Environmental Policy Act (NEPA) are eligible for CMAQ support, as are FTA's Alternatives Analyses. General studies that fall outside specific project development do not qualify for CMAQ funding. Examples of such efforts include major investment studies, commuter preference studies, modal market polls or surveys, transit master plans, and others. These activities are eligible for Federal planning funds.

B. Projects Ineligible for CMAQ Funding

The following projects are ineligible for CMAQ funding:

1. Light-duty vehicle scrappage programs.[16]

2. Projects that add new capacity for SOVs are ineligible for CMAQ funding unless construction is limited to high-occupancy vehicle (HOV) lanes.

3. Routine maintenance and rehabilitation projects (e.g., replacement-in-kind of track or other equipment, reconstruction of bridges, stations, and other facilities, and repaving or repairing roads) are ineligible for CMAQ funding as they only maintain existing levels of highway and transit service, and therefore do not reduce emissions. Other funding sources, such as STP and FTA's Section 5307 program, are available for such activities.

4. Administrative costs of the CMAQ program may not be defrayed with program funds, e.g., support for a State's ''CMAQ Project Management Office'' is not eligible.

5. Projects that do not meet the specific eligibility requirements of titles 23 and 49 U.S.C. are ineligible for CMAQ funds.

6. Stand-alone projects to purchase fuel. One exception is listed below in Section VII.D.3.

C. Public-Private Partnerships (PPPs)

In a PPP, a private or non-profit entity's resources replace or supplement State or local funds and possibly a portion of the Federal-aid in a selected project. The PPP elements of the program have been refined over the last two transportation reauthorizations, and these partnerships have become a critical part of CMAQ.[17]

Partnerships must have a legal, written agreement in place between the public agency and the private or non-profit entity before a CMAQ-funded project may be implemented. These agreements should be developed under relevant State contract law and should specify the intended use for CMAQ funding; the roles and responsibilities of the participating entities; and how the disposition of land, facilities, and equipment will be carried out should the original terms of the agreement be altered (e.g., due to insolvency, change in ownership, or other changes in the structure of the PPP).

Public funds should not be invested where a strong public benefit cannot be

[14] 40 CFR parts 51 and 93.

[15] 23 U.S.C. 116.

[16] 23 U.S.C. 149(b).

[17] 23 U.S.C. 149(e).

demonstrated. Consequently, CMAQ funds must be devoted only to PPPs that benefit the general public by clearly reducing emissions, not for financing marginal projects. Consistent with the planning and project selection provisions of the Federal-aid highway program, the FHWA considers it essential that all interested parties have full, open, and timely access to the project selection process.

There are several other statutory restrictions and special provisions on the use of CMAQ funds in PPPs. Eligible costs under this section may not include costs to fund an obligation imposed on private sector or non-profit entities under the CAA or any other Federal law. However, if the private or non-profit entity is clearly exceeding its obligations under Federal law, CMAQ funds may be used for that incremental portion of the project.

Eligible non-monetary activities that satisfy the non-Federal match requirements under the partnership provisions include the following:

- Ownership or operation of land, facilities, or other physical assets.
- Construction or project management.
- Other forms of participation approved by the U.S. DOT.

Sharing of total project costs, both capital and operating, is a critical element of a successful public-private venture, particularly if the private entity is expected to realize profits as part of the joint venture. State and local officials are urged to consider a full range of cost-sharing options when developing a PPP, including a larger State/local match than the usual 20 percent required under Federal law. For detailed information on cost principles beyond the scope of this guidance, please consult *OMB Circular A–87,* which focuses on determining allowable costs for State, local, and tribal governments; and 49 CFR Part 18, which provides direction on administering Federal grants to State and local governments.

D. Eligible Projects and Programs

Eligibility information is provided below. Not all possible requests for CMAQ funding are covered—this section provides examples of activities eligible for CMAQ funds.

1. Transportation Control Measures (TCMs)

Most of the TCMs included in Section 108 of the CAA, listed below, are eligible for CMAQ funding. One CAA TCM, programs to encourage removal of pre-1980 light-duty vehicles, is specifically excluded from CMAQ eligibility.[18]

i. Programs for improved public transit;

ii. Restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or HOV;

iii. Employer-based transportation management plans, including incentives;

iv. Trip-reduction ordinances;

v. Traffic flow improvement programs that reduce emissions; ii.fringe and transportation corridor parking facilities serving multiple-occupancy vehicle programs or transit service;

vii. Programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use;

viii. Programs for the provision of all forms of high-occupancy, shared-ride services;

ix. Programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of non-motorized vehicles or pedestrian use, both as to time and place;

x. Programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

xi. Programs to control extended idling of vehicles;

xii. Reducing emissions from extreme cold-start conditions;

xiii. Employer-sponsored programs to permit flexible work schedules;

xiv. Programs and ordinances to facilitate non-automobile travel, provision and utilization of mass transit, and to generally reduce the need for SOV travel, as part of transportation planning and development efforts of a locality, including programs and ordinances applicable to new shopping centers, special events, and other centers of vehicle activity; and

xv. Programs for new construction and major reconstructions of paths, tracks, or areas solely for the use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest.

2. Extreme Low-Temperature Cold Start Programs

Projects intended to reduce emissions from extreme cold-start conditions are eligible for CMAQ funding. Such projects include retrofitting vehicles and fleets with water and oil heaters and installing electrical outlets and equipment in publicly-owned garages or fleet storage facilities (See Section VII.C. for a possible expansion to privately-owned equipment and facilities).

3. Alternative Fuels and Vehicles

Fuel

With the exception of Missouri, Iowa, Minnesota, Wisconsin, Illinois, Indiana, and Ohio, fuel costs are not an eligible expense as a stand-alone project. Only these seven states may use CMAQ funds to purchase alternative fuels as defined in section 301 of the 1992 Energy Policy Act (natural gas, ethanol, etc.) or biodiesel, assuming such projects meet other applicable eligibility requirements noted in Section VII.B. above.

Establishing publicly-owned fueling facilities and other infrastructure needed to fuel alternative-fuel vehicles is an eligible expense, unless privately-owned fueling stations are in place and reasonably accessible. Additionally, CMAQ funds may support converting a private fueling facility to support alternative fuels through a public-private partnership agreement (See Section VII.C.).

Non-transit Vehicles

CMAQ funds may be used to purchase publicly-owned alternative fuel vehicles, including passenger vehicles, refuse trucks, street cleaners, and others. Costs associated with converting fleets to run on alternative fuels are also eligible. When private vehicles are purchased, only the cost difference between the alternative fuel vehicles and comparable conventional fuel vehicles is eligible. Such vehicles should be fueled by one of the alternative fuels identified in section 301 of the 1992 Energy Policy Act or biodiesel.

Hybrid Vehicles

Although not defined by the Energy Policy Act of 1992 as alternative fuel vehicles, certain hybrid vehicles that have lower emissions rates than their non-hybrid counterparts may be eligible for CMAQ investment. Hybrid passenger vehicles must meet EPA's low emissions and energy efficiency requirements for certification under the HOV exception provisions of the SAFETEA–LU to be eligible for CMAQ funding.[19]

Projects involving heavier vehicles, including refuse haulers and delivery trucks, also may be appropriate for program support. Eligibility should be based on a comparison of the emissions

[18] 23 U.S.C. 149(1)(A).

[19] 23 U.S.C. 166(e) (SAFETEA–LU section 1121(a)). The required rulemaking is under development by EPA and is expected to list Tier 2/Bin 5—the average of the Tier 2 tailpipe emission standards—as the minimum level for low-emission certification under the HOV exception.

projections of these larger candidate vehicles and other comparable models.

4. Congestion Reduction & Traffic Flow Improvements

Traffic flow improvements may include the following:

a. Traditional Improvements

Traditional traffic flow improvements, such as the construction of roundabouts, HOV lanes, left-turn or other managed lanes, are eligible for CMAQ funding provided they demonstrate net emissions benefits.

b. Intelligent Transportation Systems

Intelligent Transportation Systems (ITS) projects, such as traffic signal synchronization projects, traffic management projects, and traveler information systems, can be effective in relieving traffic congestion, enhancing transit bus performance, and improving air quality. The following have the greatest potential for improving air quality:

- Regional multi-modal traveler information systems
- Traffic signal control systems
- Freeway management systems
- Electronic toll-collection systems
- Transit management systems
- Incident management programs

A lengthier discussion of the benefits associated with various operational improvements can be found at: *http://ops.fhwa.dot.gov/program_areas/programareas.htm*

c. Value/Congestion Pricing

As part of its *National Strategy* referenced above, the Department broadly promotes highway congestion pricing and is also seeking an area-wide demonstration of the effectiveness of congestion pricing (along with other elements). Congestion pricing is a market-based mechanism that allows tolls to rise and fall depending on available capacity and demand. It has gained increasing attention and popularity in recent years following several highly successful facility demonstrations in the U.S. and several network wide demonstrations abroad. Tolls can be charged electronically, thereby eliminating the need for tollbooths. In addition to the benefits associated with reducing congestion, revenue is generated that can be used to pay for a wide range of transportation improvements, including Title 23-eligible transit services in the newly tolled corridor.

Parking pricing can include time-of-day parking charges that reflect congested conditions. These strategies should be designed to influence trip-making behavior and may include charges for using a parking facility at peak periods, or a range of employer-based parking cash-out policies that provide financial incentives to avoid parking or driving alone. Parking pricing integrated with other pricing strategies is encouraged.

Pricing encompasses a variety of market-based approaches such as:

- HOT lanes, or High Occupancy Toll lanes, on which variable tolls are charged to drivers of low-occupancy vehicles using High-Occupancy Vehicle (HOV) lanes, such as the ''FasTrak'' Lanes on I–15 in San Diego and the recently converted I–394 in Minneapolis in which prices vary dynamically every two minutes based on traffic conditions.
- New variably tolled express lanes on existing toll-free facilities, such as the ''91 Express Lanes'' on State Route 91 in Orange County, CA.
- Variable tolls on existing or new toll roads, such as on the bridges and tunnels operated by the Port Authority of New York and New Jersey.
- Network-wide or cordon pricing, such as implemented in Stockholm, London and Singapore.
- Usage-based vehicle pricing, such as mileage-based vehicle taxation being explored by the State of Oregon, or pay-per-mile car insurance.

As with any eligible CMAQ project, value pricing must generate an emissions reduction. Marketing and outreach efforts to expand and encourage the use of eligible pricing measures may be funded indefinitely. Eligible expenses for reimbursement include, but are not limited to: Tolling infrastructure, such as transponders and other electronic toll or fare payment systems; small roadway modifications to enable tolling, marketing, public outreach, and support services, such as transit in a newly tolled corridor. Innovative pricing approaches yet to be deployed in the U.S. also may be supported through the Value Pricing Pilot Program. A more complete discussion of projects currently underway in the U.S. can be found at: *http://ops.fhwa.dot.gov/tolling_pricing/value_pricing/index.htm.*

Operating expenses for traffic flow improvements are eligible for CMAQ funding for a period not to exceed three years if they can be shown to produce air quality benefits, if the expenses are incurred from new or additional services, and if previous funding mechanisms, such as fares or fees for services, are not displaced.

Projects or programs that involve the purchase of integrated, interoperable emergency communications equipment are eligible for CMAQ funding.[20]

[20] 23 U.S.C. 149(b)(6) (SAFETEA–LU section 1808(b)(4)).

5. Transit Improvements

Many transit projects are eligible for CMAQ funds. The general guideline for determining eligibility is whether the project increases capacity and would likely result in an increase in transit ridership and a potential reduction in congestion. As with other types of CMAQ projects, there should be a quantified estimate of the project's emissions benefits accompanying the proposal.

The FTA administers most transit projects. Once the FTA determines a project eligible, CMAQ funds will be transferred from the FHWA to the FTA, and the project will be administered according to the requirements of the FTA's Urbanized Area Formula Grant Program.[21] Certain types of transit projects for which the FTA lacks statutory authority, such as diesel retrofit equipment for public school bus fleets, are administered by the FHWA.

a. Facilities

New transit facilities (e.g., lines, stations, terminals, transfer facilities) are eligible if they are associated with new or enhanced mass transit service. Routine maintenance or rehabilitation of existing facilities is not eligible, as it does not reduce emissions. However, rehabilitation of a facility may be eligible if the vast majority of the project involves physical improvements that will increase capacity. In such cases there should be supporting documentation showing an increase in transit ridership that is more than minimal. If the vast majority of the project involves capacity enhancements, other elements involving refurbishment and replacement-in-kind also are eligible.

b. Vehicles and Equipment

New transit vehicles (bus, rail, or van) to expand the fleet or replace existing vehicles are eligible. Transit agencies are encouraged to purchase vehicles that are most cost-effective in reducing emissions. Diesel engine retrofits, such as replacement engines and exhaust after-treatment devices, are eligible if certified or verified by the EPA or California Air Resources Board (CARB). Routine preventive maintenance for vehicles is not eligible as it only returns the vehicles to baseline conditions. Besides diesel engine retrofits, other transit equipment may be eligible if it represents a major system-wide upgrade that will significantly improve speed or reliability of transit service, such as advanced signal and communications systems.

[21] 49 U.S.C. 5307.

c. Fuel

Fuel, whether conventional or alternative fuel, is an eligible expense only as part of a project providing operating assistance for new or expanded transit service under the CMAQ program. This includes fuels and fuel additives considered diesel retrofit technologies by the EPA or CARB. See Section VII.D.3 for statutory exceptions for certain states regarding the purchase of alternative fuel with CMAQ funds.

d. Operating Assistance

Operating assistance to introduce new transit service or expand existing service is eligible. It may be a new type of service, service to a new geographic area, or an expansion of existing service providing additional hours of service or reduced headways. For a service expansion, only the operating costs of the new increment of service are eligible. Eligible operating costs include labor, fuel, maintenance, and related expenses. Operating assistance may be CMAQ-funded for a maximum of three years. The intent is to support the demonstration of new services that may prove successful enough to sustain with other funding sources, and to free up CMAQ funds to generate new air quality benefits.

It is not appropriate to use CMAQ funds for operating assistance for New Start projects because these projects require dedicated, stable sources of funding for their operation. Relying on CMAQ funds for the initial operating costs of these projects is contrary to the need to establish permanent State and local funding sources to cover operating and maintenance costs.

e. Transit Fare Subsidies

CMAQ funds may be used to subsidize regular transit fares in an effort to prevent the NAAQS from being exceeded, but only under the following conditions: The reduced or free fare must be part of a comprehensive area-wide program to prevent the NAAQS from being exceeded. ''Ozone Action'' programs vary in scope around the country, but they generally include actions that individuals and employers can take and they are aimed at all major sources of air pollution, not just transportation. The subsidized fare must be available to the general public and may not be limited to specific groups. It may only be offered during periods of elevated pollution when the threat of exceeding the NAAQS is greatest; it is not intended for the entire high-ozone season. Finally, the fare subsidy proposal must demonstrate that the responsible local agencies will combine the reduced or free fare with a robust marketing program to inform SOV drivers of other transportation options. The subsidy is not subject to the three-year limit for operating assistance.

6. Bicycle and Pedestrian Facilities and Programs

Bicycle and pedestrian facilities and programs are included as a TCM in section 108(f)(1)(A) of the CAA. The following are eligible projects:

- Constructing bicycle and pedestrian facilities (paths, bike racks, support facilities, etc.) that are not exclusively recreational and reduce vehicle trips.
- Non-construction outreach related to safe bicycle use.
- Establishing and funding State bicycle/pedestrian coordinator positions for promoting and facilitating nonmotorized transportation modes through public education, safety programs, etc. (Limited to one full-time position per State).[22]

7. Travel Demand Management

Travel demand management (TDM) encompasses a diverse set of activities that focus on physical assets and services that provide real-time information on network performance and support better decision-making for travelers choosing modes, times, routes, and locations. Such projects can help ease congestion and reduce SOV use—contributing to mobility, while enhancing air quality and saving energy resources. Similar to ITS and Value Pricing, today's TDM programs seek to optimize the performance of local and regional transportation networks. The following activities are eligible if they are explicitly aimed at reducing SOV travel and associated emissions:

- Fringe parking
- Traveler information services
- Shuttle services
- Guaranteed ride home programs
- Market research and planning in support of TDM implementation
- Carpools, vanpools (see item 10 below)
- Traffic calming measures
- Parking pricing
- Variable road pricing
- Telecommuting
- Employer-based commuter choice programs

CMAQ funds may support capital expenses and up to three years of operating assistance to administer and manage new or expanded TDM programs.

Marketing and outreach efforts to expand use of TDM measures may be funded indefinitely, but only if they are broken out as distinct line items (See Section VII.D.8. below).

Eligible telecommuting activities include planning, preparing technical and feasibility studies, and training. Construction of telecommuting centers and computer and office equipment purchases are not eligible for CMAQ funds.

8. Public Education and Outreach Activities

The goal of CMAQ-funded public education and outreach activities is to educate the public, community leaders, and potential project sponsors about connections among trip making and transportation mode choices, traffic congestion, and air quality. Public education and outreach can help communities reduce emissions and congestion by inducing drivers to change their transportation choices. More important, an informed public is likely to support larger regional measures necessary to reduce congestion and meet CAA requirements.

A wide range of public education and outreach activities is eligible for CMAQ funding, including activities that promote new or existing transportation services, developing messages and advertising materials (including market research, focus groups, and creative), placing messages and materials, evaluating message and material dissemination and public awareness, technical assistance, programs that promote the Tax Code provision related to commute benefits,[23] transit ''store'' operations, and any other activities that help forward less-polluting transportation options.

Using CMAQ funds, communities have disseminated many transportation and air quality public education messages, including maintain your vehicle; curb SOV travel by trip chaining, telecommuting and using alternate modes; fuel properly; observe speed limits; don't idle your vehicle for long durations; eliminate ''jack-rabbit'' starts and stops, and others.

The *It All Adds Up to Cleaner Air* public education messages and materials (regarding vehicle maintenance, proper fueling, trip

[22] 23 U.S.C. 217(d).

[23] Section 132(f) of the Internal Revenue Code allows employers to pay their employees, in 2006, up to $105 per month for transit and vanpool expenses and up to $205 per month for qualified parking. 26 U.S.C. 132(f). Each of these benefits is subject to annual increases based on changes to the Consumer Price Index. 26 U.S.C. 1(f)(3). Alternately, employers may allow employees to use their pre-tax income to purchase these commuter benefits. Employers may also provide a combination of these employer-paid and employee paid tax-free benefits. For more information, please visit *http://www.commuterchoice.com/*.

chaining, and alternate modes) have been successful in raising awareness, garnering funds and in-kind support, and building coalitions of diverse groups across the country. These commercial-quality materials, which were developed in response to requests by state and local transportation and air agencies, are free and communities are encouraged to use and build on them. More information is available at *http://www.italladdsup.gov/.*

The Best Workplaces for CommutersSM program provides national recognition to employers offering commuter benefits that meet the EPA's National Standard of Excellence. Development of materials and public education messages promoting Best Workplaces for CommutersSM and employer provided commuter benefits may be eligible for funding. More information is available at *http://www.bwc.gov/.*

Long-term public education and outreach can be effective in raising awareness that can lead to changes in travel behavior and ongoing emissions reductions; therefore, these activities may be funded indefinitely.

9. Transportation Management Associations

Transportation Management Associations (TMAs) are groups of citizens, firms, or employers that organize to address the transportation issues in their immediate locale by promoting rideshare programs, transit, shuttles, or other measures. TMAs can play a useful role in brokering transportation services to private employers.

CMAQ funds may be used to establish TMAs provided that they reduce emissions. Eligible expenses include TMA start-up costs and up to three years of operating assistance. Eligibility of specific TMA activities is addressed throughout this guidance.

10. Carpooling and Vanpooling

Eligible activities can be divided into two types of costs: *Marketing* (which applies to both carpools and vanpools) and *vehicle* (which applies to vanpools only).

a. Carpool/vanpool marketing covers existing, expanded, and new activities designed to increase the use of carpools and vanpools, and includes purchase and use of computerized matching software and outreach to employers. Guaranteed ride home programs are also considered marketing tools. Marketing costs may be funded indefinitely.

b. Vanpool vehicle capital costs include purchasing or leasing vans for use in vanpools. Eligible operating costs, limited to three years, include empty-seat subsidies, maintenance, insurance, administration, and other related expenses.

CMAQ funds should not be used to buy or lease vans that would directly compete with or impede private sector initiatives. States and MPOs should consult with the private sector prior to using CMAQ funds to purchase vans, and if private firms have definite plans to provide adequate vanpool service, CMAQ funds should not be used to supplant that service.

Carpooling and vanpooling activities may be funded with up to 100% federal funding, with certain limitations.[24]

11. Freight/Intermodal

Projects and programs targeting freight capital costs—rolling stock or ground infrastructure—are eligible provided that air quality benefits can be demonstrated. Freight projects that reduce emissions fall generally into two categories: Primary efforts that target emissions directly or secondary projects that reduce net emissions.

Successful primary projects could include new diesel engine technology or retrofits of vehicles or engines. Eligibility is not confined to highway projects, but also applies to nonroad mobile freight projects, such as rail.[25] See Section VII.D.12. below on diesel retrofit technology—examples of primary freight projects—and for information on EPA's guidance and model rule for emissions reduction credit in the SIP and conformity processes.

Secondary projects reduce emissions through shifts in or additions to infrastructure. Support for an intermodal container transfer facility may be eligible if the project demonstrates reduced diesel engine emissions when balancing the drop in truck VMT against the increase in locomotive or other non-highway activity. Intermodal facilities, such as inland transshipment ports or on-dock rail, may generate substantial emissions reductions through the decrease in miles traveled for pre-1986 heavy-duty diesel trucks. This secondary, indirect effect on truck traffic and the ensuing drop in diesel emissions help demonstrate eligibility.

The transportation function of these freight/intermodal projects should be emphasized. Marginal projects that support freight operations in a very tangential manner are not eligible for CMAQ funding. Warehouse handling equipment, for example, is not an eligible investment of program funds. However, equipment that provides a transportation function or directly supports this function is eligible, such as railyard switch locomotives or shunters.

12. Diesel Engine Retrofits & Other Advanced Truck Technologies

The SAFETEA–LU places a new emphasis on diesel engine retrofits and the various types of projects that fall under this broad category.[26] These efforts are defined as vehicle replacement, repowering (replacing an engine with a cleaner engine), rebuilding an engine, or other technologies determined by the EPA as appropriate for reducing emissions from diesel engines.[27] This latter point, highlighting developing technologies, establishes a degree of flexibility and a need for periodic adjustment in the definition by the EPA. The legislation defines retrofit projects as applicable to both on-road motor vehicles and nonroad construction equipment; the latter must be used in Title 23 projects based in nonattainment or maintenance areas for either PM or ozone.

There are a number of project types in the diesel retrofit area for which CMAQ funds are eligible. Assuming all other CMAQ criteria are met, eligible projects include diesel engine replacement; full engine rebuilding and reconditioning; and purchase and installation of after-treatment hardware, including particulate matter traps and oxidation catalysts, and other technologies; and support for heavy-duty vehicle retirement programs. Project agreements involving replacements of either engine or full vehicle should include a provision for disposal of the engine block and a process to verify the retirement of this equipment.[28]

CMAQ funds may be used to purchase and install emission control equipment on school buses. (Such projects, generally, should be administered by FHWA; see VII.D.5, Transit Improvements, above.)

Refueling is not eligible as a stand-alone project, and is eligible only if it is required to support the installation of emissions control equipment, repowering, rebuilding, or other retrofits of non-road engines. For example, ultra-low sulfur diesel (ULSD) may be purchased as part of a project to install diesel particulate filters on nonroad

[24] 23 U.S.C. 120(c)

[25] 23 U.S.C. 149(b)(3)

[26] 23 U.S.C. 149(b)(f) (SAFETEA–LU section 1808(d)).

[27] 23 U.S.C. 149(f)(2) (SAFETEA–LU section 1808(d)).

[28] Reimbursement of costs for full-vehicle replacement may be limited to those elements that lead to emission reductions.

construction equipment because these devices need ULSD to function properly. Costs associated with ULSD are eligible for CMAQ funding only until the standards are effective and the fuel becomes commonly available through the regional supply and logistics chain, effectively rendering ULSD the only diesel fuel distributed. Eligible costs are limited to the difference between standard nonroad diesel fuel and ULSD.

In addition to equipment and technology, outreach activities that provide information exchange and technical assistance to diesel owners and operators on retrofit options are eligible investments. Please see Appendix 5 for more detail on diesel retrofits and the various strategies available in this developing air quality field.

The FHWA acknowledges that diesel retrofit projects may include nonroad mobile source endeavors, which traditionally have been outside the Federal-aid process. However, the SAFETEA–LU clarifies CMAQ eligibility for nonroad diesel retrofit projects. Areas that fund these projects are not required to take credit for the projects in the transportation conformity process. For areas that want to take credit, the EPA developed guidance for estimating diesel retrofit emission reductions and for applying the credit in the SIP and transportation conformity processes. The guidance can be found at *http://www.epa.gov/otaq/stateresources/transconf/policy.htm#retrofit.*

In addition to retrofit projects, upgrading long-haul heavy-duty diesel trucks with advanced technologies, such as idle reduction devices, cab and trailer aerodynamic fixtures, and single-wide or other efficient tires, has been demonstrated by the EPA's *Smart Way Transport Partnership Program* to reduce NO_X emissions and save fuel. These strategies also are eligible for CMAQ support. Such projects funded directly by CMAQ that involve the private sector must be part of a Public-Private Partnership, as discussed in Section VII.C.

13. Idle Reduction

Idle reduction projects that reduce emissions and are located within, or in proximity to and primarily benefiting, a nonattainment or maintenance area are eligible for CMAQ investment (The geographic requirement mainly applies to off-board projects, i.e. truck stop electrification (TSE) efforts). However, if CMAQ funding is used for an on-board project (i.e., auxiliary power units, direct fired heaters, etc.) the vehicle—usually a heavy-duty truck—must travel within, or in proximity to and primarily benefiting, a nonattainment or maintenance area.

There have been several instances where operating assistance funds have been requested for TSE services. CMAQ funding to date for TSE projects has been limited to capital costs (i.e., deployment of TSE infrastructure). Operating assistance for TSE projects is not an eligible activity under the CMAQ program because TSE projects generate their own revenue stream and therefore should be able to cover all operating expenses from the accumulated revenue. See Section III.D for information on innovative financing opportunities available for these efforts.

The SAFETEA–LU also permits electrification or other idling reduction facilities and equipment to be constructed or located on rights-of-way of the Interstate system.[29] Prior to the enactment of the SAFETEA–LU, this activity was prohibited.

The EPA issued guidance in January 2004 on methods for calculating emissions reduction credits in SIPs and in the transportation conformity process for long-haul truck idle reduction projects. The guidance can be found at *http://www.epa.gov/smartway/idlingimpacts.htm.*

14. Training

The SAFETEA–LU provides that States and MPOs may use Federal-aid funds to support training and educational development for the transportation workforce.[30] The FHWA encourages State and local officials to weigh the air quality benefits of such training against other cost-effective strategies detailed elsewhere in this guidance before using CMAQ funds for this purpose. Training funded with CMAQ dollars must be directly related to implementing air quality improvements and be approved in advance by the FHWA Division office.

15. Inspection/Maintenance (I/M) Programs

Funds under the CMAQ program may be used to establish either publicly or privately owned I/M facilities. Eligible activities include construction of facilities, purchase of equipment, I/M program development, and one-time start-up activities, such as updating quality assurance software or developing a mechanic training curriculum. The I/M program must constitute new or additional efforts, existing funding (including inspection fees) should not be displaced, and operating expenses are eligible for a maximum of three years.

Privately Owned I/M Facilities

In States that rely on privately owned I/M facilities, State or local I/M program-related administrative costs may be funded under the CMAQ program as in States that use public I/M facilities. However, CMAQ support to establish I/M facilities at privately owned stations, such as service stations that own the equipment and conduct emission test-and-repair services, requires a public-private partnership (See Section VII.C.).

The establishment of ''portable'' I/M programs, including remote sensing, is also eligible under the CMAQ program, provided that they are public services, reduce emissions, and do not conflict with statutory I/M requirements or EPA regulations.

16. Experimental Pilot Projects

State and local organizations traditionally have experimented with various types of transportation services to better meet the travel needs of their constituents. These ''experimental'' projects may show promise in reducing emissions, but do not yet have supporting data. The FHWA has supported and funded some of these projects as demonstrations to determine their benefits and costs. These experimental pilots are not intended to bypass the definition of basic project eligibility but seek to better define the projects' future role in strategies to reduce emissions.

For a project or program to qualify as an experimental pilot, it must be defined as a transportation project and be expected to reduce emissions by decreasing vehicle miles traveled (VMT), fuel consumption, congestion, or by other factors. The FHWA encourages States and MPOs to creatively address their air quality problems and to experiment with new services, innovative financing arrangements, public-private partnerships, and complementary approaches that use transportation strategies to reach clean air goals. The CMAQ program may be used to support a well-conceived project even if the proposal may not fully meet the eligibility criteria of this guidance.

Given the untried nature of these pilot projects, before-and-after studies are required to determine actual project impacts on air quality as measured by net emissions reduced. These assessments should document the project's immediate impacts in addition to long-term benefits. A schedule for completing the study must be a part of

[29] 23 U.S.C. 111(d) (SAFETEA–LU section 1412).

[30] 23 U.S.C. 504(e) (SAFETEA–LU section 5204(e)).

the project agreement. Completed studies must be submitted to the FHWA Division office within three years of implementation of the project or one year after the project's completion, whichever is sooner.

VIII. Project Selection Process—General Conditions

Proposals for CMAQ funding should include a precise description of the project, providing information on its size, scope, location, and timetable. Also, an assessment of the project's expected emission reduction benefits is required prior to project selection to better inform the selection of CMAQ projects (See Below).

A. Air Quality Analysis

1. Quantitative Analyses

Quantified emissions benefits (i.e., emissions reductions) and disbenefits (i.e., emissions increases) should be included in all project proposals, except where it is not possible to quantify emissions benefits (see Qualitative Assessment, below). Benefits and disbenefits should be included for all pollutants for which the area is in nonattainment or maintenance status. Benefits should be listed in a consistent fashion (i.e., kg/day) across projects to allow accurate comparison during the project selection process.

State and local transportation and air quality agencies conduct CMAQ-project air quality analyses with different approaches, analytical capabilities, and technical expertise. The SAFETEA–LU encourages State DOTs and MPOs to consult with State and local air quality agencies about the estimated emission reductions from CMAQ proposals.[31] However, while no single method is specified, every effort must be taken to ensure that determinations of air quality benefits are credible and based on a reproducible and logical analytical procedure.

2. Qualitative Assessment

Although quantitative analysis of air quality impacts is required for almost all project types, an exception to this requirement will be made when it is not possible to accurately quantify emissions benefits. In these cases, a qualitative assessment based on a reasoned and logical determination that the project or program will decrease emissions and contribute to attainment or maintenance of a NAAQS is acceptable.

Public education, marketing, and other outreach efforts, which can include advertising alternatives to SOV travel, employer outreach, and public education campaigns, may fall into this category. The primary benefit of these activities is enhanced communication and outreach that is expected to influence travel behavior, and thus air quality.

3. Analyzing Groups of Projects

In some situations, it may be more appropriate to examine the impacts of comprehensive strategies to improve air quality by grouping projects. For example, transit improvements coupled with demand management to reduce SOV use in a corridor might best be analyzed together. Other examples include linked signalization projects, transit improvements, marketing and outreach programs, and ridesharing programs that affect an entire region or corridor.

4. Tradeoffs

As noted above, emissions benefits should be calculated for all pollutants for which an area is in nonattainment or maintenance status. Some potential projects may lead to benefits for one pollutant and increased emissions for another, especially when the balance involves precursors such as NO_X and VOC. States and MPOs should consult with relevant air agencies to weigh the net benefits of the project.

IX. Program Administration

A. Project Selection—MPO and State Responsibilities

CMAQ projects are selected by the State or the MPO. MPOs, State DOTs, and transit agencies should develop CMAQ project selection processes in accordance with the metropolitan and/or statewide planning process. The selection process should involve State and/or local transportation and air quality agencies.

The CMAQ project selection process should be transparent, in writing, and publicly available. The process should identify the agencies involved in rating proposed projects, clarify how projects are rated, and name the committee or group responsible for making the final recommendation to the MPO board or other approving body. The selection process should also clearly identify the basis for rating projects, including emissions benefits, cost effectiveness, and any other ancillary selection factors such as congestion relief, greenhouse gas reductions, safety, system preservation, access to opportunity, sustainable development and freight, reduced SOV reliance, multi-modal benefits, and others. At a minimum, projects must be identified by year and proposed funding source.

Close coordination is necessary between the State and MPO to ensure that CMAQ funds are used appropriately and to maximize their effectiveness in meeting the CAA requirements.

States and MPOs must fulfill this responsibility so that nonattainment and maintenance areas are able to make good-faith efforts to attain and maintain the NAAQS by the prescribed deadlines. State DOTs and MPOs should consult with State and local air quality agencies to develop an appropriate project list of CMAQ programming priorities that will have the greatest impact on air quality. In developing this list, MPOs and States should evaluate the cost-effectiveness of the projects and give priority consideration to those that will create the greatest emissions reductions for the least cost. The SAFETEA–LU calls out diesel retrofits as one type of cost-effective project to which priority consideration shall be given. The EPA has conducted an extensive study on the cost-effectiveness of diesel retrofits in reducing PM emissions.[32] The National Academy of Science's Transportation Research Board has evaluated the cost-effectiveness of other CMAQ eligible projects, with a focus on NO_X and HC reductions. Information on the cost-effectiveness of CMAQ-eligible projects is presented in Appendix 4, which can be used as a guidepost in evaluating the cost-effectiveness of different types of projects under consideration by an MPO or State. However, cost-effectiveness ultimately will depend on local conditions and project specific factors that affect emission reductions and costs.

B. Federal Agency Responsibilities and Coordination

1. Program Administration

The FHWA Division offices and the FTA Regional offices are responsible for administering the CMAQ program. The FHWA transfers funds to the FTA to administer CMAQ-funded transit projects. In cases where the FTA lacks statutory authority, (e.g., school bus fleets) the FHWA will administer the transit project. For projects that involve transit and non-transit elements, such as park-and-ride lots and intermodal passenger projects, the administering agency is decided on a case-by-case basis. All other projects are administered by the FHWA.

[31] 23 U.S.C. 149(e) (SAFETEA–LU section 1808(e)).

[32] More information is available at *http://www.epa.gov/cleandiesel/publications.htm.*

2. Eligibility Determinations

The administering agency makes the final determination on CMAQ eligibility. The FHWA, FTA, and EPA field offices should establish and maintain a consultation and coordination process to review CMAQ funding proposals as needed. The consultation process should provide for timely review and handling of CMAQ funding proposals. The FHWA and FTA headquarters offices are available to consult with their field offices on eligibility determinations as needed.

3. Tracking Mandatory/Flexible Funds

The FHWA Division office is responsible for tracking obligation of mandatory and flexible CMAQ funds in appropriate areas (See Section V.B.).

C. Annual Reports

States are required to prepare annual reports detailing how CMAQ funds have been invested.[33] CMAQ reporting is not only useful for the FHWA, the FTA, and the general public, but maintenance of a cumulative database of all CMAQ projects is required by the SAFETEA–LU. In addition, the annual reports will be key in developing the CMAQ Evaluation and Assessment, a major research effort designed to gauge the impact of the program, and also required by the statute.[34]

CMAQ annual reports must be submitted through the web-based CMAQ Tracking System. More information on the CMAQ system is available at *http://www.fhwa.dot.gov/environment/cmaqpgs/usersguidemail.htm.*

The FHWA Division offices, State DOTs, and MPOs should develop a process for entering and approving the data in a timely manner. This report should be approved by the FHWA Division office by the first day of March following the end of the previous Federal fiscal year (September 30) and cover all CMAQ obligations for that fiscal year. Thus, State DOTs and MPOs need to report the data early enough that the Division office has time to review and comment on the report. The report as entered into the CMAQ Tracking System should include:

1. A list of projects funded under CMAQ, in seven main project categories:

- *Transit:* facilities, vehicles, and equipment, operating assistance for new transit service, etc. Include all transit projects whether administered by the FTA or the FHWA.
- *Shared Ride:* vanpool and carpool programs and parking for shared-ride services.
- *Traffic Flow Improvements:* traffic management and control services, signalization projects, ITS projects, intersection improvements, and construction or dedication of HOV lanes.
- *Demand Management:* trip reduction programs, transportation management plans, flexible work schedule programs, vehicle restriction programs.
- *Pedestrian/Bicycle:* bikeways, storage facilities, promotional activities.
- *I/M and other TCMs:* projects not covered by the above categories.
- *STP/CMAQ:* projects funded with flexible funds.

For reporting purposes, obligations for all CMAQ-eligible phases (beginning with the NEPA process) should be reported for the project they support.

2. The amount of CMAQ funds obligated or deobligated for each project during the federal fiscal year. Enter deobligations as a negative number. (Do not include Advance Construct funds, as these are not obligations of federal CMAQ funds. Such projects should be reported later when converted to CMAQ funds.)

3. Emissions benefits (and disbenefits) for each project developed from project-level analyses. Report projected emissions benefits expected to occur in the first year that a project is fully operational, in kilograms reduced per day. Benefits should be reported the first time a project is entered into the system, and only then to avoid double counting of benefits. (Because funds may be obligated for a project over several years, an individual CMAQ project may show up in reports for multiple years.) Additionally, address all pollutants for which the area is in nonattainment or maintenance status. Do not enter emissions benefits for deobligations or projects funded with flexible funds (STP/CMAQ).

4. Public-private partnerships and experimental pilot projects should be identified in the system. Transmit electronic versions of completed before-and-after studies for experimental pilot projects to the Division offices (See Section VII.D.16., Experimental Pilot Projects).

5. *Other required information:* MPO, nonattainment/maintenance area, project description.

6. *Optional information:* TIP, State and/or FMIS project numbers—highly recommended. Other optional information includes: greenhouse gas emission reductions, safety, congestion relief, and other ancillary benefits.

Appendix 1: 23 U.S.C. 149

SAFETEA–LU Changes in Underlined Italics

§ 149. Congestion mitigation and air quality improvement program

(a) Establishment.—The Secretary shall establish and implement a congestion mitigation and air quality improvement program in accordance with this section.

(b) Eligible Projects.—Except as provided in subsection (c), a State may obligate funds apportioned to it under section 104 (b)(2) for the congestion mitigation and air quality improvement program only for a transportation project or program if the project or program is for an area in the State that is or was designated as a nonattainment area for ozone, carbon monoxide, or particulate matter under section 107(d) of the Clean Air Act (42 U.S.C. 7407 (d)) and classified pursuant to section 181(a), 186(a), 188(a), or 188(b) of the Clean Air Act (42 U.S.C. 7511 (a), 7512 (a), 7513 (a), or 7513 (b)) or is or was designated as a nonattainment area under such section 107 (d) after December 31, 1997, *or is required to prepare, and file with the Administrator of the Environmental Protection Agency, maintenance plans under the Clean Air Act (42 U.S.C. 7401 et seq.)* and—

(1)(A)(i) if the Secretary, after consultation with the Administrator determines, on the basis of information published by the Environmental Protection Agency pursuant to section 108(f)(1)(A) of the Clean Air Act (other than clause (xvi)) that the project or program is likely to contribute to—

(I) the attainment of a national ambient air quality standard; or

(II) the maintenance of a national ambient air quality standard in a maintenance area; and

(ii) a high level of effectiveness in reducing air pollution, in cases of projects or programs where sufficient information is available in the database established pursuant to subsection (h) to determine the relative effectiveness of such projects or programs; or,

(B) in any case in which such information is not available, if the Secretary, after such consultation, determines that the project or program is part of a program, method, or strategy described in such section 108(f)(1)(A);

(2) if the project or program is included in a State implementation plan that has been approved pursuant to the Clean Air Act and the project will have air quality benefits;

[33] The FHWA is in the process of acquiring the required clearance pursuant to the Paperwork Reduction Act from the Office of Management and Budget to collect this data.

[34] 23 U.S.C. 149(h) (SAFETEA–LU section 1808(f)).

(3) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the project or program is likely to contribute to the attainment of a national ambient air quality standard, whether through reductions in vehicle miles traveled, fuel consumption, or through other factors;

(4) to establish or operate a traffic monitoring, management, and control facility or program if the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the facility or program, *including advanced truck stop electrification systems,* is likely to contribute to the attainment of a national ambient air quality standard; (removed ''or'')

(5) if the program or project improves traffic flow, including projects to improve signalization, construct high occupancy vehicle lanes, improve intersections, *improve transportation systems management and operations that mitigate congestion and improve air quality,* and implement intelligent transportation system strategies and such other projects that are eligible for assistance under this section on the day before the date of enactment of this paragraph;

(6) if the project or program involves the purchase of integrated, interoperable emergency communications equipment; or

(7) if the project or program is for—

(A) the purchase of diesel retrofits that are—

(i) for motor vehicles (as defined in section 216 of the Clean Air Act (42 U.S.C. 7550)); or

(ii) published in the list under subsection (f)(2) for non-road vehicles and non-road engines (as defined in section 216 of the Clean Air Act (42 U.S.C. 7550)) that are used in construction projects that are—

(I) located in nonattainment or maintenance areas for ozone, PM_{10}, or $PM_{2.5}$ (as defined under the Clean Air Act (42 U.S.C. 7401 et seq.)); and

(II) funded, in whole or in part, under this title; or

(B) the conduct of outreach activities that are designed to provide information and technical assistance to the owners and operators of diesel equipment and vehicles regarding the purchase and installation of diesel retrofits.

No funds may be provided under this section for a project which will result in the construction of new capacity available to single occupant vehicles unless the project consists of a high occupancy vehicle facility available to single occupant vehicles only at other than peak travel times. In areas of a State which are nonattainment for ozone or carbon monoxide, or both, and for PM–10 resulting from transportation activities, the State may obligate such funds for any project or program under paragraph (1) or (2) without regard to any limitation of the Department of Transportation relating to the type of ambient air quality standard such project or program addresses.

(c) States Receiving Minimum Apportionment.—

(1) States without a nonattainment area.—If a State does not have, and never has had, a nonattainment area designated under the Clean Air Act (42 U.S.C. 7401 et seq.), the State may use funds apportioned to the State under section 104 (b)(2) *for any project in the State that—*

(A) would otherwise be eligible under this section as if the project were carried out in a nonattainment or maintenance area; or

(B) is eligible under the surface transportation program under section 133.

(2) States with a nonattainment area.—If a State has a nonattainment area or maintenance area and receives funds under section 104 (b)(2)(D) above the amount of funds that the State would have received based on its nonattainment and maintenance area population under subparagraphs (B) and (C) of section 104 (b)(2), the State may use that portion of the funds not based on its nonattainment and maintenance area population under subparagraphs (B) and (C) of section 104 (b)(2) *for any project in the State that—*

(A) would otherwise be eligible under this section as if the project were carried out in a nonattainment or maintenance area; or

(B) is eligible under the surface transportation program under section 133.

(d) Applicability of Planning Requirements.—Programming and expenditure of funds for projects under this section shall be consistent with the requirements of sections 134 and 135 of this title.

(e) Partnerships With Nongovernmental Entities.—

(1) In general.—Notwithstanding any other provision of this title and in accordance with this subsection, a metropolitan planning organization, State transportation department, or other project sponsor may enter into an agreement with any public, private, or nonprofit entity to cooperatively implement any project carried out under this section.

(2) Forms of participation by entities.—Participation by an entity under paragraph (1) may consist of—

(A) ownership or operation of any land, facility, vehicle, or other physical asset associated with the project;

(B) cost sharing of any project expense;

(C) carrying out of administration, construction management, project management, project operation, or any other management or operational duty associated with the project; and

(D) any other form of participation approved by the Secretary.

(3) Allocation to entities.—A State may allocate funds apportioned under section 104 (b)(2) to an entity described in paragraph (1).

(4) Alternative fuel projects.—In the case of a project that will provide for the use of alternative fuels by privately owned vehicles or vehicle fleets, activities eligible for funding under this subsection—

(A) may include the costs of vehicle refueling infrastructure, including infrastructure that would support the development, production, and use of emerging technologies that reduce emissions of air pollutants from motor vehicles, and other capital investments associated with the project;

(B) shall include only the incremental cost of an alternative fueled vehicle, as compared to a conventionally fueled vehicle, that would otherwise be borne by a private party; and

(C) shall apply other governmental financial purchase contributions in the calculation of net incremental cost.

(5) Prohibition on federal participation with respect to required activities.—A Federal participation payment under this subsection may not be made to an entity to fund an obligation imposed under the Clean Air Act (42 U.S.C. 7401 et seq.) or any other Federal law.

(f) Cost-Effective Emission Reduction Guidance.—

(1) Definitions.—In this subsection, the following definitions apply:

(A) Administrator.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

(B) Diesel retrofit.—The term 'diesel retrofit' means a replacement, repowering, rebuilding, after treatment, or other technology, as determined by the Administrator.

(2) Emission reduction guidance.—The Administrator, in consultation with the Secretary, shall publish a list of diesel retrofit technologies and supporting technical information for—

(A) diesel emission reduction technologies certified or verified by the

Administrator, the California Air Resources Board, or any other entity recognized by the Administrator for the same purpose;

(B) diesel emission reduction technologies identified by the Administrator as having an application and approvable test plan for verification by the Administrator or the California Air Resources Board that is submitted not later that 18 months of the date of enactment of this subsection;

(C) available information regarding the emission reduction effectiveness and cost effectiveness of technologies identified in this paragraph, taking into consideration air quality and health effects.

(3) Priority.—

(A) In general.—States and metropolitan planning organizations shall give priority in distributing funds received for congestion mitigation and air quality projects and programs from apportionments derived from application of sections 104(b)(2)(B) and 104(b)(2)(C) to—

(i) diesel retrofits, particularly where necessary to facilitate contract compliance, and other cost-effective emission reduction activities, taking into consideration air quality and health effects; and

(ii) cost-effective congestion mitigation activities that provide air quality benefits.

(B) Savings.—This paragraph is not intended to disturb the existing authorities and roles of governmental agencies in making final project selections.

(4) No effect on authority or restrictions.—Nothing in this subsection modifies or otherwise affects any authority or restriction established under the Clean Air Act (42 U.S.C. 7401 et seq.) or any other law (other than provisions of this title relating to congestion mitigation and air quality).

(g) Interagency Consultation.—The Secretary shall encourage States and metropolitan planning organizations to consult with State and local air quality agencies in nonattainment and maintenance areas on the estimated emission reductions from proposed congestion mitigation and air quality improvement programs and projects.

(h) Evaluation and Assessment of Projects.—

(1) In general.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall evaluate and assess a representative sample of projects funded under the congestion mitigation and air quality program to—

(A) determine the direct and indirect impact of the projects on air quality and congestion levels; and

(B) ensure the effective implementation of the program.

(2) Database.—Using appropriate assessments of projects funded under the congestion mitigation and air quality program and results from other research, the Secretary shall maintain and disseminate a cumulative database describing the impacts of the projects.

(3) Consideration.—The Secretary, in consultation with the Administrator, shall consider the recommendations and findings of the report submitted to Congress under section 1110(e) of the Transportation Equity Act for the 21st Century (112 Stat. 144), including recommendations and findings that would improve the operation and evaluation of the congestion mitigation and air quality improvement program.

SAFETEA–LU Section 1808: Additional Provisions

The following provisions were included in the SAFETEA–LU Section 1808. These provisions do not amend 23 U.S.C. and therefore sunset when the SAFETEA–LU expires. To avoid confusion, they are presented here separate from the rest of the statutory text.

(g) Flexibility in the State of Montana.—The State of Montana may use funds apportioned under section 104(b)(2) of title 23, United States Code, for the operation of public transit activities that serve a nonattainment or maintenance area.

(h) Availability of Funds for State of Michigan.—The State of Michigan may use funds apportioned under section 104(b)(2) of such title for the operation and maintenance of intelligent transportation system strategies that serve a nonattainment or maintenance area.

(i) Availability of Funds for the State of Maine.—The State of Maine may use funds apportioned under section 104(b)(2) of such title to support, through September 30, 2009, the operation of passenger rail service between Boston, Massachusetts, and Portland, Maine.

(j) Availability of Funds for Oregon.—The State of Oregon may use funds apportioned on or before September 30, 2009, under section 104(b)(2) of such title to support the operation of additional passenger rail service between Eugene and Portland.

(k) Availability of Funds for Certain Other States.7mdash;The States of Missouri, Iowa, Minnesota, Wisconsin, Illinois, Indiana, and Ohio may use funds apportioned under section 104(b)(2) of such title to purchase alternative fuel (as defined in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)) or biodiesel.

APPENDIX 2: 23 U.S.C. 104(b)(2) APPORTIONMENT

[DRAFT VERSION—NOT CODIFIED YET]

(2) Congestion mitigation and air quality improvement program.—

(A) In general.—For the congestion mitigation and air quality improvement program, in the ratio that—

(i) the total of all weighted nonattainment and maintenance area populations in each State; bears to

(ii) the total of all weighted nonattainment and maintenance area populations in all States.

(B) Calculation of weighted nonattainment and maintenance area population.—Subject to subparagraph (C), for the purpose of subparagraph (A), the weighted nonattainment and maintenance area population shall be calculated by multiplying the population of each area in a State that was a nonattainment area or maintenance area as described in section 149(b) for ozone or carbon monoxide by a factor of—

(i) 1.0 if, at the time of apportionment, the area is a maintenance area;

(ii) 1.0 if, at the time of the apportionment, the area is classified as a marginal ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.);

(iii) 1.1 if, at the time of the apportionment, the area is classified as a moderate ozone nonattainment area under such subpart;

(iv) 1.2 if, at the time of the apportionment, the area is classified as a serious ozone nonattainment area under such subpart;

(v) 1.3 if, at the time of the apportionment, the area is classified as a severe ozone nonattainment area under such subpart;

(vi) 1.4 if, at the time of the apportionment, the area is classified as an extreme ozone nonattainment area under such subpart;

(vii) 1.0 if, at the time of the apportionment, the area is not a nonattainment or maintenance area as described in section 149(b) for ozone, but is classified under subpart 3 of part D of title I of such Act (42 U.S.C. 7512 et seq. as a nonattainment area described in section 149(b) for carbon monoxide*; or*

(viii) 1.0 if, at the time of apportionment, an area is designated as nonattainment for ozone under subpart

1 of part D of title I of such Act (42 U.S.C. 7512 et seq.).

(C) Additional Adjustment for Carbon Monoxide Areas.—If, in addition to being designated as a nonattainment or maintenance are for ozone as described in section 149(b), any county within the area was also classified under subpart 3 of part D of title I of the Clean Air Act (42 U.S.C. 7512 et seq.) as a nonattainment or maintenance area described in section 149(b) for carbon monoxide, the weighted nonattainment or maintenance area population of the county, as determined under clauses (i) through (vi) or clause (viii) of subparagraph (B), shall be further multiplied by a factor of 1.2.

(D) Minimum apportionment.—Notwithstanding any other provision of this paragraph, each State shall receive a minimum of ½ of 1 percent of the funds apportioned under this paragraph.

(E) Determinations of population.—In determining population figures for the purposes of this paragraph, the Secretary shall use the latest available annual estimates prepared by the Secretary of Commerce.

APPENDIX 3: 23 U.S.C. § 120 FEDERAL SHARE PAYABLE

(c) INCREASED FEDERAL SHARE FOR CERTAIN SAFETY PROJECTS. [excerpt]

The Federal share payable on account of any project for traffic control signalization, traffic circles (also known as 'roundabouts'), safety rest areas, pavement marking, commuter carpooling and vanpooling, rail-highway crossing closure, or installation of traffic signs, traffic lights, guardrails, impact attenuators, concrete barrier endtreatments, breakaway utility poles, or priority control systems for emergency vehicles or transit vehicles at signalized intersections may amount to 100 percent of the cost of construction of such projects; except that not more than 10 percent of all sums apportioned for all the Federal-aid systems for any fiscal year in accordance with section 104 of this title shall be used under this subsection.

APPENDIX 4: COMPARATIVE COST-EFFECTIVENESS OF POTENTIAL CMAQ FUNDED PROJECTS

While the SAFETEA–LU maintains the existing roles and authorities of public agencies in project selection, the law also indicates that priority for CMAQ funding should be given to cost-effective emission reduction and congestion mitigation measures.[35] The SAFETEA–LU specifically highlights diesel retrofits as a priority cost-effective measure.

In 2002, the National Academy of Sciences' (NAS) Transportation Research Board (TRB) published a study, in response to a congressional request that assessed the cost-effectiveness of various CMAQ-eligible strategies to reduce congestion and emissions. The study measured the cost-effectiveness of projects based on cost per ton of emissions (HC and NO_X) reduced. In preparing the assessment, TRB gave NO_X reductions four times the weight of HC reductions. The findings, shown in Figures A and D, are reported as the median values for each category analyzed. The cost information has been adjusted to 2005 dollars to account for inflation.

It is important to note that while the NAS study reflects the best available data at the time of its completion, there are limitations inherent in such an assessment. The data presented are based on a select sampling of projects that may not completely capture the potential cost effectiveness of other techniques of implementing particular strategies. Therefore, the median cost should be coupled with the cost range to better portray a project's potential cost-effectiveness.

The NAS study did not consider advanced truck stop electrification (TSE) projects or diesel engine retrofit projects. Cost-effectiveness data for TSE projects were obtained from the EPA Office of Transportation and Air Quality. The cost-effectiveness of various diesel engine retrofit technologies, highlighted in the SAFETEA–LU as a priority CMAQ funding item, are illustrated in Figures B and C and are based on the cost (estimated 2007 dollars) per ton of PM reduced.

While most of the technologies are presented in terms of tons of NO_X reduced, diesel engine retrofits are presented in terms of tons of PM reduced. A direct comparison is therefore not appropriate, as the health effects and emissions inventories differ between the two pollutants. It costs more to reduce a ton of PM than it does to reduce a ton of NO_X. However, the health benefits of reducing a ton of PM are significantly greater than the benefits of reducing an equal amount of NO_X.

FIGURE A: NO_X/HC COST-EFFECTIVENESS OF VARIOUS PROJECT TYPES

Strategy	Median cost (2005 dollars)/ton of NO_X/HC reduced	Cost range (2005 dollars)/ton of NO_X/HC reduced
I/M	2,155	2,041–6,577
Regional Rideshare	8,392	1,361–18,144
Charges and Fees	11,680	907–56,020
Vanpool Programs	11,907	5,897–100,926
Misc. TDM	14,175	2,608–37,649
Conventional Fuel Bus Replacements	18,257	12,474–45,247
Alternative-Fuel Vehicles	20,185	4,536–35,834
Traffic Signalization	22,793	6,804–145,152
Employer Trip Reduction	25,742	6,464–199,017
Conventional Service Upgrades	27,896	4,309–136,193
Park-and-Ride Lots	48,762	9,752–80,174
Modal Subsidies and Vouchers	52,844	907–534,114
New Transit Capital Systems/Vehicles	75,298	9,639–533,887
Bike/Pedestrian	95,369	4,763–390,890
Shuttles, Feeder, Paratransit	99,225	13,948–223,398
Freeway Management	116,122	2,608–616,783
Alternative-Fuel Buses	143,338	7,598–644,772
HOV Lanes	199,811	6,464–381,931

[35] 23 U.S.C. 149(f).

FIGURE A: NO_X/HC COST-EFFECTIVENESS OF VARIOUS PROJECT TYPES—Continued

Strategy	Median cost (2005 dollars)/ton of NO_X/HC reduced	Cost range (2005 dollars)/ton of NO_X/HC reduced
Telework	285,541	15,082–9,329,418
Source: TRB Special Report 264—The Congestion Mitigation and Air Quality Improvement Program: Assessing 10 Years of Experience, Chapter 4, 2002.		
Advanced Truck Stop Electrification	1,696	1,416-1,976
Source: Environmental Protection Agency, Office of Transportation & Air Quality (Measured in dollars/ton of NO_X reduced), 2006.		

In March, 2006, the EPA released a report, Diesel Retrofit Technology: An Analysis of the Cost-Effectiveness of Reducing Particulate Matter Emissions from Heavy-Duty Diesel Engines Through Retrofits, that analyzed diesel oxidation catalysts (DOC) and catalyzed diesel particulate filters (CDPF). These technologies are assessed in dollars per ton of PM reduced, unlike the information in Figure A and D, which is measured in tons of NO_X/HC reduced. The EPA did not provide median values, instead providing a cost-effectiveness range.

FIGURE B: PM COST-EFFECTIVENESS IN DIESEL RETROFIT APPLICATIONS

Vehicle	Retrofit technology	Range of $/ton of PM reduced (Estimated 2007 dollars)*
School Bus	DOC	12,000–49,100
	CDPF	12,400–50,500
Class 6 & 7 Truck	DOC	27,600–67,900
	CDPF	28,400–69,900
Class 8b Truck	DOC	11,100–40,600
	CDPF	12,100–44,100

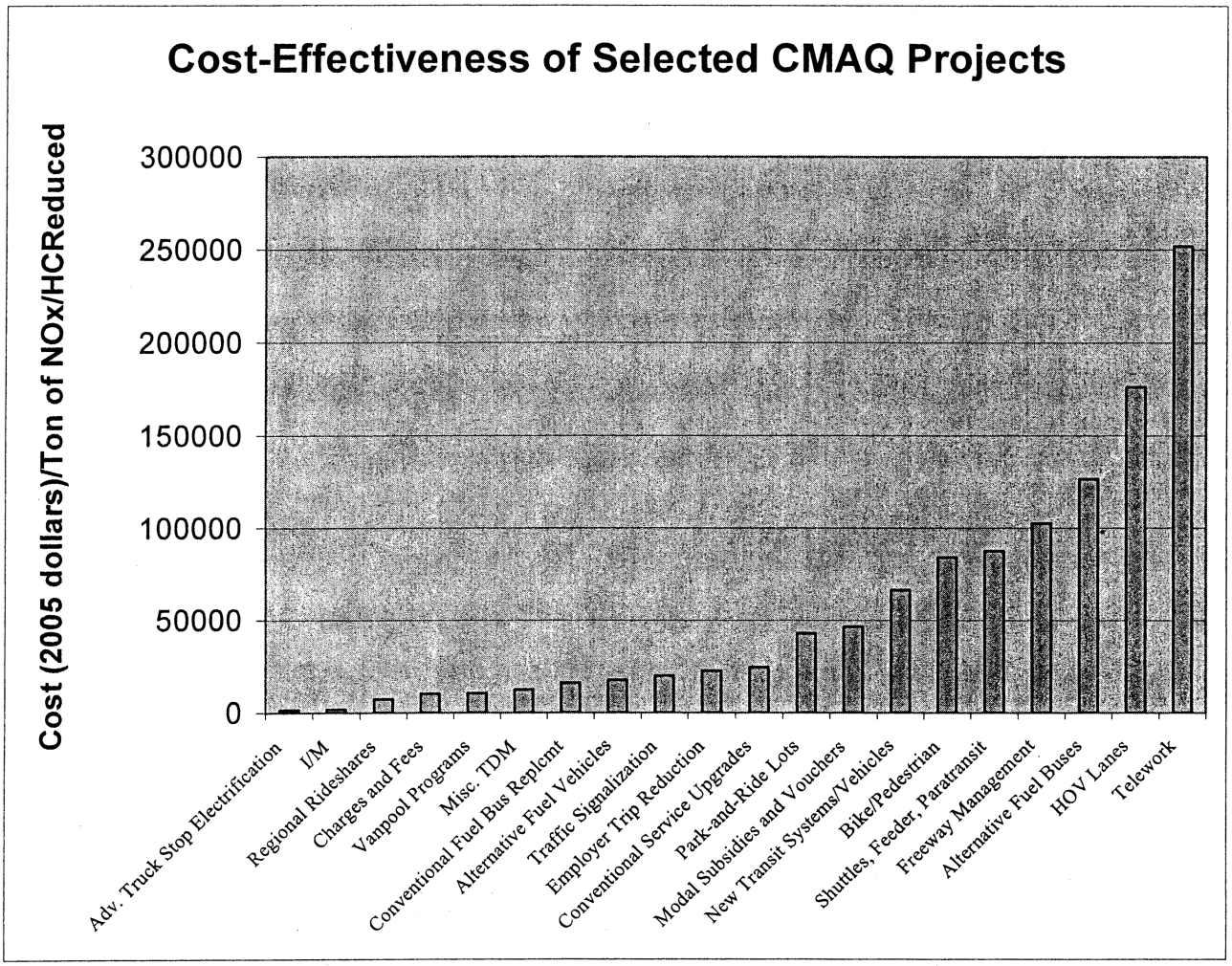
* The cost per ton of PM reduced will depend on a variety of factors including the age and activity levels of the vehicles or equipment.

FIGURE C: PM COST-EFFECTIVENESS IN NONROAD RETROFIT APPLICATIONS

Equipment	Retrofit technology	Range of $/ton of PM reduced (Estimated 2007 dollars)*
Off-highway trucks	DOC	17,200–43,500
	CDPF	14,300–36,300
Loaders/Backhoes/Tractors	DOC	13,800–25,100
	CDPF	11,500–20,900
Excavators	DOC	17,800–49,600
	CDPF	14,800–41,300
Skid Steer Loaders	DOC	11,600–25,900
	CDPF	9,700–21,600
Generator Sets	DOC	15,500–36,900
	CDPF	12,900–30,800
250 hp Bulldozer	DOC	18,100–49,700
	CDPF	N/A

* The cost per ton of PM reduced will depend on a variety of factors including the age and activity levels of the vehicles or equipment.

FIGURE D



Source: TRB Special Report 264—The Congestion Mitigation and Air Quality Improvement Program: Assessing 10 Years of Experience, Chapter 4.

States and MPOs are encouraged to consider the information presented in this Appendix during their CMAQ project selection and prioritization process.

Those seeking further information on the cost-effectiveness of CMAQ projects should consult TRB Special Report 264—The Congestion Mitigation and Air Quality Improvement Program: Assessing 10 Years of Experience, Chapter 4.

APPENDIX 5: CONSIDERATIONS FOR DIESEL RETROFIT PROJECTS

The term diesel retrofit includes any technology or system that achieves emission reductions beyond that required by the EPA regulations at the time of engine certification. Assuming all other criteria are met, eligible diesel retrofit projects include the replacement of high-emitting vehicles/equipment with cleaner vehicles/equipment (including hybrid or alternative fuel models), repowering or engine replacement, rebuilding the engine to a cleaner standard, the purchase and installation of advanced emissions control technologies (such as particulate matter traps or oxidation catalysts) or the use of a cleaner fuel to support eligible nonroad devices. The legislation defines retrofit projects as applicable to both on-road motor vehicles and nonroad construction equipment. Retrofit strategies include:

Emissions Control Technologies

The EPA and the California Air Resources Board (CARB) have retrofit technology verification programs that evaluate the performance of advanced emissions control technologies and engine rebuild kits. CMAQ-funded diesel retrofit projects must use retrofit technologies that are verified under the EPA's Voluntary Diesel Retrofit Program or CARB. A list of EPA-verified technologies is available at *http://www.epa.gov/otaq/retrofit/retroverifiedlist.htm*. CARB's verification program can be found at *http://www.arb.ca.gov/diesel/verdev/home/home.htm.*

Refueling

Refueling is eligible only when combined with an overall diesel retrofit project for which the cleaner fuel is required. For example, ultra-low sulfur diesel (ULSD) may be purchased as part of a project to install diesel particulate filters on highway construction equipment only because these devices require ULSD to function properly.

Fuel-related technologies identified in EPA's list of retrofit strategies are eligible only until standards for such

clean fuel are effective. For example, ULSD is eligible for CMAQ only until the standard is effective. For on-road use, ULSD is mandated for use in October 2006. According to EPA's regulatory development calendar, low sulfur diesel (500 ppm of sulfur) will be required for nonroad use in 2007, while ULSD (15 ppm of sulfur) will be required for nonroad use in 2010.

Vehicle/Equipment Replacement Projects

Replacement projects occur when older vehicles/equipment are replaced with cleaner vehicles/equipment before they would have been removed through normal fleet turnover or attrition. The vehicle or equipment being replaced should be scrapped or the engine remanufactured to a cleaner standard. For areas that want to take credit in the SIP and transportation conformity processes for these projects, see the EPA's retrofit guidance at: *http://www.epa.gov/otaq/stateresources/transconf/policy.htm#retrofit.*

Generally, the replacement vehicle or equipment would perform the same function as the vehicle or equipment that is being replaced (e.g., an excavator used to dig pipelines or utility trenches would be replaced by an excavator that continues these duties).

In addition, the vehicle or equipment being replaced would be in good working order and able to perform the duties of the new vehicle or equipment. Removing vehicles that no longer function or are at the end or their useful life will not lead to an emissions reduction.

Repower or Engine Replacement Projects

Engine replacement projects involve the replacement of an older, higher emitting engine with a newer, cleaner engine. Engine replacements can also be combined with emission control technologies. The engines being replaced should be scrapped or remanufactured to a cleaner standard. As noted above, for areas that want to take credit in the SIP and transportation conformity processes for these projects, see EPA's retrofit guidance at: *http://www.epa.gov/otaq/stateresources/transconf/policy.htm#retrofit.*

New engines also must be EPA-certified. For a complete list of all EPA certified large highway and nonroad engines, please consult the list at *http://www.epa.gov/otaq/certdata.htm.*

For more information on diesel retrofits, please see the EPA's National Clean Diesel Campaign Web site at *http://www.epa.gov/cleandiesel/.*

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Federal Register

Tuesday,
December 19, 2006

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petitions to List the Mono Basin Area Population of the Greater Sage-Grouse as Threatened or Endangered; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petitions to List the Mono Basin Area Population of the Greater Sage-Grouse as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on two petitions to list the Mono Basin area population of greater sage-grouse (*Centrocercus urophasianus*) in the Bi-State area of California and Nevada as threatened or endangered under the Endangered Species Act of 1973, as amended. We find that the petitions do not present substantial scientific or commercial information indicating that listing this population may be warranted. Therefore, we are not initiating a status review in response to these petitions. We ask the public to submit to us any new information that becomes available concerning the status of this population or threats to it or its habitat at any time.

DATES: This finding was made on December 19, 2006.

ADDRESSES: The complete file for this finding is available for public inspection, by appointment, during normal business hours at the Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Blvd., Suite #234, Reno, NV 89502. Submit new information, materials, comments, or questions concerning this species to us at the address above.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES**) or 775–861–6300 (voice), or 775–861–6301 (fax).

SUPPLEMENTARY INFORMATION:

Background

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

In making this finding, we based our decision on information provided by the petitioners in petitions dated December 28, 2001, and November 10, 2005, and otherwise available in our files at the time of the petition review. As part of an active and ongoing partnership with the States of California and Nevada in collaborative sage-grouse conservation efforts, we contacted the Nevada Department of Wildlife (NDOW) and the California Department of Fish and Game (CDFG) subsequent to receiving the 2005 petition, to obtain information about sage-grouse for the Mono Basin area, as sage-grouse are a game species managed by the States. We received information from these agencies on population levels, lek distribution, harvest and harvest seasons, and implementation of projects of benefit to sage-grouse. We also contacted the U.S. Geological Survey—Biological Resources Division (USGS–BRD), Dixon Field Station of the Western Ecological Research Center, to obtain reports from a 3-year study of sage-grouse in the Bi-State area that was mostly funded by the CDFG and the Service. New information (*i.e.* information not already in our files) obtained from NDOW, CDFG, and USGS–BRD as a result of these contacts, was not used as a basis for this 90-day finding. Specifically we did not utilize the new information we obtained in our evaluation of threats (see Threats Analysis, below), which is the basis of this finding. This approach is consistent with recent court decisions that invalidated the Service's 90-day findings for the Yellowstone cutthroat trout (*Center for Biological Diversity, et al* v. *Morgenweck*, 351 F. Supp. 2d 1137, 1143–44 (D. Colo. 2004)) and the Colorado River cutthroat trout (*Colorado River Cutthroat Trout, et al.* v. *Kempthorne et al.,* No. 00–2497, slip op. at 12 (D. D.C. September 7, 2006)). In these cases, the courts ruled that the Service over-reached the limited review involved in a 90-finding by soliciting information from State and Federal agencies after the receipt of the petition and relied on that information to supplement petition findings. Therefore, the Service did not rely on any new information received from the States or from USGS–BRD in the threats analysis. We have however, included some of the new information in the Species Information section (see below) to help the public understand the status of the population.

We evaluated the information in the petitions in accordance with our regulations at title 50 of the Code of Federal Regulations (CFR), § 424.14(b). The process of making a 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is based on a determination of whether the information in the petition meets the ''substantial scientific information'' threshold.

Our standard for substantial scientific or commercial information with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that the petition presents substantial scientific or commercial information, we are required to promptly commence a status review of the species.

On January 2, 2002, we received a petition, dated December 28, 2001, from the Institute for Wildlife Protection requesting that the greater sage grouse (*Centrocercus urophasianus phaios*) occurring in the Mono Basin area of Mono County, California, and Lyon County, Nevada, be emergency listed as an endangered distinct population segment (DPS) under the Act. Although the petitioner referred to greater sage-grouse in the Mono Basin area by the subspecific epithet ''*phaios*'' we have concluded that the subspecies designations for greater sage-grouse are inappropriate give current taxonomic standards (September 12, 2006, **Federal Register**, p. 53781). In response to recent judicial direction, the Service is in the process of revisiting our current interpretation of the taxonomic status of the greater sage-grouse subspecies. We have not included subspecies designations any further in this finding.

The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). In a March 20, 2002, letter to the petitioners, we responded that we reviewed the petition and determined that an emergency listing was not necessary. On December 26, 2002, we published a 90-day finding that this petition did not present substantial scientific or commercial information indicating that the petitioned action may be warranted (67 FR 78811). Our finding was based the lack of substantial information in the petition indicating that the Mono basin area sage-grouse is a distinct population segment (DPS) under our DPS policy (61 FR 47222), and thus we concluded it was not a listable entity (**Federal Register**, December 26, 2002, pp. 78813–78814).

Our 2002 finding also included a determination that the petition did not present substantial information that the Mono Basin area sage grouse was threatened with extinction (**Federal Register**, December 26, 2002, p. 78814).

On November 15, 2005, we received a formal petition dated November 10, 2005, submitted by the Stanford Law School Environmental Law Clinic on behalf of the Sagebrush Sea Campaign, Western Watersheds Project, the Center for Biological Diversity, and Christians Caring for Conservation to list the Mono Basin area greater sage-grouse (*Centrocercus urophasianus*) as threatened or endangered. The petition clearly identified itself as a petition and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). In a March 28, 2006, letter to the petitioners, we responded that we reviewed the petition and determined that emergency listing was not warranted. We also stated that due to court orders and settlement agreements for other listing and critical habitat actions that required nearly all of our listing and critical habitat funding for fiscal year 2006, we would not be able to further address the petition at that time. On April 17, 2006, we received a 60-day notice of intent letter from the Stanford Environment Law Clinic, dated April 14, 2006, notifying us that the petitioners intend to sue the Service for violating the Act's requirement to make a petition finding within 12 months after receiving a petition.

On November 18, 2005, the Institute for Wildlife Protection and Dr. Steven G. Herman filed a Complaint for Declaratory and Injunctive Relief in United States District Court for the Western District of Washington (*Institute for Wildlife Protection et al.* v. *Norton et al.*, No. C05–1939 RSM) challenging the Service's finding in 2002 that their petition did not present substantial information indicating that the petitioned action may be warranted. On April 11, 2006, we reached a stipulated settlement agreement with the plaintiffs. Under this settlement agreement we agreed to evaluate both the November 2005 petition submitted by the Sagebrush Sea Campaign, Western Watersheds Project, the Center for Biological Diversity, and Christians Caring for Conservation (hereafter referred to as the November, 2005 petition), and to reconsider the December 2001 petition submitted by the Institute for Wildlife protection (hereafter referred to as the December, 2001 petition). The settlement agreement calls for the Service to submit to the **Federal Register** a completed 90-day finding by December 8, 2006, and if substantial, to complete the 12-month finding by December 10, 2007. This notice constitutes the 90-day finding on the November 2005 petition and reevaluation of the December 2001 petition. In completing this finding, we reviewed the December 2001 petition in the context of whether it provided additional information not discussed in the November 2005 petition.

Species Information

The sage-grouse is the largest North American grouse species. Adult males range in size from 65 to 75 centimeters (cm) (26 to 30 inches (in)) and weigh between 1.7 and 2.9 kilograms (kg) (3.8 and 6.4 pounds (lb)); adult females range in size from 50 to 60 cm (19.7 to 23.6 in) and weigh between 1 and 1.8 kg (2.2 and 3.9 lb) (Schroeder *et al.* 1999, p. 19–20). Males and females have dark grayish-brown body plumage with many small gray and white speckles, fleshy yellow combs over the eyes, long pointed tails, and dark-green toes (Schroeder *et al.* 1999, p. 2). Males also have blackish chin and throat feathers, conspicuous phylloplumes (specialized erectile feathers) at the back of the head and neck, and white feathers forming a ruff around the neck and upper belly. During breeding displays, males also exhibit olive-green apteria (fleshy bare patches of skin) on their breasts (Schroeder *et al.* 1999, p. 2).

Sage-grouse depend on a variety of shrub steppe habitats throughout their life cycle, and are particularly associated with several species of sagebrush (*Artemisia* spp.). Throughout much of the year, adult sage-grouse rely on sagebrush to provide roosting cover and food (Schroeder *et al.* 1999, p. 4). During the winter, they depend almost exclusively on sagebrush for food (Schroeder *et al.* 1999, p. 5). The type and condition of shrub steppe plant communities strongly affect habitat use by sage grouse populations. However, these populations also exhibit strong site fidelity. Sage-grouse populations may disperse up to 160 kilometers (km) (100 miles (mi)) between seasonal use areas; however, average population movements are generally less than 34 km (21 mi) (Schroeder *et al.* 1999, p. 3). Movements between season use areas may involve dispersal over areas of unsuitable habitat.

During the spring breeding season, primarily during the morning hours just after dawn, male sage-grouse gather together and perform courtship or strutting displays on areas called leks (an area where animals assemble and perform courtship displays) (Connelly *et al.* 2004, p. 3–8). Areas of bare soil, short grass steppe, windswept ridges, exposed knolls, or other relatively open sites may serve as leks (Connelly *et al.* 2004, p. 3–7). Leks range in size from 1 hectare (ha) (2.5 acre (ac)) to at least 16 ha (39.5 ac) (Connelly *et al.* 2004, p. 3–7) and can host several to hundreds of males. Some leks are used for many years. These ''historic'' leks are typically surrounded by smaller ''satellite'' leks, which may be less stable in both size and location within the course of 1 year and between 2 or more years. A group of leks where males and females may interact within a breeding season (approximately late February to early June each year) or between years is called a lek complex. Males defend individual territories within leks and perform elaborate displays with their specialized plumage and vocalizations to attract females for mating (Connelly *et al.* 2004, pp. 3–7 to 3–8).

Females may travel over 20 km (12.5 mi) after mating, and typically select nest sites under sagebrush cover, although other shrub or bunchgrass species are sometimes used (Connelly *et al.* 2000, p. 970). Nests are relatively simple and consist of scrapes on the ground. Clutch sizes range from about 6–9 eggs (Connelly *et al.* 2004, p. 3–10). Nest success ranges from 12 to 86 percent (Connelly *et al.* 2000, p. 969). Sage grouse generally have low reproductive rates and high annual survival compared to other grouse species (Connelly *et al.* 2000, p. 970). Shrub canopy and grass cover provide concealment for sage grouse nests and young, and may be critical for reproductive success (Connelly *et al.* 2000, p. 971).

Sage-grouse typically live between 1 and 4 years. However, sage-grouse up to 10 years of age have been recorded in the wild (Connelly *et al.* 2004, p. 3–12). Annual survival ranges from about 36 to 78 percent for females and about 30 to 60 percent for males (Connelly *et al.* 2004, p. 3–12). The generally higher survival rate of females accounts for a female-biased sex ratio in adult birds (Schroeder *et al.* 1999, p. 14).

Prior to settlement of the western United States by European immigrants greater sage-grouse were found in 13 States and 3 Canadian provinces—Washington, Oregon, California, Nevada, Idaho, Montana, Wyoming, Colorado, Utah, South Dakota, North Dakota, Nebraska, Arizona, British Columbia, Alberta, and Saskatchewan (Schroeder *et al.* 2004, p. 368). Greater sage-grouse still occur in most of these states and provinces except for Nebraska, British Columbia, and possibly Arizona where they have been extirpated (Schroeder *et al.* 2004, pp.

368–369). Sagebrush habitats that potentially supported greater sage-grouse covered approximately 1,200,483 square kilometers (sq km) (463,509 square miles (sq mi)) before the year 1800 (Schroeder *et al.* 2004, p. 366). Current distribution is estimated at 668,412 sq km (258,075 sq mi) or 56 percent of the potential pre-settlement distribution (Schroeder *et al.* 2004, p. 369).

The number of greater sage-grouse that existed in North America prior to European expansion across the continent is unknown. The Western States Sage- and Columbian Sharp-Tailed Grouse Technical Committee (WSSCSTGTC) estimated there were 1.1 million sage-grouse in 1800 (WSSCSTGTC 1999), although this estimate was for both greater sage-grouse and Gunnison sage-grouse (*Centrocercus minimus*). Braun (1998, unpaginated) estimated that there were about 142,000 sage-grouse (both greater and Gunnison sage-grouse) rangewide in 1998. Connelly *et al.* (2004, p. 13–5) did not estimate a rangewide population for greater sage-grouse, but did state that the number is probably much greater than the estimate by Braun (1998).

Although Connelly *et al.* (2004) were unable to estimate rangewide population numbers for greater sage-grouse, they did use lek count data as an indication of population changes since 1965 (Connelly *et al.* 2004, Chapter 6). They reported substantial declines from 1965 through 2003 with an average decline of 2 percent of the population per year during this time period (Connelly *et al.* 2004, p. 6–71). The decline was more pronounced from 1965 through 1985, with an average annual change of 3.5 percent (Connelly *et al.* 2004, p. 6–71). However, the rate of decline rangewide slowed from 1986 to 2003 to 0.37 percent annually (Connelly *et al.* 2004, p. 6–71).

The best available scientific and commercial information regarding the past, present, and future threats faced by the greater sage-grouse were reviewed by the Service, including information on population declines. Based on that review, on January 12, 2005, the Service published a finding that listing the greater sage-grouse was not warranted (70 FR 2243). The Service noted that although sagebrush habitat and sage-grouse populations had declined and were continuing to decline in some areas, the most recent data indicated overall population declines had slowed, stabilized, or populations had increased, and that the threats, when considered in relation to the status, trend, and distribution of the current population, were not sufficient to result in the greater sage-grouse becoming an endangered species in the foreseeable future (**Federal Register**, January 12, 2005, pp. 2280–2281).

Mono Basin Area Sage Grouse

The States of California and Nevada jointly supported development of a conservation plan, entitled *Greater Sage Grouse Conservation Plan for Nevada and Eastern California* (Sage-Grouse Conservation Team 2004). A draft version of the *Greater Sage Grouse Conservation Plan for Nevada and Eastern California* was submitted to a seven-person team for external science peer review (Sage-Grouse Conservation Team 2004, p. 6). The conservation plan written specifically for sage-grouse in the Mono Basin area is the *Greater Sage-Grouse Conservation Plan for the Bi-State Plan Area of Nevada and Eastern California* (Bi-State Plan) (Bi-State Local Planning Group 2004), and is an appendix of the *Greater Sage-Grouse Conservation Plan for Nevada and Eastern California.* The 2005 petition frequently refers to the Bi-State Plan. The Bi-State Plan was not peer reviewed. The group that developed the Bi-State Plan consisted of local biologists, land managers, land users, and others with concerns about sage-grouse in western Nevada and eastern California (Bi-State Plan 2004, p. vi).

The Bi-State Plan covers the same geographic area described in the 2001 and 2005 petitions as the Mono Basin area, but refers to it as the Bi-State area (Bi-State Local Planning Group 2004, pp. 4–5). The Mono Basin area includes portions of Alpine and Inyo Counties, and most of Mono County in California and portions of Lyon, Douglas, Carson City, Esmeralda, and Mineral Counties in Nevada.

Sage-grouse in the Mono Basin area historically occurred approximately throughout Mono, eastern Alpine, and northern Inyo Counties, California (Hall 1995, Figure 1); and parts of Carson City, Esmeralda, Mineral, Lyon, and Douglas Counties, Nevada. The current range of the population in California is reduced from the historic range (Leach and Hensley, 1954, p. 386; Hall 1995, p. 54). Gullion and Christensen (1957, pp. 131–132) documented that sage-grouse occurred throughout most of their historic range in Nevada, including occurrences in Esmeralda, Mineral, Lyon, and Douglas Counties, but not in Carson City County, although Espinosa (2006) hypothesized that birds may still persist in this County. Sage-grouse habitat has been lost in the Nevada portion of the Bi-State area but the extent of the loss has not been estimated (Stiver 2002).

Prior to development of the *Greater Sage Grouse Conservation Plan for Nevada and Eastern California,* the State of Nevada sponsored development of the Nevada Sage-Grouse Conservation Strategy (Sage-Grouse Conservation Planning Team 2001). This Strategy established Population Management Units (PMUs) for Nevada and California as management tools for defining and monitoring sage-grouse distribution (Sage-Grouse Conservation Planning Team 2001, p. 31). The PMU boundaries are based on aggregations of leks, sage-grouse seasonal habitats, and existing sage-grouse telemetry data (Sage-Grouse Conservation Planning Team 2001, p. 31). PMUs that comprise the Mono Basin area include the Pine Nut, Desert Creek-Fales, Mount Grant, Bodie, South Mono, and White Mountains PMUs. The Bi-State Plan (2004) is the only existing assessment of greater sage-grouse populations and habitats specific to the PMUs that comprise the Mono Basin area.

Currently in the Mono Basin area, sage-grouse leks occur in the Pine Nut, Desert Creek-Fales, Bodie, Mount Grant, South Mono, and White Mountains PMUs (Bi-State Plan 2004). Most of the leks occur in the Bodie and South Mono PMUs (Bi-State Plan 2004). Of the 122 known lek locations in the Mono Basin area: 56 are on Bureau of Land Management (BLM) land, 30 are on U.S. Forest Service (USFS) land, 4 are on Department of Defense land, 2 are on State of California land, 9 are on Los Angeles Department of Water and Power land, and 21 occur on private land (Espinosa 2006; Taylor 2006). Overall, 83 percent of the leks are on public land and 17 percent occur on private land. Based upon the extent of previous survey work, it is unlikely that more leks will be found in the Nevada portions of the Pine Nut and Desert Creek-Fales PMUs (Espinosa 2006). Due to long-term and extensive survey efforts, it also is unlikely that new leks will be found in the California portion of the Pine Nut and Desert Creek-Fales PMUs or the Bodie and South Mono PMUs (Gardner 2006). However, it is possible that more leks will be discovered in the Mount Grant PMU and the Nevada portion of the White Mountains PMU because these are less accessible and there has been less survey effort in them (Espinosa 2006). More leks also may be discovered in the California portion of the White Mountains PMU, which is difficult to access and has not been well surveyed (Gardner 2006).

Sage-grouse population trends analyzed for California and Nevada for 1965–2003 (Connelly *et al.* 2004, pp. 6–

24 to 6–26 and 6–36 to 6–39) led to a conclusion that populations in California had slightly increased over this timeframe while those in Nevada had declined (Connelly *et al.* 2004, pp. 6–67 to 6–68). However, this analysis was performed at the State level and did not specifically analyze population trends for the Mono Basin area.

The Bi-State Plan (2004) provides some information on population trends for some of the PMUs in the Mono Basin area, and indicates that in some areas population declines occurred historically. However, the number of leks surveyed, survey methodology, and techniques for estimating population size are inconsistent and have varied considerably over time, making it very difficult to interpret or rely on the information. In 2003, the NDOW began estimating population numbers based on a peer reviewed and accepted formula (NDOW, 2006, p. 1), and consequently we believe the most accurate population estimates for the Nevada portion of the Mono Basin area start in 2003. Prior to that, Nevada survey efforts varied from year to year, with no data for some years, and inconsistent survey methodology. Although CDFG methods for estimating populations of sage-grouse have been more consistent prior to 2003, using population estimates for sage-grouse derived before 2003 would lead to invalid and unjustified conclusions given the variation in the number of leks surveyed, survey methodology, and population estimation techniques between NDOW and CDFG. Due to past differences in consistency in population estimation techniques for the two States, in this description of populations we are only presenting population numbers from 2003–2006. During this period of time, both states used the same population estimation methods. We provide this information to help inform the public, and for the reasons described above, we did not consider this information in our Threats Analysis (below) and it was not part of the basis for making this finding.

CDFG and NDOW annually coordinate sage-grouse lek counts in the California and Nevada portions, respectively, of the Mono Basin area. Results from these lek counts are used by CDFG and NDOW to estimate sage-grouse populations for PMUs in the Mono Basin area. CDFG and NDOW calculate low and high sage-grouse population estimates for the PMUs, based on low and high lek detection rates, respectively, to account for the range in lek detection rates.

The following spring population estimates are based on lek counts for the South Mono, Bodie, Mount Grant, and Desert Creek-Fales PMUs (CDFG 2006; NDOW 2006). They also include population estimates from the Nevada portion of the Pine Nut PMU (NDOW 2006). However, they do not include population estimates for the White Mountains PMU or the California portion of the Pine Nut PMU (CDFG 2006; NDOW 2006). The White Mountain PMU and the California portion of the Pine Nut PMU together comprise about 41 percent of the Mono Basin area. Due to the lack of information on sage-grouse habitat for the Mono Basin, we cannot state what percent of the current habitat occurs in these two areas for which population estimates are unavailable. The recent spring population estimates for the areas described above are as follows: 2003—a low estimate of 2820 birds and a high estimate of 3181 birds, 2004—a low estimate of 3682 birds and a high estimate of 4141 birds, 2005—a low estimate of 3496 birds and a high estimate of 3926 birds, and 2006—a low estimate of 4218 birds and a high estimate of 4740 birds (CDFG 2006; NDOW 2006). Spring populations largely reflect the number of breeding sage-grouse in this area. The number of breeding sage-grouse is representative of effective population size and probably one of the best ways to assess the health of the overall population.

At a minimum, the spring population estimates for sage-grouse in the Mono Basin area indicate that the surveyed populations have not declined in recent years. Indeed, 2004 to 2006 spring lek counts for the Long Valley lek complex, which comprises most of the leks in the South Mono PMU, are the highest numbers counted in the last 30 years and sage-grouse in this area are more productive than anywhere else in California (Gardner 2006).

Casazza *et al.* (2006) conducted a 3-year study on sage-grouse in the Mono Basin area to determine movements. The researchers radio-marked birds in Mono County within the Desert Creek-Fales, Bodie, White Mountains, and South Mono PMUs (Casazza *et al.* 2006, unpaginated). The greatest distances moved by radio-tagged birds between two points is as follows: About 29 percent moved 0–8 km (0–5 mi); about 41 percent moved 8–16 km (5–10 mi); about 25 percent moved 16–24 km (10–15 mi); about 4 percent moved 24–32 km (15–20 mi); and about 1 percent moved a distance greater than 32 km (20 mi) (Overton 2006). Female sage-grouse home range size ranged from 2.3 to 137.1 sq km (0.9 to 52.9 sq mi), with a mean home range size of 38.6 sq km (14.9 sq mi) (Overton 2006). Male sage-grouse home ranges ranged in size from 6.1 to 245.7 sq km (2.3 to 94.9 sq mi), with a mean home range size of 62.9 sq km (24.1 sq mi) (Overton 2006).

Distinct Population Segment

We consider a species for listing under the Act if available information indicates such an action might be warranted. ''Species'' is defined by the Act as including any species or subspecies of fish and wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532 (16)). We, along with the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries), developed the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS Policy) (February 7, 1996, 61 FR 4722) to help us in determining what constitutes a DPS. The policy identifies three elements that are to be considered in a decision regarding the status of a possible DPS. These elements include (1) the discreteness of a population in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing. Our policy further recognizes it may be appropriate to assign different classifications (*i.e.*, threatened or endangered) to different DPSs of the same vertebrate taxon (February 7, 1996, 61 FR 4722).

Discreteness

The November 2005 and December 2001 petitions assert that Mono Basin area sage-grouse qualify as a Distinct Population Segment (DPS) based on discreteness. Both petitions cite the Services' DPS policy under the Act (February 7, 1996, 61 FR 4722) and both assert that Mono Basin area sage-grouse are discrete based on genetic distinctiveness. The DPS policy states that a population segment may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation. (2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. In a previous 90-

day finding, we reviewed the December 2001 petitioners' claim that Mono Basin area sage-grouse are a DPS, and found that there was not substantial scientific or commercial information indicating that Mono Basin area sage-grouse may be discrete from other greater sage-grouse (December 26, 2002, **Federal Register**, p. 78811). Our 2002 determination was based on a lack of information to demonstrate that Mono Basin sage-grouse are physically isolated from other nearby populations, the limited extent of sage-grouse genetic sampling within the Mono Basin area at that time, information from a comparative study which indicated that Mono Basin sage-grouse are not behaviorally different from other populations of great sage-grouse, and the lack of any morphological information on Mono Basin sage-grouse.

We still believe that there are no significant behavioral differences between sage-grouse populations. Young *et al.* (1994) compared greater sage-grouse behavioral attributes for populations in the Mono Basin area and outside it for males displaying on leks. This study concluded that sage-grouse in the Mono Basin area do not exhibit any appreciable behavioral differences in male mating displays from other greater sage-grouse populations (Young *et al.*, 1994).

In contrast to results from comparative behavioral studies, comparative genetics studies have documented genetic differences between greater sage-grouse populations in the Mono Basin area and those outside of it. The November 2005 petition correctly cites Benedict *et al.* (2003), Oyler-McCance *et al.* (2005), and the Bi-State Plan (2004) with regard to how sage-grouse in the Mono Basin area are genetically unique from other populations of greater sage-grouse. Since we published our previous 90-day finding, comparisons of genetic material from many sage-grouse populations across the range of the species have been completed and demonstrate that Mono Basin area sage-grouse contain unique haplotypes not found elsewhere within the range of the greater sage-grouse (Benedict *et al.* 2003; Oyler-McCance *et al.* 2005). Genetic sampling continues in the Mono Basin area, as the full geographic extent of this genetic uniqueness has not yet been determined. However since our previous 90-day finding on Mono Basin area sage-grouse (December 26, 2002, 67 FR 78811), most leks in the Mono Basin area have now been genetically sampled. Although the full extent of this genetic uniqueness is undetermined, there now exists sufficient evidence to suggest that Mono Basin area sage-grouse are genetically distinct from other greater sage-grouse populations (Benedict *et al.* 2003; Oyler-McCance *et al.* 2005). The November 2005 petitioners assert that genetic work by Benedict *et al.* (2003) or Oyler-McCance *et al.* (2005) support their contention that Mono Basin area sage-grouse area are presently isolated from other sage-grouse populations by present day habitat conditions, but this claim is inaccurate. These genetic studies provided evidence that the present genetic uniqueness exhibited by Mono Basin area sage-grouse occurred over thousands and perhaps tens of thousands of years (Benedict *et al.* 2003, p. 308; Oyler-McCance *et al.* 2005, p. 1307). Hence, the genetic uniqueness of this sage-grouse population developed prior to the Euro-American settlement in the Mono Basin area that resulted in changes in habitat conditions for this population.

The Services' DPS policy requires that only one of the discreteness criteria be satisfied in order for a population segment of a vertebrate species to be discrete. There is substantial information indicating that Mono Basin area sage-grouse are genetically distinct from other greater sage-grouse populations. Therefore, we conclude that there is substantial information indicating that the Mono Basin area sage-grouse may satisfy the discreteness criterion of the DPS policy.

Significance

Both the December 2001 petition and the November 2005 petition also assert that Mono Basin area sage-grouse further qualify as a DPS based on significance. The DPS policy (February 7, 1996, **Federal Register**, p. 4725) states that if a population segment is considered discrete under one or more of the discreteness criteria then its biological and ecological significance will be considered in light of Congressional guidance that the authority to list DPSs be used ''* * * sparingly'' while encouraging the conservation of genetic diversity. In such an examination, the Service considers available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. As specified in the DPS policy February 7, 1996, **Federal Register**, p. 4725), this consideration of the significance may include, but is not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon; (2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

The November 2005 petition claims that the Mono Basin area is a unique ecological setting and cites a map in Rowland *et al.* (2003) to support this claim. This petition also asserts that the loss of the Mono Basin area population would result in a significant gap in the range of the greater sage-grouse and that the population differs markedly from other sage-grouse populations in genetic characteristics.

The Mono Basin area sage-grouse populations do occur in an ecological province labeled the Mono province in Rowland *et al.* (2003, p. 63). However, this ecological province is part of the Great Basin, and on a gross scale all the ecological provinces that comprise this area are characterized by basin and range topography. Basin and range topography covers a large portion of the western United States and northern Mexico. It is typified by a series of north-south oriented mountain ranges running parallel to each other, with arid valleys between the mountains. Most of Nevada and eastern California are covered by basin and range topography. Hence, we do not concur that Mono Basin area sage-grouse occur in an ecological setting that is unique for the taxon. Based on the extant range of greater sage-grouse provided by Schroeder *et al.* (2004, p. 369), we do not agree that the loss of the Mono Basin area sage-grouse population would result in a significant gap in the range of greater sage-grouse. Schroeder *et al.* (2004, p. 363) estimated total extant range of greater sage-grouse to be 668,412 sq km (258,075 sq mi) and the total area of the PMUs that comprise the Mono Basin area is 18,310 sq km (7,069 mi) (Bi-State Plan 2004). Hence, the total area comprised by the Mono Basin represents at most about 3 percent of the total extant range of greater sage-grouse and loss of the population in this area would not result in a significant gap in the range of the species. Mono Basin area sage-grouse are not the only surviving occurrence of the taxon, and as previously discussed represent a small proportion of the total extant range of the species. However, existing genetic evidence (Benedict *et al.* 2003; Oyler-McCance *et al.* 2005) does indicate that Mono Basin area sage-grouse differ from other populations of greater sage-grouse in their genetic

characteristics, as discussed previously with regard to the discreteness criterion. Therefore, based on information regarding genetics, we conclude that there is substantial information indicating that the Mono Basin area sage-grouse may satisfy the significance criterion of the DPS policy.

DPS Conclusion

We have reviewed the information presented in the petitions, and have evaluated the information in accordance with 50 CFR 424.14(b). In a 90-day finding, the question is whether a petition presents substantial information that the petitioned action may be warranted. We do not make final determinations regarding DPSs at this stage; rather, we determine whether a petition presents substantial information that a population may be a DPS. On the basis of our review, we find that the November 2005 petition, and our files, do present substantial scientific or commercial information to indicate that Mono Basin area sage-grouse may be a DPS based, on genetic evidence, which may meet both the discreteness and significance criteria of the DPS policy. Based on this preliminary assessment, we proceeded with an evaluation of information presented in both petitions, as well as information in our files, to determine whether there is substantial scientific or commercial information indicating that listing this population may be warranted. Our threats analysis and conclusion follow.

Threats Analysis

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal List of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this 90-day finding, we evaluated whether information on threats to the Mono Basin area sage-grouse in our files and presented in the November 2005 and the December 2001 petitions constitutes substantial scientific or commercial information such that listing under the Act may be warranted. Our evaluation of this information is presented below.

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

Geographic Range

The November 2005 petition asserts that the range of sage-grouse in the Mono Basin area is greatly reduced and that the populations are scattered among several counties in western Nevada and eastern California. Petitioners cite the work of Schroeder *et al.* (2004) and claim that in pre-settlement time the habitat for the species was continuous along the California-Nevada border and extended from Inyo County, California, into Oregon. The petition further states that by 2000 the Mono Basin area population had become physically isolated from other sage-grouse populations and now only occurs in small isolated groups. The petitioners cite a Western States Sage Grouse Technical Committee report (WSSGTC 1999) and state that for the Nevada portion of the Mono Basin area sage-grouse are extirpated from Storey and Carson City Counties, at extreme risk in Douglas and Esmeralda Counties, and at risk in Lyon and Mineral Counties. Regarding sage-grouse range in California, the petition cites Hall (1995) and states that there has been a 55 percent reduction statewide in the range of the species from its historic range. More specific to the Mono Basin area, the petitioners cite our December 26, 2002, 90-day finding (67 FR 78811), which states that suitable habitat for the California portion of the Mono Basin area has declined approximately 71 percent from historic levels based on information in Hall (1995). The petitioners also cited Oyler-McCance *et al.* (2001) to state that extirpations of local populations of Gunnison sage-grouse have occurred because of the loss and fragmentation of habitat caused by human activities; cited Barbour (1988, unpaginated) regarding impacts to sagebrush habitat in California; and cited Braun's (1998, unpaginated) assessment of factors that have caused sage-grouse declines across the western United States, which included habitat loss.

We agree with the petitioners that there has been a reduction in the distribution of greater sage-grouse along the California-Nevada border (Schroeder *et al.* 2004, pp. 368–369). Distribution in the Mono Basin area is much more disjunct now compared to pre-settlement conditions; however, the southern limit of sage-grouse distribution along the California-Nevada border has not changed (Schroeder *et al.* 2004, pp. 368–369). A considerable amount (approximately 71 percent) of the original sage-grouse habitat has been lost in the California portion of the Mono Basin area (Hall, 1995, p. 54; December 26, 2002, **Federal Register**, p. 78813). The extent of habitat has also declined within the Nevada portion of the Mono Basin area, but no estimates are provided in the petitions or available in our files regarding the Nevada portion. The Bi-State Plan (2004) provides limited anecdotal information about the historic range of the population in the Mono Basin area, and the distribution and range discussion is focused primarily on current conditions. Additionally the work cited from Oyler-McCance *et al.* (2001) and Braun (1998) is not specific to the Mono Basin area. Connelly *et al.* (2004) did assess changes for the sagebrush ecosystem, but this analysis was also performed at the rangewide level for sage-grouse and not specific to the Mono Basin area. Although sage-grouse habitat and range has been reduced from pre-settlement conditions, and some additional habitat losses may be occurring at present, neither the petitioners, nor our files, provide information on the rate or extent of habitat losses for the Mono Basin area. The Bi-State Plan (2004) documents some loss of specific localized habitat areas due to wildfire. The Service recognizes that historically there has been destruction and modification of the habitat and range of sage-grouse in the Mono Basin area. However, historic impacts are not the focus of the evaluation called for under Factor A; rather, Factor A specifically addresses the present or threatened destruction, modification, or curtailment of habitat or range. Although the petitioners and our files contain information on historic reductions in range, neither the petitioners, nor our files, provide substantial information that documents the present or threatened loss of sage-grouse range for sage-grouse in the Mono Basin area. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that listing may be warranted due to the present or threatened destruction or modification of habitat or range for the sage-grouse population in the Mono Basin area.

Private Land Development

The November 2005 petition cites private land development as a significant threat to Mono Basin area sage-grouse. The petitioners state that over 329,000 acres (close to 12 percent) of land in the Mono Basin area is

privately owned and susceptible to development. They cite the Bi-State Plan (2004) regarding private land development in several of the PMUs and reference discussions of: community expansion in the Pine Nut PMU; conversion of private rangeland to residential and vacation homes, conversion of grouse winter habitat to irrigated pasture and hay fields, and increased pressure of subdivision and development in the Desert Creek-Fales PMU; increasing development of private lands for residential, commercial and recreational purposes in the Bodie PMU; and development of private lands in the South Mono PMU. The petitioners claim that Mono County intends to significantly expand the Benton Crossing Landfill, which could impact sage-grouse through direct habitat loss, increased predation, and a potential increase in disease (Mono County 2004). They also cite a process to revise the Mammoth Lakes general plan (Mammoth Lakes 2005) and claim the revised plan will allow for more development on non-Federal lands. The petitioners assert that expansion of the Mammoth Lakes airport to accommodate commercial jets and construction of an adjacent business park would pose a significant impact to sage-grouse in the South Mono PMU. Petitioners cite a California Department of Fish and Game memo (California Department of Fish and Game 2001) and state that the California Department of Fish and Game expressed serious concerns about the impacts of the proposed airport expansion on sage-grouse. The petitioners claim that California Department of Fish and Game expressed several concerns, including that aircraft may disturb birds on leks and while they are wintering and that the airport expansion project would have growth-inducing impacts to the region. Finally, they claim that a number of other proposed developments could affect the South Mono sage-grouse population.

The December 2001 petition also cited development and habitat conversion to suburbs and ranchettes as a threat to sage-grouse. However, this petition did not provide additional information beyond what was provided in the November 2005 petition.

The November 2005 petition is incorrect in asserting that close to 12 percent of the Mono Basin area is privately owned. Their figures do not include the White Mountains PMU, which comprises about 38 percent of the total area; including this PMU, approximately 8 percent of lands within the Mono Basin area are privately owned (Bi-State Plan 2004). Connelly *et al.* (2004, pp. 7–25, 7–26) included some analysis of the effects of development (including associated infrastructure) on sage-grouse, but the analysis was conducted at the rangewide scale (Connelly *et al.* 2004, pp. 12–1 to 12–23) and not specific to the Mono Basin area. The Bi-State Plan (2004) recognizes urban expansion as a risk to sage-grouse in the Pine Nut PMU (Bi-State Plan 2004, p. 24), the Desert Creek-Fales PMU (Bi-State Plan 2004, p. 47), the Bodie PMU (Bi-State Plan 2004, p. 88), and the South Mono PMU (Bi-State Plan 2004, p. 169).

Although development of private lands may impact sage-grouse habitat (Connelly *et al.* 2004) and there are concerns about private lands being developed for housing in the Mono Basin area (Bi-State Plan 2004, p. 4), about 89 percent of the land area within the Mono Basin area is federally managed land, primarily USFS and BLM lands (Bi-State Plan 2004). These public lands are not the areas where traditional development into housing communities is occurring and are not subject to such development. Furthermore, although some housing development has occurred on private lands within the Mono Basin area, the five housing subdivisions cited by the petitioners are considered speculative, as they have not moved beyond the planning stage. The petitioners are correct that the Town of Mammoth Lakes General Plan is being updated and does allow for more housing development on private land; however, the petitioners fail to note that this growth is planned to occur within the Mammoth Lakes Urban Growth Boundary (Town of Mammoth Lakes 2005, pp. 3–9 to 3–14), well away from known lek sites, and therefore it will not directly impact sage-grouse. Additionally, the Benton Crossing Landfill will not be expanded as the petition asserts (Town of Mammoth Lakes 2005, p. 2–38).

The Federal Aviation Administration (FAA) has dropped its proposal to expand the Mammoth Yosemite Airport (FAA 2006). However, the FAA is currently proposing to resume regional commercial air service using the existing Mammoth Yosemite Airport facilities, with two winter flights per day initially and potentially increasing to a maximum of eight winter flights per day by 2012–2013 (FAA 2006). The Mammoth Yosemite Airport had regional commercial air service from 1970 to the mid-1990s (FAA 2006) and it currently supports about 400 flights per month, primarily single-engine aircraft (Town of Mammoth Lakes 2005, p. 4–204). Therefore, sage-grouse in the South Mono PMU that occur in lek areas in the near proximity of the Mammoth Yosemite Airport have been exposed to commercial air traffic in the past, and they are presently exposed to private air traffic. Effects of the FAA proposal to reinstate commercial air traffic at the Mammoth Yosemite Airport on sage-grouse are unknown at this time, as the level of commercial flight traffic these birds may be exposed to is undetermined and subject to commercial success by the airlines. Also, since the proposal by FAA has yet to be implemented, any assessment of effects is speculative. The FAA will develop an environmental analysis for the proposed project pursuant to the National Environmental Policy Act (NEPA) (FAA 2006), which will include an assessment of impacts to wildlife. The Town of Mammoth Lakes is proposing commercial development on a tract of land immediately adjacent to the existing airport (Town of Mammoth Lakes 2005, p. 2–9). We do not have information in our files to determine whether the area of proposed development involves sage-grouse habitat.

In summary, development of private lands for housing and the associated construction of roads and power lines within the Mono Basin area would occur mostly in areas where sage-grouse are not present. Furthermore, petitioners' claims about expansion of the Mammoth Yosemite Airport are no longer valid, and they did not provide information which documents how the proposed resumption of commercial air service at the Airport, combined with the construction of an adjacent business park, would impact sage-grouse in the South Mono PMU. Most significantly, about 89 percent of the Mono Basin area is federally managed land (Bi-State Plan 2004), where development into housing communities is not occurring. Neither the petitioners, nor our files, provide information on the extent or magnitude of private development to indicate that listing of the Mono Basin area sage-grouse may be warranted due to the present or threatened destruction, modification, or curtailment of sage-grouse habitat or range due to private land development.

Public Land Development

The November 2005 petition states that the majority of the Mono Basin area sage-grouse habitat is managed by BLM and the USFS under multiple-use policies that have harmed sage-grouse and degraded their habitat. Petitioners assert that public land is subject to some forms of development and that private land development often affects the

integrity and health of adjacent public lands. The petitioners cite the Bi-State Plan (2004) with regard to the Bodie PMU and state that habitat loss and fragmentation associated with land use change and development is not restricted to private lands in this PMU. Petitioners further assert that development of private lands can also have indirect effects on sage-grouse populations and habitat on public lands. They cite the Bi-State Plan (2004) for the Desert Creek-Fales PMU and note that residential development may reduce habitat, resulting in risks to habitat quality and fragmentation. The petitioners indicate that the Bi-State Plan provides no new regulatory measures or funding for mitigation of threats from private land use and development.

The petitioners cite the Bi-State Plan (2004) to support their claim that 13 sites have been authorized for monitoring for wind energy development in the Pine Nut PMU and wind turbines may be constructed on these sites. The petitioners also state that numerous geothermal energy developments have been proposed or approved on public and private land in the South Mono PMU (Bi-State Plan 2004) and specifically reference a proposal for the Inyo National Forest claiming that sage-grouse have been found within 0.4 km (0.25 mi) of the proposed project and that the project may displace individual sage-grouse by eliminating suitable habitat for the species (USFS 2005).

The petition claims that a myriad of other smaller projects or activities are authorized and developed on Federal lands. In support of this assertion, the petitioners indicate that records they obtained from the BLM-Carson City Field Office for these smaller projects and lesser activities authorized between 2001 and 2005 included 55 records of categorical exclusions and 13 findings of no significant impact under the National Environmental Policy Act (NEPA). The petitioners further stated that these decisions were for a variety of projects, including rights-of-way, road construction, communication towers, power lines, gas/water/sewer pipelines, water tanks, fiber optic/telephone cables, seismometer stations, irrigation facilities, monitoring wells, and a railroad. The petition asserts that, although the size and scope of these are considered minor by Federal management agencies, and hence their potential environmental impacts are not assessed under NEPA, their cumulative impact fragments and degrades sagebrush habitat in the Mono Basin area.

As noted previously, the majority of the land area in the Mono Basin area, and therefore most of the sage-grouse habitat, is managed by BLM and the USFS; approximately 89 percent of the land in the Mono Basin area is administered by these agencies (Bi-State Plan 2004). Both of these Federal agencies manage public lands on a multiple-use basis under Federal laws (January 12, 2005, **Federal Register**, pp. 2272, 2274). The multiple-use management approach allows for a wide array of actions on Federal lands, including some forms of development that may be detrimental, as well as conservation measures that are beneficial, for habitat of wildlife species such as sage-grouse. When private lands adjacent to public lands are developed, there can be impacts to sage-grouse on the public lands (Braun 1998, unpaginated) and Connelly *et al.* (2004, pp. 7–24 to 7–26), both document impacts to sage-grouse as a result of urbanization, such as loss of habitat.

Several urban and suburban areas in this PMU are continuing to expand in the Pine Nut PMU (Bi-State Plan 2004, p. 24). For the Bodie PMU, the Bi-State Plan does indicate that habitat loss and fragmentation associated with land use change and development is not restricted to private lands (Bi-State Plan 2004, p. 88). Rights-of-ways across public lands for roads, utility lines, sewage treatment plants and other public purposes are frequently requested, and granted, to support development activities on adjacent private lands (Bi-State Plan 2004, p. 88). But the Bi-State Plan concludes that land use and development on most lands in the Bodie PMU are guided by existing land use plans and that the development is a manageable risk for sage-grouse (Bi-State Plan 2004, p. 88). Residential development was reported to be very low in the White Mountains PMU (Bi-State Plan 2004, p. 124). Effects of public land development were not cited among the risk factors described for the Mount Grant PMU (Bi-State Plan 2004).

We have also evaluated the threat of energy development as presented by the petitioners. According to the Bi-State Plan (2004, p. 31) three sites in the Pine Nut PMU have been authorized for monitoring wind energy potential, not 13 sites as presented by the petitioners. The Bi-State Plan expresses concern about possible threats arising from infrastructure, such as roads and power lines, associated with wind energy development in this area (Bi-State Plan 2004, p. 31). Connelly *et al.* (2004, p. 7–43) discuss wind energy development as a factor that could impact sagebrush ecosystems. There is also potential for wind energy and geothermal energy development in the South Mono PMU (Bi-State Plan 2004, p. 178). The South Mono PMU has an existing geothermal plant and the Bi-State Plan discusses four other proposed geothermal energy projects in the PMU, only one of which has been approved (Bi-State Plan 2004, pp. 178–181). The Bi-State Plan indicates that geothermal development in the South Mono PMU is a manageable risk, and that the USFS and BLM both have management plans in place that consider effects of this activity on sage-grouse (Bi-State Plan 2004, p. 181). One of the geothermal projects discussed in the Bi-State Plan is being evaluated by the USFS (Inyo National Forest 2005). The project would occur in suitable habitat for sage-grouse, and birds have been documented within 0.4 km (0.25 mi) of the site (Inyo National Forest, 2005, p. 7). However, the USFS evaluation concluded that while the proposed geothermal project may affect individuals it would not likely result in a loss of sage-grouse viability because: the area was surveyed for leks and none were found; only about 3 acres of habitat would be lost; prior to construction, an area adjacent to the construction corridor would be surveyed for nests and if nests are located, construction would not be allowed within 30 meters (100 feet) until after the young had fledged (Inyo National Forest 2005, p. 22).

We acknowledge that development of public lands for a variety of purposes (including rights-of-ways for roads, power lines, utility lines, and wind and geothermal energy development) may impact some sage-grouse habitat. However, neither the petitioners, nor our files, provide information on the present or future extent or magnitude of public development as a threat for the Mono Basin area. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that listing of the Mono Basin area sage-grouse may be warranted as a result of the present or threatened destruction, modification, or curtailment of sage-grouse habitat or range due to public land development.

Fences, Power Lines, Roads

The November 2005 petition cites Braun (1998) in stating that fences and power lines fragment sage-grouse habitat, cause direct mortality, and provide perches for avian predators. The petition cites a Sierra Pacific Power Company report (Sierra Pacific Power Company 2003) and states that construction of transmission lines can

increase weed invasion in sagebrush. The petitioners also cite a personal communication with F. Hall from the Bi-State Plan (2004) which indicates that, in northern California, power lines had a negative effect on lek attendance and strutting activity, and fewer radio-marked birds were lost as distance from power lines increased. For the Pine Nut PMU the petitioners cite the Bi-State Plan (2004) in stating that: The North Pine Nut lek is bordered on two sides by power lines; strutting grounds and nest sites are within the hunting territory of ravens (*Corvus corax*) that nest on power lines; and more new power lines have been requested in the area. The petitioners also cite a BLM Environmental Assessment (BLM-Carson City Field Office 2004) in stating that BLM recently authorized construction of a power line in the Pine Nut PMU and this area includes suitable sage-grouse habitat and is within 5 miles of a lek. For the Desert Creek-Fales PMU, petitioners cite the Bi-State Plan (2004) in stating that recent declines in this PMU may be linked to power line construction in the last 10 years. Petitioners cite the Bi-State Plan (2004) and state that in the Bodie area, a number of power lines may be affecting sage-grouse, and in the South Mono PMU, sage-grouse are currently impacted by power lines and more may be constructed due to energy development.

The November 2005 petition cites a BLM-Bishop Field Office document (BLM-Bishop Field Office undated), which indicates that mortalities increase and lek use decreases when fences or power lines are built nearby. Petitioners cite the Bi-State Plan (2004) in stating that fences in the Bodie area have been identified as a potentially significant threat and they also cite Fatooh *et al.* (undated), which reports that sage-grouse in the Bodie Hills area were displaced from one lek area by a fence.

Regarding roads as a threat to sage-grouse, the November 2005 petition cites Oyler-McCance *et al.* (2001) in stating that roads are an important cause of fragmentation and degradation of Gunnison sage-grouse habitat. Petitioners also cite the assessment by Wisdom *et al.* (2003) in asserting that human disturbances from roads and other activities can also exacerbate the spread of cheatgrass into sagebrush ecosystems, and that disturbances such as road construction and use, inappropriate grazing, energy development, mining, and recreational activities can cause cheatgrass expansion.

The December 2001 petition also cited fences, power lines, and roads as a threat to sage-grouse. However, this petition did not provide additional information beyond what was provided in the November 2005 petition.

The effects of fencing on sage-grouse include direct mortality through collisions, creation of predator (raptor) perch sites, the potential creation of a predator corridor along fences (particularly if a road is maintained next to the fence), incursion of exotic species along the fencing corridor, and habitat fragmentation (January 12, 2005, 70 FR 2257). Power lines can directly affect sage-grouse by posing a collision and electrocution hazard, and can have indirect effects by increasing predation, fragmenting habitat, and facilitating the invasion of exotic annual plants (January 12, 2005, 70 FR 2256). Impacts from roads to sage-grouse may include direct habitat loss, direct mortality, the creation of barriers to migration corridors or seasonal habitats, providing predator travel corridors, facilitation of the spread of invasive plant species, and other indirect influences such as noise (January 12, 2005, 70 FR 2257).

The Bi-State Plan (2004, p. 28) does state that in the Pine Nut PMU there are power lines bordering the North Pine Nut lek. However, it also indicates that these power lines are 3.2–4.8 km (2–3 mi) away from active strutting grounds (Bi-State Plan 2004, p. 28) so they do not occur in close proximity to the leks. The petitioners other assertions about the Pine Nut PMU are accurate. The BLM-Carson City Field Office did recently authorize construction of a power line in the Pine Nut PMU as stated by petitioners (BLM-Carson City Field Office 2004). However, sage-grouse habitat is not present along the power line route or in its vicinity (BLM-Carson City Field Office 2004, p. 3–15) and the closest known leks to the line are more than 8 km (5 mi) away (BLM-Carson City Field Office 2004, p. 3–20). For the Desert Creek-Fales PMU the Bi-State plan concludes that power lines are one of several types of infrastructure that are a risk to sage-grouse which can impact habitat for the species (Bi-State Plan 2004, p. 54). It also states that recent declines in the Fales population in the Desert Creek-Fales PMU may be related to construction of power lines and other associated land use activities (Bi-State Plan 2004, p. 54). In the Bodie PMU, the Bi-State Plan (2004, p. 81) characterizes utility lines as a past, current, and future risk that affects multiple sites and multiple birds. Also, the Bodie PMU utility line discussion in the Bi-State Plan cites a personal communication with F. Hall indicating that in northern California these lines have a negative effect on lek attendance and strutting activity and that radio-tagged sage-grouse lost to avian predation increased as the distance to utility lines decreased (Bi-State Plan 2004, p. 81). The Bi-State Plan (2004, pp. 81–82) identifies several utility lines in the Bodie PMU that may be negatively affecting sage-grouse. Land use plans in Bodie PMU do not predict or plan for any additional major, multi-line, or high-voltage utility lines in this PMU (Bi-State Plan 2004, p. 82). For the Mount Grant PMU, the Bi-State Plan (2004, p. 137) indicates that a power line fragments this PMU and that the line provides perches for raptors. In the South Mono PMU, transmission lines were considered to be a risk to sage-grouse on a yearlong basis (Bi-State Plan 2004, p. 169). The Bi-State Plan also mentions three transmission lines that either are impacting sage-grouse or may potentially impact them, and that future geothermal development may result in expansion of transmission lines in the South Mono PMU (Bi-State Plan 2004, p. 169). The Bi-State Plan (2004, p. 120) indicates that construction of new transmission lines may fragment occupied or potential sage-grouse habitat in the White Mountains PMU.

BLM-Bishop Field Office (undated) documented increased sage-grouse mortality and decreased use of leks when fences or power lines are built nearby although the source of this statement was a summary sheet of information put together for a presentation, not a published report or study. Fatooh *et al.* (undated) reported that sage-grouse were displaced from one lek area by fence construction. Fences were considered a risk to sage-grouse in the Desert Creek-Fales PMU (Bi-State Plan 2004, p. 54) and the Bodie PMU (Bi-State Plan 2004, p. 80). Within the Bodie PMU, there have been instances where sage-grouse avoided habitat areas following fence construction and several documented cases where mortalities resulted from collisions with fences (Bi-State Plan 2004, p. 80). However, the Bi-State Plan discussion of fences in the Bodie PMU also indicated that properly designed and sited fences are an important management tool that may improve sage-grouse habitat quality, and that fencing is clearly a manageable risk (Bi-State Plan 2004, p. 80). For the White Mountains PMU, fences can potentially affect sage-grouse populations or habitat negatively, and construction of new fences may fragment occupied or potential habitat for the species (Bi-State Plan 2004, pp. 120, 124). In the South Mono PMU, fences and other types of infrastructure are considered to be a risk

to sage-grouse and sage-grouse mortality caused by collision with a fence has been documented (Bi-State Plan 2004, p. 169). However, the South Mono PMU discussion also indicated that fences are a valuable rangeland management tool and that mitigation of potential impacts to sage-grouse from fences includes design and placement (Bi-State Plan 2004, p. 169). Fences were not considered to be a risk factor for either the Pine Nut or Mount Grant PMUs (Bi-State Plan 2004).

Roads were one of several factors causing habitat degradation for the Gunnison sage-grouse in Colorado (Oyler-McCance *et al.* 2001, p. 324). Wisdom *et al.* (2003, p. 10–3) indicates that disturbance factors, including roads, can facilitate cheatgrass spread. For the Desert Creek-Fales PMU, roads were considered to be a type of risk to sage-grouse for the (Bi-State Plan 2004, p. 54). Roads were considered as a type of disturbance in the White Mountains that can potentially negatively impact sage-grouse populations or habitat (Bi-State Plan 2004, p. 124), and construction of new roads in this PMU may fragment occupied or potential habitat for the species (Bi-State Plan 2004, p. 120). For the South Mono PMU, roads are listed as a risk factor that affect sage-grouse habitat and populations (Bi-State Plan 2004, p. 169). Roads were not presented as a specific risk factor for the Pine Nut, Bodie, or Mount Grant PMUs (Bi-State Plan 2004).

Fences, power lines, and roads are present in all the PMUs that comprise the Mono Basin area. The presence of this type of human infrastructure in areas where sage-grouse occur may have direct or indirect impacts to the species (January 12, 2005, **Federal Register**, pp. 2256–2258). In the Bi-State area, power lines and fences are considered to be a risk factor for most of the PMUs, but roads were not (Bi-State Plan 2004). Although the Bi-State Plan (2004) provides some direct examples of impacts to sage-grouse from fences, power lines, and roads, most of what it presents is the potential for impacts to sage-grouse without providing documentation that this infrastructure threatens sage-grouse or specifically how it is a threat and whether this infrastructure has actually affected populations. In general, we acknowledge that where fences, power lines, and roads occur in close proximity to occupied sage-grouse habitat, they may impact the species. However, neither the petitioners, nor our files, provide information on the extent or magnitude of fences, power lines, and roads as a threat for sage-grouse habitat in the Mono Basin area. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that listing of the Mono Basin area sage-grouse may be warranted due to the present or threatened destruction, modification, or curtailment of sage-grouse habitat or range due to the impacts of fences, power lines, or roads.

Mining

The November 2005 petition states that mining directly eliminates habitat wherever it occurs in sagebrush steppe, may poison surface water, and may expose wildlife to toxic chemicals. Petitioners also assert that mining often requires the construction of roads, power lines, ditches, pipelines, and slagheaps that fragment habitat. The petition claims that hard-rock mining for silver and gold is a prominent threat in the Bodie PMU, citing the Bi-State Plan, stating that within this PMU: Mineral exploration is likely to continue for the foreseeable future; recent proposals to mine for gold, silver, sand and gravel would affect a sage-grouse summer concentration near the Panamount Mine and a lek area on Dry Lakes Plateau; and disturbances associated with these activities include noise, stream sedimentation, water and soil contamination, and habitat removal (Bi-State Plan, pp. 89–90). Additionally, the petitioners cite Braun (1998) in asserting that there is no evidence that sage-grouse populations are able to reach their pre-mining numbers on reclaimed areas. The petition states that sage-grouse may use areas reclaimed from mining, but only if migration corridors from source populations are available (Braun 1998). Petitioners also cite problems in mineland reclamation, including that it is difficult to establish sagebrush and forbs on reclaimed areas, reclamation is expensive, invasive weeds can spread on reclaimed sites, and shrub densities on reclaimed sites may not be adequate to support sage-grouse.

The December 2001 petition also cited mining as habitat conversion that is a threat to sage-grouse. However, this petition did not provide additional information beyond what was provided in the November 2005 petition in relation to mining and its relationship to the present or threatened destruction, modification, or curtailment of the habitat or range of sage-grouse in the Mono Basin area.

We previously have concluded that surface mining for any mineral resource will result in direct habitat loss for sage-grouse if the mining occurs in occupied habitat (January 12, 2005, **Federal Register**, p. 2260). The actual effect of this loss, however, depends on the quality, amount, and type of habitat disturbed; in some cases, if the type of habitat disturbed is not a limiting factor for a local population, then loss of that habitat will not result in a population decline. However, the effects of mining on sage-grouse populations are not well known (Connelly *et al.* 2000, p. 974).

The petition correctly cites the Bi-State Plan (2004, pp. 89–90) in describing potential mineral exploration in the Bodie PMU and the associated impacts. However, most of the discussion of mining impacts for the Bodie PMU relate to either effects of past mining operations, or the potential for future mining impacts should mineral deposits be discovered and developed (Bi-State Plan 2004, pp. 89–90). The discussion for the Bodie PMU concludes that the current risk is restricted to small-scale gold and silver exploration and sand and gravel extraction activities that are considered to have minimal impacts on sage-grouse (Bi-State Plan 2004, p. 90). Furthermore, although Braun (1998) indicated that mining and the associated infrastructure negatively impact sage-grouse numbers and habitat in the short term, there is some recovery of populations following initial development and subsequent reclamation of the affected sites (although sage-grouse may not attain population levels present prior to development) (Braun 1998).

Within the Mono Basin area, sage-grouse were impacted by past mining in the Bodie PMU. While mining could potentially impact some sage-grouse habitat in the Bodie PMU in the future, petitioners' claims regarding this are speculative, since the potential for mining will depend largely on where mineral deposits are discovered and developed (Bi-State Plan 2004, pp. 89–90). Also, the potential impacts of future mineral development would be influenced by factors such as new technology and economic considerations. Furthermore, the amount of suitable habitat that might be involved, the number of sage-grouse that might be impacted, and the actual nature of the impacts resulting from mining are inherently speculative at this time and would depend on local conditions, including whether the habitat impacted was a limiting factor for the local sage-grouse population in that area.

Neither the petitioners, nor our files, provide information on the present or future extent, magnitude, or immediacy of mining as a threat for the Mono Basin area. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that

listing of the Mono Basin area sage-grouse may be warranted due to the present or threatened destruction, modification, or curtailment of sage-grouse habitat or range due to mining activities.

Livestock Grazing

The November 2005 petition asserts that livestock grazing is associated with the widespread decline of sage-grouse across their range through habitat degradation, loss, and fragmentation and cites Connelly and Braun (1997) and Webb and Salvo (2002) to support this assertion. According to the petitioners, Beck and Mitchell (2000) found that there were more negative impacts than positive impacts of livestock grazing; negative impacts often affect large areas, whereas positive grazing affects are localized; and livestock grazing appears to affect sage-grouse productivity.

The petitioners cite Gregg and Crawford (1991) and Holloran *et al.* (2005) in asserting that livestock eat and trample sagebrush, and the grasses and forbs around sagebrush, which degrades or eliminates nesting habitat; and the petitioners cite Gregg *et al.* (1994), Delong *et al.* (1995), and Sveum *et al.* (1998) to state that this affects both nesting success and chick survival. The petitioners cite information from multiple authors and studies in asserting the following: the availability of forbs during the pre-laying period may affect the nutritional status of hens and their reproductive success (Barnett and Crawford 1994); herbaceous cover is important in nest site selection (Connelly *et al.* 1991; Wakkinen 1990); nest success is positively correlated with presence of big sagebrush (*Artemisia tridentata*) and thick grass and forb cover (Beck and Mitchell 2000; Connelly *et al.* 1991; Gregg *et al.* 1994); herbaceous cover is important for nesting sage-grouse for concealment, security, and shelter from weather and predators (Schroeder and Baydack 2001; Sveum *et al.* 1998); unsuitable nesting habitat may contribute to lower nesting success (Connelly and Braun 1997); the presence of livestock can cause sage-grouse to abandon their nests (Rasmussen and Griner 1938; Call 1979); consumption of forbs by livestock in late spring and early summer may limit their availability for sage-grouse chicks (Call 1979); insects are an important food source for sage-grouse chicks (Pyle and Crawford 1991; Johnson and Boyce 1990) and insects are less abundant in degraded habitats; the availability of primary foods directly affects the diets of sage-grouse chicks (forbs and insects comprise over 75 percent of chick diets in areas where forbs and arthropods were more available, whereas in less productive habitats sage-grouse chicks consumed 65 percent sagebrush) (Drut *et al.* 1994).

The petitioners cite an Inyo National Forest sage-grouse management plan (Inyo National Forest 1966) in claiming that livestock grazing was a factor in historic declines in Mono Basin area sage-grouse populations. Petitioners also claim that livestock grazing affects other seasonal habitats for sage-grouse. In support of this claim, they cite Belsky *et al.* (1999) in stating that livestock damage riparian areas and associated meadows; they cite Owens and Norton (1992) in stating that livestock eat and trample sagebrush; and they cite Bedunah (1992) in asserting that livestock grazing introduces and spreads unpalatable weeds in sagebrush habitat, which reduces sage-grouse food sources. Further, the petition asserts that the range developments that support livestock grazing also harm sage-grouse. The petitioners state that fence posts provide raptor perches, and livestock water developments may artificially increase sage-grouse predators or competitors. They cite Autenrieth (1981) in asserting that conversion of sagebrush to crested wheatgrass and other livestock forage species eliminates sage-grouse habitat. The petitioners cite Wilkenson (2001) in stating that sage-grouse are low fliers and frequently collide with fences used to manage livestock.

The November 2005 petition claims that commercial livestock grazing on public lands affects broad swaths of sage-grouse habitat in the Mono Basin area. The petitioners cite the Bi-State Plan (2004) in listing the number of livestock allotments in the Desert Creek-Fales, Bodie, and Mount Grant PMUs and in stating that about 75 percent of the Bodie PMU is subject to grazing. They also assert that all PMUs in the Bi-State area are subject to livestock grazing. The petitioners further cite the Bi-State Plan (2004) in stating that: enforcement of permit conditions, seasons of use, numbers of livestock, and trespass grazing is a concern for part of the Pine Nut PMU; riparian habitats are being adversely impacted by grazing in the White Mountains PMU; and trespass livestock are impacting habitat in the Mount Grant PMU. Finally, the petitioners cite two Great Basin assessments (Wisdom *et al.* 2003; Rowland *et al.* 2003) in stating that vast areas of sagebrush habitat in Nevada are at risk of cheatgrass invasion and may be sensitive to inappropriate livestock grazing.

The December 2001 petition also cited grazing as a threat to sage-grouse. However, this petition did not provide additional information beyond what was provided in the November 2005 petition.

In reviewing several of the documents cited by the petitioners (Beck and Mitchell 2000; Connelly and Braun 1997; Holloran *et al.* 2005; Gregg and Crawford 1991; Schroeder and Baydack 2001; and Call 1979), we found that the cited materials offered a more comprehensive discussion of the threats from grazing. For example, although Beck and Mitchell (2000) found more negative than positive impacts of grazing, they concluded that indirect impacts of livestock grazing have affected sage-grouse habitat more than direct impacts (Beck and Mitchell 2000, p. 997) and that presently little information is available regarding the direct impacts of grazing on sage-grouse habitat (Beck and Mitchell 2000, p. 993). Connelly and Braun (1997, p. 231–232) stated that although excessive grazing during the breeding season may have negative impacts on sage-grouse populations, there is little direct evidence linking grazing practices to sage-grouse population levels and that more information is needed on the relationship of livestock grazing to sage-grouse production. Additionally, although several authors (Holloran *et al.* 2005; Gregg and Crawford 1991; Gregg *et al.* 1994; Delong *et al.* 1995; Sveum *et al.* 1998; 1994; Connelly *et al.* 1991; and Wakkinen 1990) discuss the relationship between sagebrush grass and herbaceous cover and nesting success as presented by the petitioners, none of these studies are direct comparisons of grazed versus non-grazed sites, but rather they all compare successful to unsuccessful nest sites and hypothesize that grazing may negatively impact nesting success. Furthermore, neither Holloran *et al.* (2005) nor Gregg and Crawford discuss livestock eating sagebrush and trampling sagebrush or the grasses and forbs around them as asserted by the petitioners. Beck and Mitchell (2000) did not demonstrate that sagebrush cover and grass or herbaceous cover was important to nest success but rather summarized the work of other researchers. Sveum *et al.* (1998, p. 268) did find that sagebrush cover and tall grass cover was greater for successful nests than for those lost to predation, but Schroeder and Baydack (2001) only discuss predation for prairie grouse species in general without providing specific conclusions for sage-grouse. Call (1979, p. 25) cites work by Patterson (1950) in which livestock

presence at a site resulted in nest desertion and destruction, but Call (1979; p. 30) also states that while sheep can cause nest abandonment, cattle are generally not considered to cause nest desertion. Call (1979, p. 25) indicates that consumption of forbs by livestock in spring and summer may have an adverse impact on young sage-grouse, but this was not based on a comparative study of grazed versus ungrazed sites. Barnett and Crawford (1994, p. 114) documented the importance of forb availability to nesting females, but as with other studies, they did not compare grazed sites to ungrazed sites to directly address grazing effects on forb availability.

Both Pyle and Crawford (1991) and Johnson and Boyce (1990, pp. 90–91) demonstrated that insects were important in the diet of young sage-grouse. However, Pyle and Crawford did not compare grazed to ungrazed sites, and the results in Johnson and Boyce (1990, pp. 89–91) are based on captive birds, not a field study. Furthermore, Johnson and Boyce (1990, p. 91) state that results from their work cannot be related directly to effects of insect reductions on wild populations, because insect types and abundance needed for young sage-grouse to meet their requirements are unknown. Drut *et al.* (1994, pp. 91–92) did document that sage-grouse chicks ate more forbs and insects at a site where these were more abundant, and they consumed more sagebrush at another study site where forbs and insects were less available. However, they did not directly compare grazed to ungrazed sites and only make inferences about land use practices based on major outcomes of their work (Drut *et al.* 1994, p. 93).

The sage-grouse management plan developed for the Inyo National Forest (Inyo National Forest 1966, p. 2) does suggest that livestock grazing was a factor in historic declines of sage-grouse populations in Inyo and Mono Counties. However, this plan is 40 years old and it refers to livestock as a factor in historic declines in sage-grouse that occurred in the 20th century, and does not relate directly to present conditions or present grazing management practices in the Mono Basin area.

The petitioners correctly cite other works (Belsky *et al.* 1999; Owens and Norton 1992; and Bedunah 1992) that document effects of grazing on sagebrush habitat. However these authors only present effects of livestock grazing on habitat and do not document how grazing directly impacts sage-grouse. Petitioners do correctly cite Autenrieth (1980, p. 772) regarding conversion of sagebrush to grasslands and Wilkinson (2001), who documents sage-grouse mortalities caused by fences used to manage livestock.

For the Mono Basin area, all the sage-grouse PMUs are subject to livestock grazing (Bi-State Plan 2004), as stated by petitioners. Petitioners also accurately characterize the number of grazing allotments for the Desert Creek-Fales, Bodie, and Mount Grant PMUs (Bi-State Plan 2004, pp. 56–57, 82, and 138). The petition accurately characterizes concerns related to grazing for the southern part of the Pine Nut PMU (Bi-State Plan 2004, p. 29); however, the Bi-State Plan indicates that public land grazing in this PMU is being managed in such a way that it is not known to be impacting sage-grouse habitat at this time (Bi-State Plan 2004, p. 29). Petitioners asserted that riparian habitats in general are being impacted in the White Mountains PMU; whereas, according to the Bi-State Plan (2004, p. 122), impacts are discussed for only three specific riparian areas and there is no indication that livestock grazing is considered to be a major risk for sage-grouse in this PMU. For the Mount Grant PMU, the petitioners assert that trespass livestock are impacting habitat in this PMU, whereas the Bi-State Plan (2004, p. 138) only states that there are some trespass cattle present in one specific area. There is no indication in the Bi-State Plan (2004, pp. 138–139) that livestock grazing is considered to be a major risk for the Mount Grant PMU. Nor is livestock grazing considered to be a major risk for sage-grouse in the Desert Creek-Fales PMU (Bi-State Plan 2004, pp. 56–57). The Bi-State Plan does characterize livestock grazing as a risk to sage-grouse for the Bodie PMU (Bi-State Plan 2004, p. 82); however, it also states that permitted grazing is a manageable risk with current management practices representing a significant improvement over historic use (Bi-State Plan 2004, p. 85). Finally, for the South Mono PMU, the Bi-State Plan (2004, pp. 175–176) states the livestock grazing occurs on public lands in this PMU but it does not characterize grazing as a major risk to sage-grouse.

The petition accurately characterizes both the Wisdom *et al.* (2003, p. xiv) and Rowland *et al.* (2003, p. 16) assessments of the Great Basin and Nevada regarding the large area at risk to cheatgrass displacement and sensitivity to inappropriate grazing. However, both of these assessments were completed at a large geographic area scale. Neither of these assessments is specific to the Mono Basin area. With regard to inappropriate livestock grazing, the Rowland *et al.* (2003, p. 16) assessment only states that very little of the sagebrush habitat in Nevada is on lands protected outright from disturbances like energy development or inappropriate grazing, and this information is not specific to the Mono Basin area.

Petitioners accurately cite a BLM Environmental Assessment authorizing livestock grazing (BLM-Bishop Field Office 2003, pp. 22–23). However, the 2005 petitioners' assessment of grazing actions for BLM-Bishop Field Office lands is not consistent with the characterization of grazing provided in the Bi-State Plan. Most of the land administered by the BLM-Bishop Field Office occurs in the Bodie and South Mono PMUs. For these two PMUs, the discussions of livestock grazing in the Bi-State Plan do not indicate that livestock grazing is a major risk, or that it is having major impacts on sage-grouse populations in these areas (Bi-State Plan 2004, pp. 82–85 and 175–176).

Beck and Mitchell (2000), Connelly *et al.* (2000), Connelly *et al.* (2004), and Crawford *et al.* (2004) present information about the effects of livestock grazing on sage-grouse, including what is documented and what has not been documented. Livestock grazing has some effects on sagebrush habitat and therefore some effects on sage-grouse. Most of the impacts on sage grouse appear to be indirect (Beck and Mitchell 2000, p. 993). There is little direct experimental evidence linking grazing practices to sage-grouse population levels (Connelly *et al.* 2004, p. 974). Excessive livestock grazing has negatively impacted sage-grouse habitat by creating conditions that favor annual grasses and reducing perennial grasses used as nesting and escape cover by sage-grouse (Crawford *et al.* 2004, p. 12). However, the specific relationship between grazing pressure and sage-grouse nest success has not been evaluated, and more research is needed to address the direct effects of livestock grazing on the species (Crawford *et al.* 2004, p. 12).

Specific to the Mono Basin area, most of the land area that is grazed by livestock in the Mono Basin area is public land managed by BLM and USFS under rangeland management practices guided by agency land use plans. Livestock grazing is a long-term and historic use in the Mono Basin area, and sage-grouse have persisted here over time. Neither the petitioners, nor our files, provide information on the present or threatened extent, magnitude, or immediacy of livestock grazing as a threat for the Mono Basin area. Therefore, we conclude that there is not substantial scientific or commercial

information to indicate that listing of the Mono Basin area sage-grouse may be warranted due to the present or threatened destruction, modification, or curtailment of sage-grouse habitat or range due to livestock grazing.

Non-Native Species

The November 2005 petition states that non-native plants are common in sagebrush-steppe habitat and degrade habitat quality for sage-grouse. The petitioners cite the description of the impacts of cheatgrass (*Bromus tectorum*) invasion and other invasive plants on sagebrush habitat and sage-grouse provided by Connelly *et al.* (2004). They also cite the Bi-State Plan in stating that in the Pine Nut PMU noxious weeds and cheatgrass are invading sagebrush and wet meadow sites throughout the PMU. Petitioners cite Wisdom *et al.* (2003) as reporting that 26 percent of sage-grouse habitat in Nevada is at moderate risk and another 14 percent of this habitat is at high risk of cheatgrass invasion, and that 44 percent of all sagebrush habitat in Nevada currently faces a moderate or high risk of being replaced by non-native cheatgrass. The petitioners cite a related assessment completed by Rowland *et al.* (2003) in stating that sage-grouse habitat for the BLM-Carson City District lands, where Mono Basin area sage-grouse occur, are at moderate risk of displacement by cheatgrass, and 13 percent of these lands are at high risk of displacement by cheatgrass.

The December 2001 petition also cited invasive species as a threat to sage-grouse. However, this petition did not provide additional information beyond what was provided in the November 2005 petition.

We recognize that a wide variety of plant species are considered invasive across the range of the sagebrush ecosystem that sage-grouse occupy (January 12, 2005, **Federal Register**, p. 2265). Cheatgrass is a non-native annual grass species that was introduced to western North America and was well established by the late 1920s (Connelly *et al.* 2004, p. 7–14). Cheatgrass readily outcompetes native plant species for water and nutrients, and standing dead cheatgrass is more flammable than native species, leading to increased fire intensity and frequency, which greatly shortens the fire return interval in areas where it dominates compared to native sagebrush ecosystems (Connelly *et al.* 2004, p. 7–14). The more frequent fires encouraged by the presence of cheatgrass directly eliminate native shrubs, forbs, and perennial grasses, resulting in self-perpetuating stands of cheatgrass (Connelly *et al.* 2004, p. 7–14).

Wisdom *et al.* (2003, pp. 4–3 to 4–13) assessed the risk of cheatgrass displacement of native vegetation and presented their results for the Great Basin eco-region and then separately for the State of Nevada. We agree with petitioners that for their Nevada assessment, Wisdom *et al.* (2003, p. xi) reported that 44 percent of existing sagebrush habitat was at either a moderate or high risk of displacement by cheatgrass, but we also note that 56 percent of sagebrush habitat is at low risk of displacement (Wisdom *et al.* 2003, p. xi). Wisdom *et al.* (2003, p. xii) also stated that for Nevada sage-grouse habitat, 14 percent was at high risk and another 26 percent was at moderate risk of cheatgrass replacement within Nevada, but that 60 percent of sage-grouse habitat in Nevada is at low risk of being displaced by cheatgrass (Wisdom *et al.* 2003, p. xii). Furthermore, the assessment stated that the amount of habitat present and its associated threats do not directly correlate with population effects for a given species, and that new research is needed to evaluate the performance of their cheatgrass risk model, including extensive field evaluation (Wisdom *et al.* 2004, p. 9–2 and 4–12). The Rowland *et al.* (2003) habitat assessment was a component of the Wisdom *et al.* (2003) assessment.

We note also that the assessments conducted by Wisdom *et al.* (2003) and Rowland *et al.* (2003) were conducted at large landscape scales and do not provide information specific to the Mono Basin area. The Rowland *et al.* (2003) assessment provided a summary for lands within BLM's Carson City Field Office boundary, but a large portion of the lands administered by this Field Office do not occur within the Mono Basin area, and consequently it is not appropriate to apply these results directly to the Mono Basin area.

The Bi-State Plan (2004, p. 30) states that noxious weeds and cheatgrass are invading sagebrush and meadow sites throughout the Pine Nut PMU, and that exotic plant species negatively affect sage-grouse habitat quality and quantity. The Bi-State Plan also identifies cheatgrass in some sagebrush communities in the Bodie PMU and states that there is some risk of habitat type conversion, but it is for limited sagebrush habitats in this PMU and there have not been any conversions of sagebrush habitat to non-native annual grasslands in the Bodie PMU to date (Bi-State Plan 2004, p. 93). Although non-native plants are present in the White Mountains, Mount Grant, and South Mono PMUs, this was not found to be a risk factor in any of these areas (Bi-State Plan 2004, pp. 118, 140, 177). Non-native plants were not considered to be a risk factor in the Desert Creek-Fales PMU (Bi-State Plan 2004).

Neither the petitioners, nor our files, provide substantial information to document the extent or magnitude of the present or future threat of non-native plant species for sage-grouse habitat in the Mono Basin area. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that listing of the Mono Basin area sage-grouse may be warranted due to the present or threatened destruction, modification, or curtailment of sage-grouse habitat or range due to non-native plant species.

Pinyon-Juniper Encroachment

The November 2005 petition cites the impacts of pinyon-juniper (*Pinus edulis-Juniperus* spp.) encroachment described by Connelly *et al.* (2004) on sagebrush steppe habitat and sage-grouse. The petition asserts that pinyon-juniper encroachment into sagebrush habitat is occurring throughout the Mono Basin area and has widespread impacts on sage grouse habitat. The petition also cites USFS information that the Inyo National Forest noticed encroachment of pinyon pine into sagebrush habitat in the Crowley Lake area in 1966 (Inyo National Forest 1966). For the Pine Nut PMU, the petitioners cite the Bi-State Plan (2004) in stating that many of the ecological sites that support big sagebrush have been converted to pinyon-juniper woodlands over the past 100 years. The petition further cites the Bi-State Plan (2004) for the Pine Nut PMU in stating that: Encroachment is impacting potential nesting and brood habitat at multiple sites; it may also be affecting connectivity between breeding populations; and the effects of encroachment may become permanent and irreversible without active management. For the Desert Creek-Fales PMU petitioners cite the Bi-State Plan (2004) in stating that pinyon-juniper encroachment is occurring throughout the entire PMU and is adversely affecting both the habitat quality and quantity for sage-grouse. For the Bodie PMU they assert that Fatooh *et al.* (undated) questioned whether ''pinyon and juniper may be limiting potential winter habitat or constraining potential migration routes.'' The petitioners also cite the Bi-State Plan (2004) in stating that all or portions of the other PMUs are also affected by pinyon-juniper encroachment, and they cite the work of Wisdom *et al.* (2003) in stating that 41 percent of Great Basin ecosystems were

at moderate or high risk of pinyon-juniper invasion.

We agree that the work by Connelly *et al.* (2004) describes the expansion of pinyon-juniper woodlands as a threat to the sagebrush ecosystem, and specifically within the Great Basin region, these woodlands have expanded greatly in comparison to their distribution over 150 years ago (Connelly *et al.* 2004, p. 7–7). Potential causes for this increase include a decrease in fire frequencies; climate change; past patterns of livestock grazing; and increases in carbon dioxide in the atmosphere (Connelly *et al.* 2004, p. 7–7). This expansion has resulted in the loss of many bunchgrass and sagebrush-bunchgrass communities that formerly dominated the Intermountain West (January 12, 2005, **Federal Register**, p. 2266). Wisdom *et al.* (2003, p. 4–1 to 4–7) modeled the risk that pinyon-juniper woodlands would displace sagebrush habitats in the Great Basin and found that nearly 60 percent of the area occupied by sagebrush was at low risk of replacement, 6 percent of all sagebrush cover was at moderate risk, and 35 percent of sagebrush cover was at high risk of replacement. However, they also reported that new research is needed to evaluate the performance of their pinyon-juniper risk model, including extensive field evaluation, and that the amount of habitat and associated threats does not directly correlate with populations effects for a given species (Wisdom *et al.* 2003, p. 4–6 and 9–2). We note also that the assessments by Connelly *et al.* (2004) and Wisdom *et al.* (2003) were for large geographic areas covering multiple states in the range of the species, and hence they do not provide a specific assessment of conditions in the Mono Basin area.

The quote of Fatooh *et al.* (undated) in the petition was incomplete. Fatooh *et al.* (undated) actually stated that ''in a heavy snow winter we may want to note whether pinyon and juniper may be limiting potential winter habitat or constraining potential migration routes'' (Fatooh *et al.*, undated). Thus the information in Fatooh *et al.* is inconclusive, as it relates to period of heavy winter snow and poses questions, rather than providing evidence, in relation to possible effects on potential habitat and potential migration routes.

The Inyo National Forest reported that some pinyon pine encroachment into sagebrush has occurred (Inyo National Forest 1966, p. 22). However, that statement related to past conditions and was limited to the east side of the Crowley Lake area. Also, there is no information presented by the Inyo National Forest document on the extent or magnitude of pine encroachment in this limited area by Crowley Lake.

The Bi-State Plan reports that within the Pine Nut PMU, pinyon-juniper encroachment is occurring and many big sagebrush sites have been converted to pinyon-juniper woodland (Bi-State Plan 2004, p. 20). The petition correctly cites other concerns expressed for the Pine Nut PMU in the Bi-State Plan (2004, p. 20) as well as concerns about pinyon-juniper encroachment in the Desert Creek-Fales PMU (Bi-State Plan 2004, p. 39), and Bodie, White Mountains, Mount Grant, and South Mono PMUs (Bi-State Plan 2004, pp. 96, 119, 133, 167). The Bi-State Plan indicates that pinyon-juniper encroachment is occurring to some degree in all of the PMUs in the Mono Basin area with the greatest risk occurring in the Pine Nut, Desert Creek-Fales, and Bodie PMUs (Bi-State Plan 2004, pp. 20, 39, 96). However, the Bi-State Plan does not provide documentation of the amount of sagebrush habitat lost to encroachment in the Mono Basin area, nor does it not demonstrate that pinyon-juniper encroachment has caused sage-grouse populations to decline in any of the PMUs. Information about the time period over which encroachment has been ongoing is lacking, but it has been occurring since at least the 1960's (Inyo National Forest 1966, p. 22).

Our evaluation shows that neither the petitions, nor our files, provide documentation of the extent or magnitude of the present or future threat of pinyon-juniper encroachment to sage-grouse habitat within the Mono Basin area. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that listing of the Mono Basin area sage-grouse may be warranted as a result of the present or threatened destruction, modification, or curtailment of sage-grouse habitat or range due to pinyon-juniper encroachment.

Military Lands

The November 2005 petition states that 19,804 hectares (ha) (48,936 acres (ac)) of sage-grouse habitat in the Mono Basin area are managed by the Department of Defense as an army depot (a facility used for storage, renovation, and disposal of conventional army weapons). The petitioners cite Connelly *et al.* (2004) regarding impacts of military training and related activities on sagebrush habitat and sage-grouse and conclude that these lands cannot be considered suitable or protected habitat since they are open to development and activities that negatively impact the species. The December 2001 petition also cited military operations as a threat to sage-grouse. However, this petition did not provide additional information beyond what was provided in the November 2005 petition.

We agree that the U.S. Army manages 19,804 ha (48,936 ac) of land within the Mount Grant PMU as part of its Hawthorne Army Depot (Bi-State Plan 2004, p. 127). However, the petitioner's claim that these lands cannot be considered suitable or protected habitat because they are open to development and activities that negatively impact sage-grouse is not valid. The Bi-State Plan (2004) describes Hawthorne Army Depot lands in the Mount Grant PMU as some of the best sage-grouse habitat within this PMU because of the exclusion of livestock and the public (Bi-State Plan 2004, p. 149). Livestock grazing has not occurred on the Hawthorne Army Depot lands in the Mount Grant PMU since the 1930s and military activities such as testing and training have been fairly minor on these lands (Nachlinger 2003, p. 38).

Connelly *et al.* (2004, p. 7–43) summarizes impacts of military training due to military exercises involving tracked and wheeled vehicles, and fires from ordnance impacts from across the range of sagebrush ecosystems. However, this assessment was generalized for all military lands within the range of the sage-grouse and did not include information specific to military lands in the Mono Basin area.

Hawthorne Army Depot lands within the Mount Grant PMU have been documented to provide relatively high quality habitat for sage-grouse (Nachlinger 2003, p. 38; Bi-State Plan 2004, p. 149), and we are not aware of any other U.S. military lands elsewhere in the Mono Basin area. Neither the petitioners, nor our files, provide documentation to substantiate claims that military training or development on military lands is a present or future threat to the habitat or range of the sage-grouse population in the Mono Basin area. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that listing of the Mono Basin area sage-grouse may be warranted due to the present or threatened destruction, modification, or curtailment of sage-grouse habitat or range due to military training or development of military lands.

Water Development

The November 2005 petition states that the conversion of natural basins to managed watersheds for the purpose of providing water for agriculture and

urban centers negatively affects semiarid ecosystems. The petitioners also state that the City of Los Angeles Department of Water and Power (LADWP) manages land in the Mono Basin area and diverts, collects, and exports water from this area to Los Angeles. They cite the work of Elmore *et al.* (2003) and indicate that the diversion, exportation, and inter-basin transfer of water from arid environments results in adverse ecological impacts to aquatic, riparian, wetland, mesic, and other systems dependent on that water. They also cite Elmore *et al.* (2003) in stating that: groundwater pumping adversely affects semi-arid habitats that are dependent on groundwater when droughts occur; that native vegetation decreases during drought when groundwater pumping lowers water tables; in some areas the decline in native vegetation is followed by an increase in non-native weed species after the drought ended; and that these effects are amplified when vegetation communities are disturbed by other factors such as burning, grazing, and agriculture. According to the petitioners, a variety of plant communities are present in the Owens River Valley, including sagebrush habitat and Mono Basin sage-grouse were historically present in this area. The petitioners cite Elmore *et al.* (2003) and assert that this study demonstrated that where LADWP has drilled wells and pumped water, the lowered water tables have caused a loss of native vegetative cover within 19 percent of the valley landscape. Finally, the petitioners assert that the loss of mesic and semi-arid habitats adversely affects sage-grouse in the Owens Valley by eliminating habitat and degrading and fragmenting the sagebrush habitats that remain.

We concur that Elmore *et al.* (2003) demonstrated that groundwater pumping from the Owens River Valley by LADWP impacted some native plant communities in this area. However, the petitioners failed to note that only a small portion of the Owens Valley study area (Elmore *et al.* 2003, p. 449) actually overlaps with the Mono Basin area (in the White Mountains PMU). They also fail to note that only a small portion of the Owens Valley study area (Elmore *et al.* 2003, p. 449) overlaps with the historic range of sage-grouse in Inyo County (Hall 1995, Figure 1) or that sage-grouse are no longer present in the area where the Elmore *et al.* (2003) study occurred (Hall 1995, Figure 1). Even if groundwater pumping by LADWP was a factor in the reduction of sage-grouse range in Inyo County, the extent and magnitude of this impact would have been limited, given the small overlap in the historic range of sage-grouse and the Elmore *et al.* (2003) study area. Also, Elmore *et al.* (2003, p. 454) did not find any negative response of sagebrush plant communities (which sage-grouse require) to groundwater pumping. Furthermore, the sagebrush type in the Elmore *et al.* (2003, p. 447) study only comprised a minor portion of their study area (about 4 percent of the area), and the nearest sage-grouse leks to the Owens Valley are at high-elevation sites in the White Mountains, and groundwater pumping would not directly impact these birds. None of the PMU discussions in the Bi-State Plan identified groundwater pumping by LADWP as a risk to sage-grouse.

Neither the petition, nor our files, provide documentation that groundwater pumping in the Owens Valley of California is the cause of the present or threatened destruction, modification, or curtailment of the habitat or range of the greater sage-grouse in the Mono Basin. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that listing the Mono Basin area sage-grouse may be warranted due to water development.

Feral Horses

The November 2005 petition claims that feral horses affect sage-grouse populations at several locations in the Mono Basin area and cites the Bi-State Plan (2004) in claiming they are a potentially significant risk for the 7-Troughs lek in the Bodie PMU. They also cite the discussion of impacts from wild horse and burros in Connelly *et al.* (2004).

Connelly *et al.* (2004, pp. 7–36—7–37) stated that habitat occupied by horses exhibits lower grass cover, fewer shrubs, and less total vegetative cover, and that horse alteration of spring or other mesic areas may be a concern with regard to sage-grouse brood rearing (Connelly *et al.* 2004, p. 7–37). However, these observations were general and not specific to the Mono Basin area. The Bi-State Plan (2004, pp. 28, 86, 122, 139, 177) included discussions on wild horses for the Pine Nut, Bodie, White Mountains, Mount Grant, and South Mono PMUs. For all PMUs except Bodie, the discussions in the Bi-State Plan are brief and focused on one or a few locations within each PMU where wild horses may be impacting sage-grouse habitat. The most extensive discussion is for the Bodie PMU (Bi-State Plan 2004, pp. 86–87), where there is risk of disturbance to the 7-Troughs lek. However, for the Bodie PMU, the current extent of breeding and summer sage-grouse habitat degradation attributable to wild horses is insignificant due to low horse numbers, and the extent of winter habitat degradation due to this factor also is insignificant because sagebrush cover is minimally affected by horse use (Bi-State Plan 2004, p. 86). The BLM captured and removed some wild horses from part of the Bodie PMU in 2003 (Bi-State Plan 2004, pp. 86–87).

Neither the petitioners, nor our files, provide substantial information to document the extent, magnitude, or immediacy of present or future threats posed by feral horses to sage-grouse throughout the Mono Basin area. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that listing of the Mono Basin area sage-grouse may be warranted as a result of the present or threatened destruction, modification, or curtailment of sage-grouse habitat or range due to feral horses.

Wildfire

The November 2005 petition states that wildfire is often mentioned as a significant threat to sage-grouse. It cites the Connelly *et al.* (2004) review of wildfire impacts on sagebrush steppe habitats and sage-grouse. The petitioners also cite Wisdom *et al.* (2003) and state that: Wildfire often leads to cheatgrass invasion of sagebrush habitats; that the number and size of wildfires across the Great Basin and Nevada have increased in the past 20 years and this trend continues; and that reducing the spread of cheatgrass in native shrublands through mitigation of human disturbances that facilitate its spread is probably the most important consideration in reducing the frequency, intensity, and area of undesirable wildfires.

The December 2001 petition also cited fire as a threat to sage-grouse. However, this petition did not provide additional information beyond what was provided in the November 2005 petition.

We note the Connelly *et al.* (2004) assessment of fire data across the range of the sagebrush ecosystem and their conclusions that the number of fires and total area burned had increased for the period from 1980–2003, and that fires are an increasingly significant disturbance throughout much of the sagebrush ecosystem (Connelly *et al.* 2004, p. 7–6). Repeated fires in more arid sagebrush stands have allowed cheatgrass to replace native shrubs and herbs with fires occurring at more frequent intervals (Connelly *et al.* 2004, p. 7–5). Cheatgrass recovers more quickly after fire, effectively preventing

the return of native sagebrush (January 12, 2005, **Federal Register**, p. 2265). From a rangewide perspective, altered fire regimes due to cheatgrass invasion is a factor in the loss of sage-grouse habitat (Connelly *et al.* 2004, p. 7–5). Wisdom *et al.* (2003, p. 10–1) conducted a bioregional assessment of the Great Basin eco-region and similarly concluded that the number and size of wildfire across this region have increased dramatically in the last 20 years, and that this trend continues. They further concluded that reducing the spread of cheatgrass in native shrublands, and mitigating human disturbances that facilitate its spread are probably the most important considerations in reducing the frequency, intensity, and area of wildfires (Wisdom *et al.* 2003, p. 10–1). However, both the analysis performed by Connelly *et al.* (2004) and the assessment by Wisdom *et al.* (2003) were conducted at large landscape scales, and neither provides an evaluation of the present or potential future effects of wildfire on greater sage-grouse habitat in the Mono Basin area.

For the Mono Basin area, the Bi-State Plan (2004) states that: wildfire is a factor that can affect the quality of sagebrush habitat for the Desert Creek-Fales and South Mono PMUs; wildfire is a low risk for sage-grouse in the White Mountains PMU; and only three recent fires have occurred in the Mount Grant PMU (Bi-State Plan 2004, pp. 53, 124, 140, 178). The Bi-State Plan indicates that some wildfires occur in the Pine Nut PMU nearly every year with the potential to remove sagebrush habitats (Bi-State Plan 2004, p. 26). Wildfire is a risk to sage-grouse habitat in the Pine Nut PMU; however, the Bi-State Plan (2004, p. 26) does not provide information on the extent or magnitude of fire, or how it has impacted sage-grouse in this PMU. For the Bodie PMU, the Bi-State Plan (2004, p. 92) indicates that all sagebrush habitats in the PMU are subject to some fire-related risk. However, it also states that: Recent wildfire activity in the PMU is limited; no landscape-scale fires have occurred over the last 40 years and even the largest recent burns have been small; no significant impacts to key sage-grouse habitats have been documented; and fire is a manageable risk (Bi-State Plan 2004, p. 93).

Rangewide, wildfires have led to the loss of some sage-grouse habitat. Within the Mono Basin area, wildfire is a potential threat to sage-grouse habitat, but neither the petitioners, nor our files, provide any documentation that large landscape fires have occurred in this area or that significant amounts of habitat have been lost here due to fire. Hence, information on the extent and magnitude of wildfire is lacking for the Mono Basin area. Wildfires are a natural part of the environment in which the sage-grouse has evolved and persisted. Due to the changes in fire regimes described, wildfire remains a potential threat to sage-grouse in the Mono Basin area. However, neither the petitioners, nor our files, provide substantial scientific or commercial information that indicates wildfire poses a substantial risk of present or threatened destruction, modification, or curtailment of the habitat or range of the greater sage-grouse in the Mono Basin area to such an extent as to indicate listing may be warranted.

Summary for Factor A

Habitat loss and modification for sage-grouse has occurred in the Mono Basin area in the past as a result of many of the situations and actions described above. However, the question being addressed in Factor A is the present or future, not the past. Our evaluation (above) shows that the 2001 and 2005 petitions, and information in our files, do not present substantial information that indicates listing is warranted under Factor A in relation to any of the individual activities described in the petitions. Further, neither the petitions nor information in our files present substantial information that collectively these actions indicate that listing is warranted under Factor A.

In summary, we evaluated the threats cited in both petitions. We find that the petitions and other information in our files do not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to the present or threatened destruction, modification, or curtailment of sage-grouse habitat or range.

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

The November 2005 petition asserts that given the declines in sage-grouse populations across the West, there are many concerns about the possible impacts of continued sport hunting on this species. The petition further states that the impacts of hunting may disproportionately affect small and isolated populations of sage-grouse. The petitioners also claim that hunting in the South Mono and Bodie PMUs could suppress local populations and jeopardize the Mono Basin area sage-grouse rangewide. The petitioners cite the following information to support their contention that hunting is a threat to Mono Basin area sage-grouse. Connelly *et al.* (2004) reviewed the impacts of hunting on sage-grouse populations. Autenrieth (1981) assessed hunting of sage-grouse and stated that harvest rates should be more conservative in xeric (dry) areas close to urban centers than in more mesic (moist) areas. Connelly *et al.* (2003) studied sage-grouse response to hunting and reported that: Areas open to hunting had lower rates of increase than did areas with no hunting; both moderate and restricted hunting seasons slowed population recovery; and populations in low elevation habitats close to urban centers, and isolated due to habitat fragmentation, may be less able to withstand a harvest rate that would not affect populations in more extensive, contiguous, remote, or mesic areas. The petitioners also cited Gibson (1998), who analyzed the effect of hunting sage-grouse on two populations in the Mono Basin area and found that for the Long Valley area, which was characterized as an isolated population, hunting mortality could depress and hold population levels well below the carrying capacity. In contrast, for another local population that was contiguous with other sage-grouse local populations in Nevada, Gibson (1998) found that population level was not related to hunting mortality. The petition states that Gibson (2001) later concluded that: The Long Valley population of sage-grouse is heavily impacted by hunting; changes in population size in this area have been driven by CDFG hunting regulations over the past 40 years; and despite reduced permit numbers over the past 10 years, this population has not rebounded like it did when the season was closed for several years each in the 1960s and 1980s. The petition cites the Bi-State Plan (2004) to state that for the Bodie PMU, direct mortality of sage-grouse from hunting is a potentially significant risk, and that during a closure of the hunting season in Mono County the population increased but then declined after the season was reopened.

The December 2001 petition also identified hunting as a threat to Mono Basin area sage-grouse. The December 2001 petition states that roads and the use of off-road vehicles greatly increase the level of poaching, and that hunting seasons for other upland game birds expose sage-grouse to mortality when the areas open to hunting overlap with sage-grouse range, as they may be misidentified and shot. The petition also asserts that falconry, bird watching, and scientific study disturb or stress

sage-grouse. However, that petition did not provide any additional information beyond that presented in the November 2005 petition that was substantial.

The effect of harvest on greater sage-grouse has been assessed across the range of the species (Connelly *et al.* 2004, pp. 9–1 to 9–6). Some negative effects have been documented to particular populations of sage grouse, but Connelly *et al.* (2004, p. 9–6) conclude that no studies have demonstrated that hunting is a primary cause of reduced numbers of greater sage-grouse. The only known assessment of hunting effects specific to the Mono Basin area is the analysis by Gibson (2001) for the Bodie Hills and Long Valley lek complexes. The assessment by Gibson (2001) indicated that populations in the Long Valley area were depressed by hunting for the period of years examined, but the Bodie Hills populations were not. However, Gibson's analysis covered a 45-year period (Gibson 1998), and CDFG has significantly changed hunting seasons for sage-grouse in the Mono Basin area over this time period, as described below.

Prior to 1983, there was no limit on hunting permits in the Mono Basin area, then the season was closed from 1983 to 1986 (Bi-State Plan 2004, pp. 73–74). CDFG instituted a permit system in 1987 when the season was re-opened, and issued hundreds of permits each year until 1998 when permit numbers were reduced significantly over what they had been during the period of 1987–1997 (Bi-State Plan 2004, pp. 74–75). From 1998 to the present, the number of hunting permits issued by CDFG has ranged from 10 to 35 per year for the two hunt units (the North Mono Hunt Area in the Bodie Hills portion of the Bodie PMU, and the South Mono Hunt Area in the Long Valley part of the South Mono PMU) open to hunting in the California portion of the Mono Basin area (Bi-State Plan 2004, p. 173). CDFG has concluded that the removal of individual animals from resident game bird populations statewide (including sage-grouse) will not significantly reduce those populations and will therefore not have a significant environmental impact on resident game birds (CDFG 2002, p. 7).

Hunting (gun) has been closed in the Nevada portion of the Mono Basin area since 1999 (Greater Sage-Grouse Conservation Plan for Nevada and Eastern California 2004, p. 108).

Regarding possible effects of bird watching at leks or from scientific studies of sage-grouse, neither CDFG nor NDOW had any specific information about how these activities may affect birds in the Mono Basin area. Casazza *et al.* (2005, p. 10) indicate that in two years of study of radio-marked sage-grouse, the deaths of only 3 birds was attributed to handling of the birds by researchers. Thus, mortality related to scientific studies of sage-grouse in the Mono Basin area is negligible.

The petitions provided information regarding the impacts of hunting for a limited part of the Mono Basin area. However, as described above the extent of hunting of sage-grouse in the Mono Basin area is quite limited. The petitions did not provide substantial information, nor did our files contain information, indicating that the extent or magnitude of hunting and other potential overutilization factors are significant threats to this sage-grouse population such that the requested listing action may be warranted.

C. Disease or Predation

The November 2005 petition asserts that West Nile virus is a threat to Mono Basin area sage-grouse. The petitioners cite Naugle *et al.* (2004) as stating ''If survival in our marked sample is representative of broader impacts of West Nile virus, the virus may be an important new stressor on sage-grouse populations.'' They further quote Naugle *et al.* (2004) as stating, ''Survival of females has been shown to be limiting in sage-grouse populations and declines due to West Nile virus occurred in late summer when survival typically is high.'' Additionally they cite Naugle *et al.* (2004) as stating, ''Of immediate concern are the potential consequences of West Nile virus for small populations * * * of greater sage-grouse in California,'' and ''Stochastic events such as disease exacerbate risk of extinction due to the combined effect of demographic stochasticity, deterministic stressors, and inbreeding depression in small, fragmented populations. Moreover, because small or isolated populations generally show reduced genetic variation, they are less likely to include individuals resistant to emerging infectious disease.'' The petition further cites Oyler-McCance *et al.* (2005) as stating, ''Populations with relatively low levels of genetic diversity can suffer from inbreeding effects and can be more susceptible to parasitic agents and disease.'' The petitioners cite Casazza *et al.* (2005) in stating that two birds in the Bodie PMU and one in the Desert Creek-Fales PMU have been killed by West Nile virus. The petition also asserts that West Nile virus could eliminate entire populations in the near future because they are small and isolated, which makes them more susceptible to disease.

The December 2001 petition also indicates that disease and parasites could cause local declines in sage-grouse populations. The petition discusses losses in sage-grouse populations due to coccidiosis. It also states that numerous parasites are associated with sage-grouse, including tapeworms, protozoans, and ticks. The petitioner states that other diseases such as salmonellosis, botulism, aspergillosis, avian tuberculosis, and pasturellosis affect sage grouse. The petitioner claims that disease outbreaks need not kill or even cause physiologic effects in individual birds to reduce population viability. The petition cites Boyce (1990) in stating that even mild malaria outbreaks can affect reproduction because male sage-grouse infected with malaria attend leks significantly less frequently during the mating season. Finally, the petition claims that the introduction of exotic game birds in an area to provide hunting opportunities carries a substantial risk of disease and parasite spread to sage-grouse.

The November 2005 petition states that there are many studies that correlate predation of sage-grouse to reduced and degraded habitat. The petitioners cite a BLM-Bishop Field Office source in stating, ''56% of monitored sage grouse leks were lost from predation in the Long Valley in 2003, despite a high nest initiation rate.'' The petition also indicates that poor habitat quality may have been the causative factor with regard to these losses. Petitioners also cite work by Casazza *et al.* (2005, p. 10) in stating, ''recent research documented that predators killed 55 of 136 radio-collared sage-grouse in the Mono Basin area in 2003 and 2004.'' Also, petitioners quoted the Bi-State Plan as stating that ''steep declines in the sage-grouse population for any reason. * * * could render the population vulnerable to predation impacts'' (Bi-State Plan 2004, p. 77).

The December 2001 petition also cited predation as a threat to sage-grouse. However, this petition did not provide additional information beyond what was provided in the November 2005 petition.

West Nile virus was first diagnosed in greater sage-grouse in 2003 (January 12, 2005, **Federal Register**, p. 2269). Data from four studies in the eastern half of the greater sage-grouse range (Alberta, Montana, and Wyoming) showed survival in these populations declined 25 percent in July and August as a result of the West Nile virus infection (Naugle *et al.* 2004, p. 709). Populations of greater sage-grouse not affected by West Nile virus showed no similar decline.

However, the Naugle *et al.* (2004) study did not include any sage-grouse from the Mono Basin area, and even in the region where the Naugle *et al.* (2004) study was conducted, lek counts in 2004 indicated that regional sage-grouse populations did not decline. This suggests that the initial effects of West Nile virus were localized (January 12, 2005, **Federal Register**, p. 2270) and did not have a substantial effect on local populations. As cited by the petitioners, Casazza *et al.* (2005, p. 10) documented the loss of three sage-grouse to West Nile virus in the Mono Basin area. However, this is very minor and localized mortality and there is no information presented by the petitions, nor is there information in our files, that West Nile virus is a major factor contributing to mortality of sage-grouse in the Mono Basin area.

Greater sage-grouse host a variety of potentially pathogenic organisms. However, there have been few systematic surveys for parasites and infectious diseases completed for greater sage-grouse (Connelly *et al.*, 2004, p. 10–3). The disease coccidiosis, which is caused by the protozoan *Eimeria* spp., has been documented to cause sage-grouse mortalities (Connelly *et al.*, 2004, p. 10–4). However, no cases of sage-grouse mortality resulting from coccidiosis have been documented since the early 1960s (Connelly *et al.*, 2004, p. 10–4). Although tapeworms are known to parasitize sage-grouse, the grouse remain in good physical condition (Connelly *et al.*, 2004; p. 10–5).

Greater sage-grouse host many external parasites, including lice, ticks, and dipterans (midges, flies, mosquitoes, and keds) (Connelly *et al.*, 2004, pp. 10–6 to 10–7). Some studies have suggested that lice infestations can affect sage-grouse mate selection (Boyce 1990, p. 266), but they have not been shown to significantly affect the status of sage-grouse populations (Connelly *et al.* 2004, p. 10–6). Connelly *et al.* (2004, p. 10–7) stated that the presence of ticks is not a threat to sage-grouse populations.

A variety of bacterial, fungal, and viral diseases are known to infect greater sage-grouse (Connelly *et al.* 2004, p. 10–7). However, in relation to the diseases cited by the 2001 petition, salmonellosis is not an important disease of wild birds, botulism is not considered a significant threat because the potential for exposure is low, there is no evidence to suggest that aspergillosis plays a significant role in sage-grouse ecology, and avian tuberculosis has not been documented in sage-grouse and thus is not considered a significant threat (Connelly *et al.* 2004, pp. 10–7 to 10–11). Avian malaria has been documented to affect male reproductive performance on sage-grouse leks (Boyce 1990, p. 265); however, the petitions and the information available in our files do not provide evidence that this disease affects sage-grouse populations in the Mono Basin area.

Regarding the introduction of exotic game birds for state hunting programs, we acknowledge that it may be possible for diseases carried by exotic birds to infect native sage-grouse populations. However, neither the December 2001 petition, nor information available to us in our files, provides evidence that exotic game bird introductions threaten sage-grouse populations in the Mono Basin area.

Predation is the most commonly identified cause of direct mortality for sage-grouse (Schroeder *et al.* 1999, p. 14; Connelly *et al.* 2000b, p. 228). The November 2005 petition states that many studies have linked predation of sage-grouse to degraded habitat. This relationship is confirmed by the literature (Schroeder and Baydack, p. 28; Connelly *et al.* 2004, pp. 10–2 and 10–3). However, the petitioners' statement that ''56 percent of monitored sage-grouse leks were lost from predation in Long Valley in 2003'' is inaccurate. This statement is based on a table comparing nest initiation rates, nest success, renesting success, nest predation rate, and other nesting parameters from Long Valley with those for the Bodie Hills (BLM-Bishop Field Office, undated). The statement in the November 2005 petition should have read, ''56 percent of monitored sage-grouse nests were lost from predation in Long Valley in 2003.'' This translates to a nest success of 44 percent for monitored nests in Long Valley, which is well within the range of nest success from across the range of the species, 14.5 to 86.1 percent, as summarized for a variety of studies in a variety of states and one province by Connelly *et al.* (2004, p. 3–21).

Annual mortality of breeding-age sage-grouse varies from 55 to 75 percent for females and 38 to 60 percent for males (Schroeder and Baydack 2001, p. 25); therefore the statement in the November 2005 petition ''that predators killed 55 of 136 radio-collared sage-grouse in the Mono Basin area in 2003 and 2004,'' although accurate (Casazza *et al.* 2005, p. 10), is misleading. Similar to the nest success rate for Long Valley, the loss of approximately 40 percent of the radio-collared sage-grouse to predators is well within the normal range of annual mortality for the species.

The 2005 petition statement that ''steep declines in the sage-grouse population for any reason * * * could render the population vulnerable to predation impacts'' was taken out of context. The statement only applies to the Bodie PMU and not the Bi-State area as a whole (Bi-State Plan 2004, p. 77). Additionally, the Bodie PMU discussion (Bi-State Plan 2004, p. 77) also stated that predation is not known to be a significant limiting factor in the Bodie PMU, and few studies have identified predation as primary factor limiting sage-grouse populations elsewhere.

In summary, neither the petitioners, nor our files, provide substantial information to document the extent or magnitude of the present or future threat of disease or predation to sage-grouse in the Mono Basin area. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that listing of the Mono Basin area sage-grouse may be warranted due to disease or predation.

D. Inadequacy of Existing Regulatory Mechanisms

The November 2005 petition asserts that no plan or agreement has been drafted that contains adequate regulatory mechanisms to prevent further decline of Mono Basin area sage-grouse and avoid listing the species. The petition discusses Candidate Conservation Agreements (CCAs) and references a 2001 application by CDFG to the Service to acquire funding for developing a CCA for sage-grouse in Mono County, and asserts that the Service awarded the funding but the CCA was not developed.

The November 2005 petition discusses the Bi-State Plan (2004) and acknowledges it is a component of the *Greater Sage-Grouse Conservation Plan for the Bi-State Plan Area of Nevada and Eastern California.* Petitioners reference the six goals and objectives of the Bi-State Plan (2004) and indicate they are an excellent starting point but that the Bi-State Plan will not meet them. The petitioners contend that the Bi-State Plan (2004) only seeks to maintain current populations of sage-grouse in the Bi-State planning area and that there is no discussion of restoring historic sage-grouse numbers or habitat in the area.

The 2005 petition cites the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (March 28, 2003, 68 FR 15100) and lists the criteria under the policy regarding the certainty that a conservation effort will be implemented and the certainty that the conservation effort will be effective. According to the petitioners,

the Bi-State Plan (2004) does not contain adequate regulatory mechanisms that meet PECE policy criteria to avoid listing the Mono Basin area sage-grouse under the ESA. They further contend that the Bi-State Plan's (2004) management prescriptions are voluntary, dependent on the cooperation and participation of interested parties and agencies, and may be altered or abandoned at any time. Also, there is no penalty for non-compliance with the Plan and no prohibition against activity that will harm sage-grouse or their habitat. The petitioners contend that the Service cannot rely on voluntary conservation efforts, or on the promise of future conservation efforts, by Federal and State agencies and private parties to delay listing the Mono Basin area sage-grouse under the ESA. From their review of the Bi-State Plan (2004), the petitioners conclude that often action items were not included to address risks, that the action items are voluntary and lack funding to complete, that regulatory mechanisms are lacking, and that often the actions identified do not conserve sage-grouse.

The petitioners cite a Service review of the Bi-State Plan (USFWS 2004) in which we evaluated the conservation measures proposed in the Plan pursuant to PECE. In citing that review, petitioners state the Service found that 1 of the 30 individual conservation efforts in the Bi-State Plan fully meets PECE and the other 29 do not. Petitioners conclude that if the Bi-State Plan (2004) does not meet the Service's PECE policy (March 28, 2003, 68 FR 15100), then adequate regulatory mechanisms are not in place to conserve the sage-grouse in the Mono Basin area.

Finally, the 2005 petition references the BLM-Bishop Field Office Resource Management Plan (BLM-Bishop Field Office 1993) and asserts that sage-grouse have continued to struggle since the Resource Management Plan was adopted in 1993. The petitioners suggest that a possible reason for suppressed sage-grouse populations is the small management buffers recommended by the Resource Management Plan for certain activities within 0.4 to 0.5 km (0.25 to 0.33 mi) of active leks.

The 2001 petition contends that existing regulatory mechanisms are virtually non-existent and existing management is inadequate to conserve the sage-grouse. This petition contends that Federal laws such as NEPA, National Forest Management Act, Federal Lands Policy and Management Act, and others do not provide for sage-grouse conservation. The petitioner also reviewed management on BLM lands and concluded that BLM has seriously mismanaged public lands; that BLM does not adequately monitor, plan, or measure sage-grouse populations or habitat needed to restore the species; and that the Service cannot rely on BLM to follow Federal environmental laws to conserve sage-grouse. This petition also provided a review of management on USFS lands and concluded that the agency is not giving adequate attention to sage-grouse on National Forests or National Grasslands. Management of a National Guard training area, Department of Energy lands, and National Park Service lands were also included in the petition, which found shortcomings in the management of all these federal lands with regard to sage-grouse. The petitioner also reviewed management of sage-grouse by the Service and asserts that the Service has mismanaged both its ESA duties, including listing responsibilities, and the lands in the National Wildlife Refuge System. The petition also asserts that management of the Conservation Reserve Program (CRP) of the U.S. Department of Agriculture has failed to halt severe declines in sage-grouse populations to date.

At the State level, the petition assessed management of sage-grouse by the States and asserts they have a poor record of conserving the species. Regarding State management, the petition cites the general lack of conservation plans for sage-grouse and indicates that those which have been completed are not regulatory mechanisms in any sense and do not assure funding for conservation actions. Finally, the petition provided an assessment of management by private parties and concluded that, aside from hunting seasons, there are no regulatory mechanisms to protect sage-grouse on private lands.

We concur that the Service did provide funding to CDFG for development of a CCA for sage-grouse in Mono County, and to our knowledge this CCA has not yet been completed. However, a CCA is not essential to providing adequate regulatory mechanisms. Regarding the Bi-State Plan (2004), we agree that it is focused on maintaining existing breeding population in the Bi-State area (Bi-State Plan 2004, p. 186). However, there is no apparent need to return sage-grouse populations and habitat in the Mono Basin area to historic levels in order to preclude the need for listing the species as threatened or endangered. When populations and habitat are at less than historic levels, it does not mean a species is threatened or endangered as defined by the Act. Thus, the fact that the Bi-State Plan does not prescribe restoring historic sage-grouse numbers or range does not mean the Plan is inadequate, nor does it mean that existing regulatory mechanisms are inadequate.

We agree that the recommended actions in the Bi-State Plan are voluntary and depend on the cooperation and participation of interested parties and agencies, and that the Bi-State Plan does not include any prohibitions against actions that harm sage-grouse or their habitat. The Service did review the Bi-State Plan as part of our rangewide status review for greater sage-grouse (January 12, 2005, 70 FR 2244). In that review, we evaluated formalized conservation efforts that have not been implemented or have not demonstrated effectiveness, to determine if they met the standard in PECE. In accordance with PECE, a conservation effort can contribute to a determination that listing is not necessary if it is found to be sufficiently certain to be implemented and effective so as to have contributed to the elimination or adequate reduction of one or more threats to the species. (March 28, 2003, **Federal Register**, p. 15111). The petition correctly states that the Service found that 1 of 30 conservation efforts included in the Bi-State Plan fully met standard in PECE (USFWS 2004, p. 4). This does not, however, mean that regulatory mechanisms are inadequate. The fact that conservation efforts in the plan are voluntary does not mean that further regulatory mechanisms are necessary to conserve the sage-grouse in the Mono Basin area, nor does it mean that the actions it recommends to conserve sage-grouse will fail to be implemented and effective. Further, PECE applies to determining that a conservation effort(s) is sufficiently certain to be implemented and effective so as to have contributed to the elimination or adequate reduction of one or more threats to the species identified through the threats analysis (March 28, 2003, **Federal Register**, p. 15115); PECE is not applicable when such threats are not documented to exist.

In regard to the BLM-Bishop Resource Management Plan, although the petitioners assert that management buffers and seasonal restrictions that BLM imposes on land use activities are insufficient to conserve sage-grouse, they do not provide information that documents how this impacts sage-grouse. We note also that BLM resource management plans are guided by direction in the Federal Land Policy and Management Act (FLPMA) and associated regulations, BLM's Special

Status Species Management Policy, the National BLM Sage-Grouse Habitat Conservation Strategy, and Regulations on Grazing Administration Exclusive of Alaska (January 12, 2006, FR p. 2272–2274.

The 2001 petition provides many citations to support the petitioners' contention that existing regulatory mechanisms are inadequate and threaten Mono Basin area sage-grouse. We cannot validate the substantiality of the petitioners' claims concerning the inadequacy of regulatory mechanisms because the petitioners did not provide copies of these citations and thus we cannot verify the quality and validity of the citations, whether the information was cited correctly, or whether the information directly relates to the status of sage-grouse in the Mono Basin area. We note that most of the information in the petition regarding this factor is not specific to the Mono Basin area. Specifically, most of the discussion in the 2001 petition regarding BLM and USFS lands was not specific to the Mono Basin area. Further, there are no National Guard training areas in the Mono Basin area, and the only U.S. Department of Defense lands in the area are the Hawthorne Army Depot, an area that provides some of the best remaining habitat for sage-grouse, as discussed above. There are no National Parks or National Wildlife Refuges in any of the PMUs in the Mono Basin area, and we are unaware of any private lands in the area that are enrolled in the CRP program. Thus, none of the assertions in the 2001 petition regarding these lands are relevant. The 2001 petition indicated that California and Nevada had not yet completed conservation plans for sage-grouse, but this is no longer the case for the Mono Basin area, due to completion of the *Greater Sage-Grouse Conservation Plan for the Bi-State Plan Area of Nevada and Eastern California* and its component, the Bi-State Plan (2004).

As discussed under Factor B, above, there are only two areas where sage-grouse are hunted in the Mono Basin area and the harvest of birds in these areas is closely regulated by CDFG such that it has determined that there is no significant environmental impact on this game bird (CDFG 2002, p. 7). Also, 89 percent of the lands in the Mono Basin area are public lands managed by BLM and USFS under federal laws such as FLPMA, the National Forest Management Act, and NEPA, along with other related agency policies (January 12, 2005, **Federal Register**, pp. 2272–2276). Neither the petitions, nor our files, provide substantial scientific or commercial information indicating that the inadequacy of existing regulatory mechanisms is presently a threat to Mono Basin area sage-grouse such that the petitioned action may be warranted.

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

Off-Road Vehicle Use

The November 2005 petition states that off-road vehicles are a threat to a number of sage-grouse populations in the Mono Basin area. Regarding the Bodie PMU, the petition quotes the Bi-State Plan (2004) as stating that ''population impacts of motorized recreation include disturbance, displacement, and direct mortality from vehicle collisions'' and that recreation in this PMU ''is characterized as a past, current, and future risk to multiple birds and multiple sites.'' It also cites the South Mono PMU section of the Bi-State Plan (2004) in stating that recreational activities are affecting multiple birds on multiple sites year round and increased urbanization threatens to increase this risk. Petitioners also quote a portion of the Pine Nut PMU section of the Bi-State Plan (2004), which states that ''unrestricted road access throughout the Pine Nut PMU provides the potential for increased human presence in critical habitats during critical times of the year,'' and ''people particularly affect nesting, early brood, and late brood habitat during spring through fall where critical habitats are easily accessed by vehicles [and] increased human presence disrupts daily activities for individual birds and broods.'' The petition also asserts that another threat in the Pine Nut PMU is an off-road vehicle race that goes through sage-grouse brood habitat and affects birds by direct mortality or by disturbances that break up broods and cause chick mortality. Finally, the petitioners cite Robertson and Bushman (2001) in asserting that BLM is currently considering recommendations to develop new off-road facilities within sage-grouse habitat.

The December 2001 petition also cited off road vehicles as a threat to sage-grouse. However, this petition did not provide additional information beyond what was provided in the November 2005 petition.

We are not aware of any published studies concerning recreational effects on sage-grouse, although recreation could disturb sage-grouse on leks and in nesting areas (January 12, 2005, **Federal Register**, p. 2278). Also, we are not aware of any scientific reports that document direct mortality of sage-grouse through collision with off-road vehicles (January 12, 2005, **Federal Register**, p. 2278). Off-road vehicle use could have indirect impacts to sage-grouse habitat; this type of activity generally is known to reduce sagebrush canopy cover through repeated trips in an area, increased sediment production, and decreased soil infiltration rates (January 12, 2005, **Federal Register**, p. 2278).

The Bi-State Plan discusses off-road vehicles as a risk factor in the Pine Nut PMU and the Mount Grant PMU (Bi-State Plan 2004, p. 27 and pp. 137–138, respectively). However, for the Bodie and South Mono PMUs, the Bi-State Plan (2004, pp. 91–92 and pp. 170–171 respectively) discusses off-road vehicles in the context of all types of recreational activities (motorized and non-motorized). For the Pine Nut PMU, the Bi-State Plan (2004, p. 24) indicates concerns about unrestricted road access, including increased human presence in critical habitats in critical times of the year, disruption of daily activities for individual birds and broods, and existing law enforcement limitations. The Pine Nut PMU section of the Bi-State Plan also mentions off-road vehicle races, which could impact individual and multiple birds by direct mortality or disturbance (Bi-State Plan 2004, p. 27). However, the Bi-State Plan (2004, p. 27) does not indicate that this is a major risk for the Pine Nut PMU. The off-road vehicle discussion for the Mount Grant PMU states that off-road vehicle use is restricted to designated routes within this PMU, minimizing any risks to birds in this PMU. However, the Bi-State Plan (2004, p. 137) continues to state that some off-road vehicle use is on undesignated routes within the Mount Grant PMU, causing damage to meadows that provide potential habitat for sage-grouse. For the Bodie PMU, the Bi-State Plan considered population impacts of motorized recreation, including disturbance, displacement, and direct mortality (Bi-State Plan 2004, p. 91), but the statement that recreation is a past, current, and future risk to multiple birds and multiple sites refers to all types of recreation, not just off-road vehicles (Bi-State Plan 2004, p. 91). The Bi-State Plan states that the prospect of increased motorized recreational use is a concern, but it does not indicate that this factor is a major threat to sage-grouse in the Bodie PMU (Bi-State Plan 2004, p. 92). In the South Mono PMU, the Bi-State Plan (2004, p. 170) states that recreational activities are affecting multiple birds on multiple sites year round, but this statement refers to all types of recreational

activities combined, not just off-road vehicle use alone.

Robertson and Bushman (2001) provide limited recommendations to BLM for managing existing recreational uses (motorized and non-motorized) in the wildland urban interface zone east of Carson City, Minden, and Gardnerville, including improvements at existing staging areas, creation of new staging areas, and improving management of existing recreational activities at access points to Federal land that are already being used. We do not know whether BLM has implemented the recommendations in the report. Using Robertson and Bushman (2001), we mapped the locations of the recreational areas described in the report. While there may be some sagebrush habitat associated with these recreational areas, the majority (80 percent) of the known lek areas in the Pine Nut PMU are at least 17.6 km (11 mi) east of these areas, and the other few remaining leks in this PMU are a minimum of 11.2 km (7 mi) southeast of these areas. Hence, sage-grouse do not currently use sagebrush habitat in the near vicinity of the recreation areas discussed in Robertson and Bushman (2001).

In summary, the Bi-State Plan (2004) discusses the effects of recreational activities and off-road vehicles. Most of the discussions in the Bi-State Plan relate to only the potential for off-road vehicles to disturb, disrupt, or cause mortalities to sage-grouse, with relatively few specific examples of impacts to the species in the area, and all of these examples involved indirect effects. Neither the petitions, nor our files, provided information that documents the extent, magnitude, or immediacy of the threat of off-road vehicles to sage-grouse, or their habitat, within the Mono Basin area. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that listing of the Mono Basin area sage-grouse may be warranted due to the present or threatened effects to Mono Basin area sage-grouse, or their habitat, due to off-road vehicle use.

Human Disturbance

The November 2005 petition cites the Bi-State Plan (2004) in asserting that human disturbance is affecting multiple birds on multiple sites in the Desert Creek-Fales PMU.

Other than citing the Bi-State Plan (2004) with regard to the Desert Creek-Fales PMU, the November 2005 petition does not specify the types of human disturbances that affect sage-grouse or the extent of the impacts. The Desert Creek-Fales PMU part of the Bi-State Plan includes human disturbance as a risk factor for sage-grouse, stating that some sage-grouse habitats in this PMU are accessible for public recreation year round or are adjacent to recently developed housing areas, but it does not indicate this is a major threat to sage-grouse in this PMU (Bi-State Plan 2004, p. 51). Neither the petitions, nor our files, present information that documents the extent, magnitude, or immediacy of human disturbance as a threat to sage-grouse for the Mono Basin area. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that listing of the Mono Basin area sage-grouse may be warranted due to human disturbance.

Insecticides

The November 2005 petition lists insecticides as a factor affecting sage-grouse habitat in the Mono Basin area. The petitioners cite Beck and Mitchell (2000) as recommending against application of insecticides to sage-grouse summer habitat, a Johnson and Boyce (1990) finding that insects are essential to chick development and that they are required by chicks of all ages for normal development, and a report by Blus *et al.* (1989) that in southeastern Idaho there was a sage-grouse die-off after organophosphorus insecticides were applied to cultivated crops.

None of the studies cited by the petitioners are specific to the Mono Basin area. In the Bi-State Plan the only mention of this as a threat factor was for the White Mountains PMU risk assessment, which indicates that accidental exposure to pesticides and herbicides can kill sage-grouse, but that these compounds are not generally used in this area because the human population and agricultural activities are limited (Bi-State Plan 2004, p. 112). Neither the petitions, nor our files, provide any specific information about how insecticides impact sage-grouse in the Mono Basin area. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that listing Mono Basin area sage-grouse may be warranted due to insecticide use.

Other Threats

The December 2001 petition cited other threats to sage-grouse in the Mono Basin area, including: Noise, acoustic interference, disturbance, oil and gas operations, weather effects, climate change and global warming, ozone layer depletion, air pollution, acid precipitation, effects of chemical and radiological agents, natural factors and environmental variation, habitat recovery time, and genetic introgression.

The December 2001 petition cited numerous sources to support the contention that these other threats pose a threat to Mono Basin sage-grouse. The information cited is generic in nature and was not specific to sage-grouse or not specific to the Mono Basin or Mono Basin sage-grouse. The petitioner did not provide copies of these citations and hence we cannot validate the substantiality of the petitioner's claims regarding these threats, nor do our files contain information to validate any of the other threats cited by the petitioner. We cannot verify the quality and validity of the citations, or whether the information was correctly cited. These other threats cited by the petition are speculative in nature. The 2001 petition does not provide information that documents the extent, magnitude, or immediacy of these other threats on sage-grouse throughout the Mono Basin area.

In summary, neither the petition nor our files contain substantial scientific or commercial information that indicating other natural or man-made factors threaten the sage-grouse population in the Mono Basin area such that the petitioned action may be warranted.

Finding

We reviewed the petitions and supporting information provided by the petitioners and evaluated that information to determine whether the sources cited in the petitions support the claims made in the petitions. Based on this review and evaluation, we find the petitions do not present substantial scientific or commercial information that listing the Mono Basin area sage-grouse as threatened or endangered may be warranted at this time. We note that in making this finding we did not use any of the new information received from the States or USGS–BRD subsequent to our receipt of the 2005 petition; if we had used that new information, we would have reached the same conclusion. We encourage interested parties to continue gathering data that will assist with the conservation and monitoring of sage-grouse in the Mono Basin area. Information regarding the Mono Basin area sage-grouse may be submitted to the Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES** section), at any time.

References Cited

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

Author

The primary author of this notice is Kevin Kritz, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **ADDRESSES**).

Authority

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

Dated: December 7, 2006.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E6–21135 Filed 12–18–06; 8:45 am]

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Federal Register

Tuesday,
December 19, 2006

Part V

Environmental Protection Agency

40 CFR Part 6

Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 6

[EPA–HQ–OECA–2005–0062; FRL–8257–1]

RIN 2020–AA42

Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing amendments to its procedures for implementing the requirements of the National Environmental Policy Act of 1969 (NEPA). This proposed rule also includes minor, technical amendments to the Agency's procedures for implementing Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions.''

This proposed rule would amend EPA's NEPA implementing procedures by: consolidating and standardizing the procedural provisions and requirements of the Agency's environmental review process under NEPA; clarifying the general procedures associated with categorical exclusions, consolidating the categories of actions subject to categorical exclusion, amending existing and adding new categorical exclusions, and consolidating and amending existing and adding new extraordinary circumstances; consolidating and amending the listing of actions that generally require an environmental impact statement; clarifying the procedural requirements for consideration of applicable environmental review laws and executive orders; and incorporating other proposed revisions consistent with the Council on Environmental Quality's regulations (CEQ's Regulations).

DATES: Comments must be received on or before February 20, 2007. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before January 18, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2005–0062, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: hargrove.robert@epa.gov.*
- *Fax:* 202–564–0072, Attention: Robert Hargrove.
- *Mail:* EPA–HQ–OECA–2005–0062, Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.
- *Hand Delivery:* Public Reading Room, Room B102, Enforcement and Compliance Docket and Information Center, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2005–0062. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov*, or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Public Reading Room, Room B102, Enforcement and Compliance Docket and Information Center, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OECA Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hargrove; NEPA Compliance Division; Office of Federal Activities (Mailcode 2252A); Environmental Protection Agency; 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–7157; fax number: (202) 564–0072; e-mail address: *hargrove.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: This preamble is organized according to the following outline:

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  A. Does This Proposed Rule Apply to Me?
  B. Tips for Preparing Your Comments
II. Introduction
  A. Statutory authority
  B. Background
  C. Exemptions From NEPA for Certain EPA Actions
  D. EPA's Voluntary NEPA Policy and Procedures
III. Purpose and Policy
IV. Proposed Changes to the Regulations and Objectives of These Proposed Changes
  A. Proposed Revision to the Title for EPA's Regulations at Part 6
B. Restructuring and Standardizing EPA's NEPA Implementing Regulations
  1. Consolidate and Standardize the Procedural Provisions and Requirements of the Agency's Environmental Review Process Under NEPA
  2. Clarify the General Procedures Associated With Categorical Exclusions; Consolidate the Categories of Actions Subject to Categorical Exclusion; Amend Existing and Add New Categorical Exclusions; and Consolidate and Amend Existing and Add New Extraordinary Circumstances
  3. Consolidate and Amend the Listing of Actions that Generally Require an Environmental Impact Statement

4. Clarify the Procedural Requirements for Consideration of Applicable Environmental Review Laws and Executive Orders
5. Other Proposed Revisions Consistent With the CEQ Regulations
C. Proposed amendments to EPA's Procedures for Implementing Executive Order 12114
1. Amendment to Re-Designate the Subpart for EPA's Procedures Implementing Executive Order 12114
2. Amendments to Update Office Names and Titles
3. Amendment to Reference in the Executive Order 12114 Implementing Procedures to EPA's Voluntary NEPA Policy
4. Amendment to Reference in the Executive Order 12114 Implementing Procedures to EPA's NEPA Implementing Procedures
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VI. Administrative Requirements
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
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E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution and Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does This Proposed Rule Apply to Me?

Those subject to the proposed rule include EPA employees who must comply with NEPA or Executive Order 12114, and certain grant and permit applicants who must submit environmental information documentation to EPA for their proposed projects.

EPA's Procedures for Implementing NEPA. As with EPA's current NEPA implementing regulations, compliance with the proposed regulations would be the responsibility of EPA's Responsible Officials. For applicant-proposed actions, certain procedures in the proposed NEPA regulations would require those defined in the proposed regulations as applicants (that is, grant and permit applicants) to provide environmental information for EPA's use in its environmental review process.

Currently, EPA's NEPA implementing regulations apply, by subpart, to specific types of EPA proposed actions. For example, Subpart E applies to the award of wastewater treatment construction grants under Title II of the Clean Water Act, and Subpart F applies to EPA's environmental review process for issuance of new source National Pollutant Discharge Elimination System (NPDES) permits. The proposed regulations would consolidate and standardize the environmental review process applicable to all EPA proposed actions subject to NEPA, including those actions now specifically addressed in the current regulations and other actions subject to NEPA but not specifically addressed in the current regulations (e.g., certain EPA grant awards for special projects identified in the State and Tribal Assistance Grants (STAG) account authorized by Congress through the Agency's annual Appropriations Act, including grants for the Border Environmental Cooperation Commission/Border Environmental Infrastructure Fund and Colonias grant projects). As with EPA's current regulations, the proposed regulations would supplement and be used in conjunction with the government-wide Council on Environmental Quality (CEQ) NEPA Regulations (40 CFR Parts 1500–1508).

For additional information of interest to applicants, please see Preamble IV.B.5, ''Other proposed revisions consistent with the CEQ Regulations. This section provides further information on proposed revisions that apply to applicants.

EPA's Procedures for Implementing Executive Order 12114. As with EPA's current Executive Order 12114 implementing procedures, compliance with these procedures would be the responsibility of EPA's Responsible Officials. As with the current procedures, for applicant-proposed actions, applicants may be required to provide environmental information for EPA's use in its environmental review process. EPA's Executive Order 12114 implementing procedures ensure that environmental information is available to the Agency's decision-makers and other appropriate Federal agencies and officials for proposed actions subject to Executive Order 12114.

Today's proposed rule also includes minor, technical amendments to the Agency's procedures for implementing Executive Order 12114 (42 U.S.C. 4321, note, E.O. 12114, 44 FR 1979, 3 CFR 1979, Comp., p. 356). EPA actions typically subject to Executive Order 12114 include major EPA actions that affect the environment of a foreign nation or the global commons and may include: major research or demonstration projects, ocean dumping activities carried out under section 102 of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401 *et seq.*), and major permitting or licensing of facilities by EPA (such as EPA-issued permits for hazardous waste treatment, storage, or disposal facilities under section 3005 of the Resource Conservation and Recovery Act (42 U.S.C. 6925), National Pollutant Discharge Elimination System permits under section 402 of the Clean Water Act (33 U.S.C. 1342), and prevention of significant deterioration approvals under Part C of the Clean Air Act (42 U.S.C. 7470 *et seq.*).

To determine whether your project would be subject to these procedures, you should carefully examine the applicability criteria in § 6.101 and Subpart C of the NEPA implementing procedures, and § 6.401 of the Executive Order 12114 implementing procedures in this proposed rule. If you have questions regarding the applicability of these procedures to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this Preamble.

B. Tips for Preparing Your Comments

When submitting comments, remember to:

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

(b) Follow directions for commenting according to the **ADDRESSES** section of this Preamble.

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

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

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

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

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

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

II. Introduction

A. Statutory Authority

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, establishes the federal government's national policy for protection of the environment. The Council on Environmental Quality Regulations (CEQ Regulations) at 40 CFR parts 1500 through 1508 establish procedures implementing this national policy. The CEQ Regulations (40 CFR 1505.1) require federal agencies to adopt and, as needed, revise their own NEPA implementing procedures to supplement the CEQ Regulations and to ensure their decision-making processes are consistent with NEPA.

Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions,'' (see 46 FR 3364) is the authority and basis for EPA's policy, criteria, and procedures contained in the portion of today's proposed rule entitled ''Assessing the Environmental Effects Abroad of EPA Actions.''

B. Background

The Environmental Protection Agency initially established its NEPA regulations as 40 CFR Part 6 (Part 6), Subparts A through H on April 14, 1975 (see 40 FR 16823). Subpart I was added on January 11, 1977 (see 42 FR 2450). On November 29, 1978, the Council on Environmental Quality (CEQ) promulgated regulations establishing uniform federal procedures for implementing NEPA (see 43 FR 55978). Section 103 of NEPA and the CEQ Regulations require federal agencies to adopt appropriate NEPA procedures to supplement those regulations. As a result, EPA amended its NEPA regulations on November 6, 1979, to make them consistent with the CEQ Regulations (see 44 FR 64177).

Under the Agency's 1979 Part 6 amendments, Subparts A through D described general NEPA procedures for preparing environmental reviews applicable to all EPA NEPA actions and established certain categorical exclusions. Subpart A contained an overview of EPA's NEPA regulations, including environmental impact statement (EIS) requirements for EPA legislative proposals and requirements for environmental information documents (EIDs) to be submitted to EPA by applicants, grantees, or permitees as required in Subparts E through I. Subpart B described the requirements for the content of an EIS prepared pursuant to Subparts E through I. Subpart C described the requirements for coordination of applicable environmental laws and certain executive orders with the environmental review procedures. It provided a brief recitation of the provisions of those laws or executive orders and EPA implementing procedures. Subpart D described the public information requirements to be undertaken in conjunction with the environmental review requirements under Subparts E through I. Subparts E through I established specific criteria for conducting environmental reviews for particular types of actions and categorical exclusions applicable to those actions. Specifically, Subpart E established NEPA environmental review procedures for the Wastewater Treatment Construction Grants Program of the Clean Water Act; Subpart F for the issuance of new source NPDES permits; Subpart G for research and development program actions; Subpart H for solid waste demonstration projects; and Subpart I for EPA actions for construction of special purpose facilities or facility renovations. EPA's ''Statement of Procedures on Floodplain Management and Wetlands Protection,'' dated January 5, 1979, was included as Appendix A to clarify the effective date and to emphasize the importance of this Statement of Procedures.

In 1981, Subpart J, ''Assessing the Environmental Effects Abroad of EPA Actions,'' was added as EPA's general policy, criteria, and procedures for implementing Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions'' (see 46 FR 3364). Executive Order 12114 does not impose NEPA compliance requirements on Federal agencies, rather it ''furthers the purpose'' of NEPA and identifies the documents, including environmental impact statements (EISs) and environmental assessments (EAs), to be used when conducting assessments under Executive Order 12114.

In 1982, the Agency revised its Part 6 NEPA regulations by removing CEQ from the consultation process on requests to segment wastewater treatment facility construction grant projects (see 47 FR 9831). In 1983, EPA revised the categorical exclusions and the criteria for not granting an exclusion, and corrected a factual error on the responsibility for preparing a final EA (see 48 FR 1012).

In 1985, the Agency promulgated procedural amendments and minor substantive amendments to its Part 6 NEPA regulations to accommodate changes in EPA's regulations for the construction grants program found at 40 CFR Part 35 (see 50 FR 26310). The modifications in the construction grants program changed the process that EPA grant recipients followed in planning and building wastewater treatment facilities. The amendments to Subpart E and related sections of the EPA NEPA regulations streamlined and clarified the criteria and process for an environmental review and for preparing an EIS, including partitioning of the review process and the public involvement requirements. These amendments also included Office name and technical changes to reflect an Agency reorganization.

In 1986, EPA amended its Part 6 NEPA regulations to clarify and streamline procedures for partitioning and re-evaluating environmental reviews, making categorical exclusion determinations, providing for public participation, and producing and distributing environmental review documents; and to make various technical changes including Office name changes due to reorganizations.

In 1991, EPA amended Subpart G of its Part 6 NEPA regulations by adding categorical exclusions and a list of projects that normally result in preparation of EAs; revising the criteria used to determine whether preparation of an EIS is required; revising the provision directing coordination, where feasible, with other EPA program reviews; and clarifying the NEPA review process for Office of Research and Development actions (see 56 FR 20541). In addition, EPA amended Subpart D by eliminating the requirement for public notice of categorical exclusion determinations for all EPA programs except the Wastewater Treatment Construction Grants Program.

In 1993, EPA amended its Part 6 NEPA regulations to address the requirement that EPA actions conform to any air quality State implementation plan, and to clarify that air pollution control requirements need to be considered when performing NEPA reviews for wastewater treatment works (see 58 FR 63214).

C. Exemptions From NEPA for Certain EPA Actions

Certain EPA actions are exempt from the procedural requirements of NEPA, including the CEQ Regulations. Congress has provided specific statutory exemptions for certain EPA actions taken under the Clean Water Act (CWA) and all EPA actions taken under the Clean Air Act (CAA). Specifically, under CWA Section 511(c)(1), EPA is exempt from preparing EISs for all actions taken under the CWA except for issuance of NPDES permits under CWA Section 402 for ''new sources'' as defined in Section 306, and for Federal financial assistance provided for assisting construction of publicly owned

treatment works under CWA Section 201 (33 U.S.C. 1371(c)). Under the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 793(c)(1)), all actions taken under the CAA are deemed not to be major federal actions significantly affecting the environment.

Further, the courts have exempted certain EPA actions from the procedural requirements of NEPA through the functional equivalence doctrine. Under the functional equivalence doctrine, courts have found EPA to be exempt from the procedural requirements of NEPA for certain actions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), the Safe Drinking Water Act (SDWA), and the Marine Protection, Research, and Sanctuaries Act (MPRSA). The courts reasoned that EPA actions under these statutes are functionally equivalent to the analysis required under NEPA because they are undertaken with full consideration of environmental impacts and opportunities for public involvement. *See, e.g., EDF* v. *EPA*, 489 F.2d 1247 (D.C. Cir. 1973) (FIFRA); *State of Alabama* v. *EPA*, 911 F. 2d 499 (11th Cir. 1990) (RCRA); *Warren County* v. *North Carolina*, 528 F. Supp. 276 (E.D. N.C. 1981) (TSCA); *Western Nebraska Resources Council* v. *U.S. EPA*, 943 F.2d 867 (8th Cir. 1991) (SDWA); *Maryland* v. *Train*, 415 F. Supp. 116 (D. Md. 1976) (MPRSA).

Agency actions exempt from the requirements of NEPA would remain exempt under this proposed rule. If a question arises regarding the applicability of the NEPA requirements to certain proposed actions, the Responsible Official should consult with the NEPA Official and the Office of General Counsel.

D. EPA's Voluntary NEPA Policy and Procedures

In 1974, EPA Administrator Russell Train determined that the Agency could voluntarily prepare EISs for certain regulatory activities that were exempt from NEPA. In 1998, Administrator Carol Browner amended this policy to permit the preparation of non-EIS NEPA documents for certain EPA regulatory actions. The Agency's current ''Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents'' (see 63 FR 58045) sets out the policy and procedures EPA uses when preparing environmental review documents under the Voluntary NEPA Policy. This proposed rule does not make any changes to the voluntary NEPA policy and procedures. However, the proposed rule can serve as a framework for the preparation of voluntary NEPA documents.

III. Purpose and Policy

This proposed rule has two purposes. The first purpose is to update and revise EPA's procedures for implementing the procedural requirements of NEPA and the CEQ Regulations by restructuring and standardizing these regulations (see Section IV below). The revised NEPA procedures would continue to be consistent with the declaration of national environmental policy as stated in Title I, Section 101(a) of NEPA (42 U.S.C. 4331(a)). Under the proposed NEPA rule, EPA's environmental review process would continue to ensure that, when required, environmental information is available and taken into account before EPA makes a finding of no significant impact or signs a Record of Decision. The NEPA environmental review process would continue to include: identification of alternatives to the proposed action, description of the affected environment, and analyses of the environmental consequences. For proposed actions subject to NEPA, EPA would continue to prepare environmental impact statements (EISs) for major federal actions significantly affecting the quality of the human environment. As part of its NEPA environmental review process, EPA also would continue to determine the applicability of other laws and executive orders early in the planning process and incorporate applicable requirements as early in the NEPA review process as possible. EPA's NEPA implementing regulations will be amended in consultation with the Council on Environmental Quality (see 40 CFR 1507.3(a)).

The second purpose of today's proposed rule is to make minor, technical amendments to Subpart D, ''Assessing the Environmental Effects Abroad of EPA Actions,'' which contains the Agency's procedures for implementing Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions.'' The scope of this portion of the proposed regulations is limited to these minor, technical changes. These minor, technical changes are described in the Preamble in Section IV.C. and include amendments to: Re-designate the subpart for EPA's procedures implementing Executive Order 12114; update office names and titles and the references to EPA's Voluntary NEPA Policy and NEPA implementing procedures; and correct cross-references and typographical errors.

IV. Proposed Changes to the Regulations and Objectives of These Proposed Changes

A. Proposed Revision to the Title for EPA's Regulations at Part 6

EPA proposes to retitle its regulations at Part 6 to clarify that the proposed rule includes two sets of Agency procedures: the Agency's procedures for implementing the National Environmental Policy Act; and the Agency's procedures for implementing Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions.'' Both sets of implementing procedures are currently, and will remain, in Part 6. However, EPA believes the proposed amended title will clarify that the procedures implementing Executive Order 12114 are not based on NEPA authority and do not impose NEPA compliance requirements on EPA.

B. Restructuring and Standardizing EPA's NEPA Implementing Regulations

Restructuring and standardizing EPA's NEPA implementing procedures will clarify that the regulations apply to all proposed actions that are subject both to EPA's control and responsibility and NEPA, including actions not specifically addressed in the current regulations (e.g., certain grants awarded for special projects identified in the STAG account authorized through the Agency's annual Appropriations Act). The proposed revisions also take into account the environmental review exemptions to NEPA established by Congress and the courts.

This proposed rule would restructure and amend EPA's NEPA implementing regulations in order to: (1) Consolidate and standardize the procedural provisions and requirements of the Agency's environmental review process under NEPA; (2) clarify the general procedures associated with categorical exclusions, consolidate the categories of actions subject to categorical exclusion, amend existing and add new categorical exclusions, and consolidate and amend existing and add new extraordinary circumstances; (3) consolidate and amend the listing of actions that generally require an EIS; (4) clarify the procedural requirements for consideration of applicable environmental review laws and executive orders; and (5) incorporate other proposed revisions consistent with the CEQ Regulations. Preamble sections IV.B.1 through 5 summarize the objectives of these proposed changes.

1. Consolidate and Standardize the Procedural Provisions and Requirements of the Agency's Environmental Review Process Under NEPA

Currently, as discussed in Section II above, EPA's NEPA implementing regulations apply, by subpart, to specific actions. The proposed regulations would consolidate the definitions and environmental review procedures in a single set of definitions and environmental review procedures applicable to all EPA proposed actions subject to NEPA.

The proposed regulations also would consolidate the notification and public participation procedures that apply to all EPA proposed actions subject to NEPA. The proposed regulations no longer require a public meeting or hearing as part of the NEPA process. However, consistent with the CEQ Regulations (40 CFR 1506.6(c)), the Agency will hold meetings and/or hearings when appropriate or in accordance with statutory requirements. This does not diminish the Agency's commitment to NEPA's requirement for full public disclosure. The proposed regulations also state the conditions for notification of and consultation with state and local governments, and federally-recognized Indian tribes (tribes) and for public participation.

2. Clarify the General Procedures Associated With Categorical Exclusions; Consolidate the Categories of Actions Subject to Categorical Exclusion; Amend Existing and Add New Categorical Exclusions; and Consolidate and Amend Existing and Add New Extraordinary Circumstances

Currently, EPA's NEPA implementing regulations include general and, by subpart, action-specific categorical exclusions and extraordinary circumstances. The proposed regulations would consolidate the categorical exclusions and extraordinary circumstances in a single location. Thus, the procedures for determining if a proposed action fits within a categorical exclusion or involves any extraordinary circumstances would be applicable to all EPA actions subject to NEPA.

The proposed regulations also propose amending existing and adding new categories of actions for categorical exclusion as discussed in Section V below, Proposed Amended and New Categories of Actions Eligible for Categorical Exclusion; Amended and New Extraordinary Circumstances; and Amended Listing of Actions that Generally Require an Environmental Impact Statement.

3. Consolidate and Amend the Listing of Actions That Generally Require an Environmental Impact Statement

Currently, some subparts of EPA's NEPA implementing regulations list proposed actions that generally require EISs, and one also lists proposed actions that generally require EAs. The proposed regulations would consolidate and amend the criteria for actions that generally require EISs. These criteria for actions that generally require EISs in the proposed regulations would be applicable to all EPA actions subject to NEPA.

4. Clarify the Procedural Requirements for Consideration of Applicable Environmental Review Laws and Executive Orders

Currently, Subpart C of EPA's NEPA implementing regulations focuses on integrating the requirements of applicable environmental laws and executive orders with environmental review requirements independent of NEPA with the Agency's NEPA environmental review procedures. Subpart C also provides a brief outline of the provisions of certain environmental laws and executive orders and EPA implementing procedures, including but not limited to: The National Historic Preservation Act (16 U.S.C. 470 *et seq.*); the Archaeological and Historic Preservation Act (16 U.S.C. 469 *et seq.*); Executive Order 11593, ''Protection and Enhancement of the Cultural Environment;'' the Historic Sites Act (16 U.S.C. 461 *et seq.*); Executive Order 11990, ''Protection of Wetlands;'' Executive Order 11988, ''Floodplain Management;'' the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*); the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*); the Wild and Scenic Rivers Act (16 U.S.C. 1274 *et seq.*); the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*); the Fish and Wildlife Coordination Act (16 U.S.C. *et seq.*); the Endangered Species Act (16 U.S.C. 1531 *et seq.*); and air quality conformity pursuant to the Clean Air Act (42 U.S.C. 7476(c) and 42 U.S.C. 7616). Appendix A provides EPA's ''Statement of Procedures on Floodplain Management and Wetlands Protection.'' The proposed NEPA regulations would remove the outlines and Appendix A, and replace them with the general procedural requirement to determine, to the fullest extent possible, the applicability of other environmental laws and executive orders early in the planning process, and to incorporate applicable requirements as early in the NEPA review process as possible. This general procedural requirement would be applicable to all EPA actions subject to NEPA. This revision also would eliminate the need to amend the regulations whenever the laws and executive orders change. Moreover, today, the environmental review laws, regulations, and executive orders are available through the Internet (for example, many executive orders are linked through CEQ's Web site on NEPAnet at: *http://ceq.eh.doe.gov/nepa/regs/executiveorders.htm*). Guidance documents have been issued by the responsible oversight agencies, CEQ, and EPA for many of these including those frequently addressed in a NEPA review. (For example, see: CEQ guidance documents available at: *http://ceq.eh.doe.gov/nepa/regs/guidance.html;* and EPA guidance such as ''Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses,'' EPA, April 1998.)

5. Other Proposed Revisions Consistent With the CEQ Regulations

Consolidate and standardize the definitions in the existing regulations. The proposed NEPA implementing regulations would consolidate and standardize the definitions in EPA's current NEPA regulations, as well as adding new definitions. Currently, EPA's NEPA implementing regulations apply, by subpart, to specific actions. The proposed regulations would consolidate the definitions in a single set of definitions applicable to all EPA actions subject to NEPA. For example, the proposed NEPA rule defines the term ''action,'' and replaces the terms ''grantee,'' ''applicant'' and ''permit applicant'' with the single defined term ''applicant.'' The current regulations define and list by title the specific EPA officials responsible for the various program and action-specific actions identified by subpart. In the proposed rule, the Responsible Official would be defined simply and without title as the EPA official responsible for compliance with NEPA for individual actions thereby precluding the need for technical change to the regulations whenever there is an Agency reorganization and/or change to the title of an organizational unit or management position. Generally, the Responsible Official is an Assistant Administrator or a Regional Administrator, and the NEPA Official is the EPA official responsible for overall review of EPA's NEPA compliance (currently the Director of the Office of Federal Activities within

the Office of Enforcement and Compliance Assurance).

Delegation of responsibilities. Currently, Subpart G of EPA's NEPA implementing regulations provides for delegation of responsibilities for carrying out the environmental review process by EPA's Office of Research and Development; other subparts are silent regarding delegation of responsibilities. In order to clarify and standardize the regulations, the proposed NEPA rule would standardize the delegation of responsibilities by stating that the NEPA-related responsibilities may be delegated to a level no lower than the Branch Chief or equivalent organizational level.

Clarify the general requirements for an environmental assessment. Consistent with the CEQ Regulations at §§ 1501.3 and 1508.9, and considering the information contained in ''The NEPA Task Force Report to the Council on Environmental Quality, Modernizing NEPA Implementation'' (September 2003), the proposed NEPA regulations would include specific elements that generally must be addressed in an EA such as the need for the proposed action, the alternatives considered, description of the affected environment, and the environmental impacts of the proposed action and the alternatives.

Consolidate and standardize the procedures that apply to applicants. Currently, EPA's NEPA implementing regulations include, by subpart, procedures applicable to certain grantees and new source NPDES permit applicants. These procedures require those grantees and permit applicants (together referred to as applicants) to submit information to the Responsible Official for use in EPA's environmental review process. The proposed NEPA regulations would consolidate and standardize these procedures in Subpart C, ''Requirements for Environmental Information Documents and Third-Party Agreements.'' These procedures would be applicable to all applicant-proposed actions subject to NEPA.

Compliance with the proposed NEPA regulations would be the responsibility of the Responsible Official. The proposed NEPA regulations require the applicant to submit an environmental information document (EID) unless the action is categorically excluded or the applicant prepares and submits a draft EA and supporting documents. As appropriate and according to the proposed procedures in Subpart C, the applicant would be able to submit information to the Responsible Official regarding the applicability of a categorical exclusion to the applicant's pending action. The Responsible Official would notify the applicant if the Responsible Official determines that the action is categorically excluded; if EPA needs additional information to support the application of a categorical exclusion; or if the submitted information does not support the application of a categorical exclusion and an EA or an EIS and supporting documents would be required for the project. The Responsible Official also would notify the applicant if an EID would not be required. Unless so notified or unless the applicant and Responsible Official implement a third-party agreement, the applicant, in consultation with the Responsible Official, would prepare an EID that is of sufficient scope to enable the Responsible Official to prepare an EA or, if necessary, an EIS.

C. Proposed Amendments to EPA's Procedures for Implementing Executive Order 12114

Today's proposed rule also includes minor, technical amendments to the Agency's procedures for implementing Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions,'' included in EPA's proposed regulations in Subpart D, ''Assessing the Environmental Effects Abroad of EPA Actions.'' These proposed amendments are described below. For this subpart, the scope of the proposal is limited to these minor, technical amendments and EPA is requesting comments only on these amendments.

1. Amendment to Re-Designate the Subpart for EPA's Procedures Implementing Executive Order 12114

Currently, EPA's procedures implementing Executive Order 12114 are in Part 6 at Subpart J. As part of the overall restructuring of Part 6, these procedures are proposed to be re-designated as Subpart D. The sections in this subpart are proposed to be re-numbered accordingly; § 6.1001 would become § 6.400, § 6.1002 would become § 6.401, § 6.1003 would become § 6.402, § 6.1004 would become § 6.403, § 6.1005 would become § 6.404, § 6.1006 would become § 6.405, and § 6.1007 would become § 6.406, respectively and in accordance with **Federal Register** numbering, in the proposed rule.

2. Amendments To Update Office Names and Titles

In 1981 when Subpart J was included in Part 6, the Office of Environmental Review (OER) housed the EPA official responsible for overall review of EPA's NEPA compliance as required by 40 CFR 1507.2(a). Today, this responsibility resides in the Office of Federal Activities (OFA). The proposed rule contains amendments to update this information. Likewise, the proposed rule also contains amendments to update other office names and titles. The following proposed office name and title amendments are identified according to the paragraph numbers in the proposed rule; *e.g.*, § 6.401(a)(5) in the proposed rule corresponds to § 6.1002(a)(5) in the current rule, § 6.403(b)(1) in the proposed rule corresponds to § 6.1004(b)(1) in the current rule, § 6.405 in the proposed rule corresponds to § 6.1006 in the current rule, and § 6.406 in the proposed rule corresponds to § 6.1007 in the current rule. In § 6.401(a)(5), ''OER'' would be amended to ''OFA''. In § 6.403(b)(1), ''The Assistant Administrator for Water and Waste Management'' would be amended to ''The Assistant Administrator for Water''. In § 6.405, ''the Director, Office of Environmental Review (OER)'' would be amended to ''the Director, Office of Federal Activities (OFA)''; ''Director Office of International Activities (OIA)'' would be amended to ''Assistant Administrator, Office of International Affairs (OIA)''; ''Director, OER'' would be amended to ''Director, OFA''; and ''Director, OIA'' would be amended to ''Assistant Administrator, OIA''. In § 6.406, paragraphs (a) through (c), ''OER'' would be amended to ''OFA''.

3. Amendment to Reference in the Executive Order 12114 Implementing Procedures to EPA's Voluntary NEPA Policy

Currently, EPA's procedures for implementing Executive Order 12114 reference EPA's Voluntary EIS Policy dated October 21, 1974. The Agency revised this policy in 1998. For this reason and to clarify the applicability of these procedures to ocean dumping activities in the global commons under section 102(a) of the MPRSA, in § 6.403(b)(1), the sentences: ''For ocean dumping site designations prescribed pursuant to section 102(c) of the MPRSA and 40 CFR part 228, EPA shall prepare an environmental impact statement consistent with the requirements of EPA's Procedures for the Voluntary Preparation of Environmental Impact Statements dated October 21, 1974 (see 30 FR 37419). Also EPA shall prepare an environmental impact statement for the establishment or revision of criteria under section 102(a) of MPRSA.'' would be amended to: ''For ocean dumping site designations prescribed pursuant to section 102(c) of the MPRSA and 40 CFR part 228, and for the establishment or revision of criteria under section

102(a) of the MPRSA, EPA shall prepare appropriate environmental documents consistent with EPA's Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents dated October 29, 1998 (see 63 FR 58045).'' This proposed amendment is identified according to the paragraph number in the proposed rule; *e.g.*, § 6.403(b)(1) in the proposed rule corresponds to § 6.1004(b)(1) in the current rule.

4. Amendment to Reference in the Executive Order 12114 Implementing Procedures to EPA's NEPA Implementing Procedures

Currently, EPA's procedures for implementing Executive Order 12114 reference § 6.506 of EPA's current NEPA implementing procedures. Because EPA proposes to restructure its NEPA implementing procedures, in § 6.403(d), ''40 CFR 6.506 details'' would be amended to ''40 CFR part 6, subparts A through C, detail''. This proposed amendment is identified according to the paragraph number in the proposed rule; e.g., § 6.403(d) in the proposed rule corresponds to § 6.1004(d) in the current rule.

5. Amendments for Correction of Cross-References and Typographical Errors

In § 6.400(a), ''the Marine Protection Research and Sanctuaries Act'' would be amended to ''the Marine Protection, Research, and Sanctuaries Act''. In § 6.401(a), ''of by EPA as set forth below:'' would be amended to ''of EPA as follows:''. In § 6.401(a)(5), ''(see § 6.1007(c)).'' would be amended to ''(see § 6.406(c)).'' In § 6.401, ''(b) [Reserved].'' would be added to meet the **Federal Register** requirement for a second paragraph in this section. In § 6.403(d), ''or water quality agreements'' would be amended to ''of water quality agreements'' in the sentence, ''Where water quality impacts identified in a facility plan are the subject of water quality agreements with Canada or Mexico, nothing in these regulations shall impose on the facility planning process coordination and consultation requirements in addition to those required by such agreements.'' These proposed amendments are identified according to the paragraph numbers in the proposed rule; e.g., § 6.400(a) in the proposed rule corresponds to § 6.1001(a) in the current rule, § 6.401(a) in the proposed rule corresponds to § 6.1002(a) in the current rule, § 6.401(a)(5) in the proposed rule corresponds to § 6.1002(a)(5) in the current rule, § 6.401 in the proposed rule corresponds to § 6.1002 in the current rule, and § 6.403(d) in the proposed rule corresponds to § 6.1004(d) in the current rule.

V. Proposed Amended and New Categories of Actions Eligible for Categorical Exclusion; Amended and New Extraordinary Circumstances; and Amended Listing of Actions That Generally Require an Environmental Impact Statement

The Environmental Protection Agency (EPA or Agency) is proposing amendments to its procedures for implementing the requirements of the National Environmental Policy Act of 1969 (NEPA). The proposed rule also includes minor, technical amendments to the Agency's procedures for implementing Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions.''

Pursuant to CEQ's Regulations that are applicable to all Federal agencies for implementing the procedural provisions of NEPA, Federal agencies must, to the fullest extent possible, reduce paperwork and accumulation of extraneous background data and emphasize real environmental issues and alternatives. (40 CFR 1500.2(b)) CEQ's Regulations (40 CFR 1507.3(b)(2)(ii)) provide that agencies are to adopt their own implementing procedures to supplement CEQ's NEPA implementing procedures, including specific criteria for and identification of classes of action which normally do not require either an environmental impact statement or an environmental assessment (e.g., categorical exclusions (see 40 CFR 1508.4)).

As part of the amendments to its NEPA implementing regulations, the Agency is proposing to amend existing and add new categories of actions eligible for categorical exclusion. Consistent with the CEQ Regulations at § 1508.4, the proposed rule would define ''categorical exclusion'' to mean ''a category of actions that does not individually or cumulatively have a significant effect on the human environment * * *'' and have been found by EPA to have no such effect. The proposed rule would require that to find that a proposed action is categorically excluded, EPA's Responsible Official must determine that the proposed action fits within a categorical exclusion listed in the proposed regulations, and the proposed action does not involve any extraordinary circumstances. Some of EPA's proposed new categorical exclusions are essentially the same as categorical exclusions of other Federal agencies; others are more specific to EPA.

Consistent with the CEQ Regulations at § 1508.4, the proposed rule would define ''extraordinary circumstances'' to mean ''those circumstances * * * that may cause a significant environmental effect such that an action that otherwise meets the requirements of a categorical exclusion may not be categorically excluded.'' Like its current NEPA implementing regulations, EPA's proposed rule includes a list of extraordinary circumstances. Some are generally the same as those in its current NEPA implementing regulations, some are new, and some are proposed amendments based on current extraordinary circumstances, the criteria for actions that generally require environmental impact statements (EISs), and NEPA's policy direction to emphasize real environmental issues and alternatives. The extraordinary circumstances would be consolidated in the proposed rule. As required by CEQ's Regulations, the proposed rule also includes a consolidated listing of actions that generally require an EIS (see 40 CFR 1507.3(b)(2)(i)).

The proposed amendments to EPA's NEPA implementing regulations include: (1) Consolidating and standardizing the procedural provisions and requirements of the Agency's environmental review process under NEPA; (2) clarifying the general procedures associated with categorical exclusions, consolidating the categories of actions subject to categorical exclusion, amending existing and adding new categorical exclusions, and consolidating and amending existing and adding new extraordinary circumstances; (3) consolidating and amending the listing of actions that generally require environmental impact statements; (4) clarifying the procedural requirements for consideration of applicable environmental review laws and executive orders; and (5) incorporating other proposed revisions consistent with CEQ's Regulations. The general reasons for the amended and new categorical exclusions, extraordinary circumstances, and criteria for actions that generally require an EIS are as follows:

(1) Consolidation and standardization of the procedural provisions and requirements of the Agency's environmental review process under NEPA

The proposed regulations would consolidate and standardize the environmental review process applicable to all EPA actions subject to NEPA, including those actions now specifically addressed in the current regulations and other actions subject to

NEPA but not specifically addressed in the current regulations (e.g., certain grants awarded for special projects identified in the State and Tribal Assistance Grants (STAG) account authorized by Congress through the Agency's annual Appropriations Act).

(2) Clarify the general procedures associated with categorical exclusions, consolidate the categories of actions subject to categorical exclusion, amend existing and add new categorical exclusions, and consolidate and amend existing and add new extraordinary circumstances

Currently, EPA's NEPA implementing regulations include general and, by subpart, program-specific categorical exclusions and extraordinary circumstances. The proposed regulations would consolidate the categorical exclusions and extraordinary circumstances in a single location. Thus, the procedures for determining if a proposed action fits within a categorical exclusion or involves any extraordinary circumstances would be the same for all EPA actions subject to NEPA.

(3) Consolidate and amend the listing of actions that generally require an environmental impact statement

Currently, some subparts of EPA's NEPA implementing regulations list actions that generally require EISs, and one also lists specific actions that generally require EAs. The proposed regulations would consolidate and amend the criteria for actions that generally require EISs. These criteria for actions that generally require EISs in the proposed regulations would be applicable to all EPA actions subject to NEPA.

EPA's NEPA regulations apply to the actions and decisions of EPA that are subject to NEPA's procedural requirements in order to ensure that environmental information is available to the Agency's decision-makers and the public before decisions are made and before actions are taken. This includes actions such as the award of wastewater treatment construction grants under Title II of the Clean Water Act, EPA's issuance of new source National Pollutant Discharge Elimination System (NPDES) permits, certain research and development projects, EPA actions involving renovations at or new construction of EPA facilities, and certain grants awarded for special projects identified in the STAG account authorized by Congress through the Agency's annual Appropriations Act. EPA actions subject to NEPA that are based on applicant proposals may include any of these except EPA actions for construction of special purpose facilities or facility renovations. As with EPA's current NEPA implementing regulations, compliance with the proposed NEPA regulations would be the responsibility of EPA's Responsible Officials and certain grant or permit applicants who must submit environmental information documentation to EPA for their proposed projects.

Currently, EPA's NEPA implementing regulations apply, by subpart, to specific actions. For example, Subpart E applies to the award of wastewater treatment construction grants under Title II of the Clean Water Act, and Subpart F applies to EPA's environmental review process for issuance of new source NPDES permits. The proposed regulations would consolidate and standardize the environmental review process applicable to all EPA actions subject to NEPA, including those actions now specifically addressed in the current regulations and other actions subject to NEPA but not specifically addressed in the current regulations (e.g., certain grants awarded for special projects identified in the STAG account.) As with EPA's current regulations, the proposed regulations would supplement and be used in conjunction with the CEQ Regulations. Certain EPA actions are exempt from the procedural requirements of NEPA and would remain exempt under the proposed rule.

EPA is proposing to consolidate and standardize the environmental review process applicable to all EPA actions subject to NEPA. As part of this process, EPA is consolidating the categories of actions eligible for categorical exclusion, and amending existing and adding new categorical exclusions. CEQ's Regulations state that Federal agencies must implement NEPA procedures, in part, ''to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives.'' (40 CFR 1500.2(b)) EPA believes that the proposed amended and identification of new categorical exclusions meets the intent of this NEPA policy as paperwork is reduced or eliminated for EPA's Responsible Officials and applicants. Likewise, EPA's attention will be focused on proposed actions with real environmental issues and the associated analysis of alternatives, including mitigation measures, that will eliminate or reduce the project's environmental impacts.

The NEPA Task Force Report to the Council on Environmental Quality notes that federal agency administrative records prepared to support categorical exclusions may include documentation of: Professional staff and expert opinions; research study results; past NEPA action records; and similar categorical exclusion actions by other agencies. [''Modernizing NEPA Implementation, Chapter 5, Categorical Exclusions,'' The NEPA Task Force Report to the Council on Environmental Quality, September 2003]

Categorical Exclusions. EPA's proposed rule identifies 15 categories of action eligible for categorical exclusion included in two listings. The first five proposed categorical exclusions, listed in the proposed rule at § 6.204(a)(1)(i) through (v), are more likely to involve extraordinary circumstances and require the EPA Responsible Official to document a determination that a categorical exclusion applies. It is also EPA's opinion that these actions generally do not pose the potential for environmental impacts, and that confirmation there are no extraordinary circumstances would satisfy a determination that the use of a CE is appropriate. The first three of these are substantially the same as, or similar to, categorical exclusions in EPA's current NEPA implementing regulations with amendments to clarify their applicability to all EPA actions subject to NEPA and to clarify the intended applicability of the categorical exclusion. Proposed categorical exclusion (i) is similar to other Federal agencies' categorical exclusions (in general terms, minor rehabilitation). Proposed categorical exclusions (ii) and (iii) are specific to EPA and are similar to current EPA categorical exclusions; they have been documented as proposed categorical exclusions through past NEPA action records. Categorical exclusion (iv) is a proposed new categorical exclusion based on EPA's past NEPA action records. Categorical exclusion (v) is a proposed new categorical exclusion based on EPA's view that these actions for award of funds are not likely to have the potential for environmental impacts because the project for which the grant is being awarded was completed prior to the date the appropriation was enacted. However, EPA has discretion to award these grants, so they should be screened to determine whether there may be extraordinary circumstances associated with the completed project that should be addressed by conducting a NEPA review (e.g., avoidance or mitigation of potential impacts).

It is EPA's view that the next 10 listed categorical exclusions are generally administrative in nature, do not generally involve extraordinary

circumstances and do not require the EPA Responsible Official to document a determination that a categorical exclusion applies (see proposed rule, § 6.204(a)(2)(i) through (x)). One of these proposed categorical exclusions is substantially the same as one in EPA's current Part 6 rule. The other 9 are proposed new categorical exclusions, one of which incorporates three of the categorical exclusions in EPA's current NEPA implementing regulations. These proposed new categorical exclusions are generally for actions involving administrative procedures of the Agency. Most are similar to other Federal agencies' categorical exclusions, and some are also based on EPA's view that they are administrative in nature and generally do not involve extraordinary circumstances. In any case, even for these categorical exclusions, the Responsible Official would be required to ensure that none of the extraordinary circumstances applies to the action.

EPA's ''Supporting Statement for Amended and New Categorical Exclusions, Extraordinary Circumstances, and Criteria for Actions that Generally Require EISs under 40 CFR Part 6: 'Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions' '' is available in the docket for this proposed rulemaking at www.regulations.gov and provides specific reasons for the proposed amended and new categorical exclusions included in EPA's proposed rule. EPA's documentation includes: references to EPA projects documented with environmental assessments and findings of no significant impact; reference to other Federal agencies with similar provisions for categorical exclusions; and statements of EPA's opinion.

Extraordinary Circumstances. EPA's proposed rule identifies 10 extraordinary circumstances in the proposed rule at § 6.204(b)(1) through (10). Four of the proposed extraordinary circumstances are substantially the same as the eight in EPA's current regulations, and one of the proposed new extraordinary circumstances combines the elements of two in the current regulations. This proposed rule updates and amends the current extraordinary circumstances to clarify the conditions for their applicability, and consolidates all of the extraordinary circumstances into a single listing that would be applicable to all EPA actions subject to NEPA. EPA is also proposing six new extraordinary circumstances based on NEPA's policy direction to emphasize real environmental issues and alternatives and on consideration of EPA's proposed criteria for actions that generally require an EIS. EPA believes there is a relationship between the extraordinary circumstances and the criteria for actions that generally require EISs. EPA notes, however, that extraordinary circumstances are used to help the Responsible Official determine whether, or not, a categorical exclusion applies to the proposed action, and that the criteria for actions that generally require an EIS are criteria that generally, but not always, require an EIS.

EPA's ''Supporting Statement for Amended and New Categorical Exclusions, Extraordinary Circumstances, and Criteria for Actions that Generally Require EISs under 40 CFR Part 6: 'Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions' '' is available in the docket for this proposed rulemaking at www.regulations.gov and provides specific reasons for the amended and new extraordinary circumstances included in the proposed rule. In summary, the intent is to standardize the essential concepts and combine the variously stated criteria into a consolidated set of extraordinary circumstances applicable to all EPA actions subject to NEPA. The proposed extraordinary circumstances are not intended to be a listing of requirements for preparing EISs. Rather, they are to be used to determine whether a categorical exclusion applies to the action. If not, the EPA Responsible Official may prepare an environmental assessment to determine whether a finding of no significant impact, or an EIS, is the appropriate NEPA document for the project, or the Responsible Official proceeds directly with preparing an EIS.

Criteria for Actions that Generally Require EISs. EPA's proposed rule identifies 11 criteria for actions that generally require an EIS. These proposed criteria are substantially the same as, or similar to, 16 of the 17 criteria in EPA's current NEPA implementing regulations. The criterion in EPA's current rule at § 6.509(b), 'the project is highly controversial,' is not included in the proposed criteria for actions that generally require EISs because EPA believes that the potential environmental impacts of such a project may not necessarily rise to the level of significance such that an EIS is generally required; e.g., an environmental assessment with provisions for mitigation could be the appropriate level of environmental review for the action. Further, as stated in the current rule, there is no direct tie to environmental impacts. Rather, EPA's proposed rule includes an extraordinary circumstance at § 6.204(b)(8) that addresses this concept, including the potential for environmental impact.

EPA's ''Supporting Statement for Amended and New Categorical Exclusions, Extraordinary Circumstances, and Criteria for Actions that Generally Require EISs under 40 CFR Part 6: 'Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions' '' is available in the docket for this proposed rulemaking at *www.regulations.gov* and provides specific reasons for the amended criteria for actions that generally require EISs included in the proposed rule. In summary, the intent is to standardize the essential concepts and combine the variously stated criteria into a consolidated set of criteria for actions that generally require EISs that are applicable to all EPA actions subject to NEPA. The proposed criteria are not intended to be a listing of requirements for preparing EISs in all cases. This is because not all actions examined under the criteria rise to the level of significance such that EISs are required (e.g., an environmental assessment with provisions for mitigation could be the appropriate level of environmental review for an action).

In keeping with the public comment process for this proposed rulemaking, EPA is interested in the public's comments on these proposed amended and new categorical exclusions, extraordinary circumstances, and criteria for actions that generally require an EIS.

VI. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here. The total annual public reporting and recordkeeping burden for this collection of information is estimated at 48,147 hours and

$3,823,740 for contractor hours and costs, direct labor hours and costs, and O&M costs. This burden reflects the annual preparation of documentation for an anticipated 312 applicant-proposed projects that may be documented with a CE, or an EA/FONSI, or an EIS/ROD. Under the proposed rule, EPA assumes there will be approximately 300 grantee projects annually with about 60% of these projects documented with a CE, and about 40% with an EA/FONSI. In addition, EPA estimates that one project will have an EIS/ROD completed during the 3-year period of this ICR. For permit applicants, EPA assumes there will be approximately 12 projects annually with about 11 documented with an EA/FONSI. In addition, EPA estimates one project will have an EIS/ROD completed annually. None will be documented initially with a CE. Over a 3-year period, EPA anticipates 937 applicant-proposed projects with a 3-year total burden estimate of 144,440 hours and $11,471,220. Under the current rule, the individual cost for each type of documentation is the same. However, EPA estimates that 50% of grantee projects are documented with a CE, and 50% are documented with an EA/FONSI. Approximately one project will have an EIS/ROD completed per three-year period, and project estimates for permit applicants are approximately the same (11 projects documented with an EA/FONSI; 1 project documented with an EIS/ROD). The total burden of the current rule is 54,497 hours and $4,275,180. The proposed rule would decrease the number of hours spent on documentation by 6,350 hours, and would have an annual yearly savings of $451,440. Over a three-year period, the proposed rule would decrease burden by 19,050 hours and $1,354,320. 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.

B. Paperwork Reduction Act

The information collection requirements of this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2243.02.

The Environmental Protection Agency (EPA or Agency) is proposing to amend its procedures for implementing the requirements of the National Environmental Policy Act of 1969 (NEPA). Today's proposed rule also includes minor, technical amendments to the Agency's procedures for implementing Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions.''

EPA is collecting information from certain applicants as part of the process of complying with either NEPA or Executive Order 12114. EPA's Executive Order 12114 procedures further the purpose of NEPA and provide that EPA may be guided by these procedures to the extent they are applicable. Therefore, when EPA conducts an environmental assessment pursuant to its Executive Order 12114 procedures, the Agency generally follows its NEPA procedures. For this ICR, applicant-proposed projects subject to either NEPA or Executive Order 12114 (and that are not addressed in other EPA programs' ICRs), are addressed through the NEPA assessment process.

Those subject to the proposed rule include EPA employees who must comply with NEPA and certain grant and permit applicants who must submit environmental information to EPA for their proposed projects. The EPA Responsible Official is responsible for the environmental review process, including any categorical exclusion determination or the scope, accuracy, and contents of a final environmental assessment (EA) or environmental impact statement (EIS) and any associated documents. The applicant contributes by submitting environmental information to EPA as part of the environmental review process. The information collected from grant or permit applicants is one-time only on a per-project basis for EPA actions subject to NEPA that are based on applicant proposals. Grantees (primarily grants for special projects identified in EPA's State and Tribal Assistance Grants (STAG) account) or permit applicants (for new source NPDES permits issued by EPA) are required to provide environmental information to EPA as part of the environmental review process unless the EPA Responsible Official decides to prepare the NEPA documents without assistance from the applicant. If the applicant cannot afford to provide the required environmental information to EPA, then EPA would undertake the environmental review without input from the applicant. Further, grantees may be grant-eligible for certain costs associated with providing environmental information to EPA; permit applicants are not eligible for EPA financial assistance.

The NEPA review for a project may result in a categorical exclusion (CE), or an EA documented with a finding of no significant impact (EA/FONSI), or an EIS documented with a record of decision (EIS/ROD). (EPA assumes a project may be documented with a CE only for grantee-proposed projects. EPA does not anticipate that an initial new source NPDES permit application would be documented with a CE.) For any specific project, only one of these levels of documentation is generally prepared. Applicants may submit an environmental information document (EID) to EPA as part of the environmental review process. Alternately, an applicant may submit a draft EA or a draft EIS and supporting documents. Applicants may prepare and submit the information directly, or may enter a third-party contract agreement with EPA for preparation of an EA or EIS and supporting documentation. For purposes of determining the maximum costs to applicants for this ICR, EPA assumed that grant and permit applicants would expend time and contractor costs to submit: (1) Information to support application of a CE with environmental information prepared directly by the applicant's contractor; or (2) a draft EA and supporting documents prepared directly by the applicant's contractor; or (3) a draft and final EIS and supporting documents prepared by the applicant's contractor under a third-party contract agreement with EPA.

Based on EPA's past experience, under the proposed rule, EPA anticipates there will be approximately 300 grantee projects annually with about 60% of these projects documented with a CE, and about 40% with an EA/FONSI. In addition, EPA estimates that one project (less than one percent of the total annual grantee projects) will have an EIS/ROD completed during the 3-year period of this ICR. For permit applicants, EPA assumes there will be approximately 12 projects annually with about 11 of the projects documented with an EA/FONSI. In addition, EPA estimates one project will have an EIS/

ROD completed annually. None will be documented initially with a CE. EPA estimated the one-time costs for applicants to prepare the environmental documentation by including contractor hours and costs, direct labor hours and costs, and O&M for documentation submitted to EPA to support a CE determination, or an EA/FONSI, or an EIS/ROD. For a grantee, EPA estimates an applicant's one-time costs for submitting environmental information will be: 45 hours and $3,292 for CE documentation, or 260 hours and $18,340 for EA/FONSI documentation, or 2,840 hours and $324,480 for EIS/ROD documentation. For a permit applicant, EPA estimates an applicant's one-time costs for submitting environmental information will be: 460 hours and $53,940 for EA/FONSI documentation, or 2,840 hours and $328,880 for EIS/ROD documentation. These figures may vary depending on the complexity of issues associated with the project and the availability of relevant information, particularly for EISs. (For example, EPA's experience with a limited number of EISs has included one-time costs ranging from nominal for information submitted by letter to supplement an existing oil and gas extraction EIS to over a million dollars for new EISs for a mining project and an oil and gas extraction project with multiple complex issues.) EPA believes the calculations for this ICR are representative of most projects.

For purposes of this ICR, the total annual public reporting and recordkeeping burden for this collection of information is estimated at 48,147 hours and $3,823,740 for contractor hours and costs, direct labor hours and costs, and O&M costs. This burden reflects the annual submission of documentation for an anticipated 312 applicant-proposed projects that may be documented with a CE, or an EA/FONSI, or an EIS/ROD. Under the proposed rule, EPA assumes there will be approximately 300 grantee projects annually with about 60% of these projects documented with a CE, and about 40% with an EA/FONSI. In addition, EPA estimates that one project will have an EIS/ROD completed during the 3-year period of this ICR. For permit applicants, EPA assumes there will be approximately 12 projects annually with about 11 documented with an EA/FONSI. In addition, EPA estimates one project will have an EIS/ROD completed annually. None will be documented initially with a CE. The total burden estimate for this ICR reduces the burden of the previous collection by 6,350 hours and $451,440 (the previous collection estimated that there were approximately 300 grantee projects annually with about 50% of these projects documented with a CE and about 50% documented with an EA/FONSI. Approximately one project completed an EIS/ROD during the 3-year period of the ICR). Over the 3-year period of this ICR, EPA anticipates 937 applicant-proposed projects with a 3-year total burden estimate of 144,440 hours and $11,471,220. For the 3-year period of this ICR, the proposed rule would reduce the total burden by 19,050 hours and $1,354,320. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this proposed rule, which includes this ICR, under Docket ID number EPA–HQ–OECA–2005–0062. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSEES** section of the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 19, 2006, a comment to OMB is best assured of having its full effect if OMB receives it by January 18, 2007. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C . Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We are proposing amendments to the Agency's procedures for implementing the requirements of the National Environmental Policy Act of 1969 (NEPA). This proposed rule also includes minor, technical amendments to the Agency's procedures for implementing Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions.''

Certain applicants must submit environmental information to EPA as part of the process of complying with either NEPA or Executive Order 12114. EPA's Executive Order 12114 procedures further the purpose of NEPA and provide that EPA may be guided by these procedures to the extent they are applicable. Therefore, when EPA conducts an environmental assessment pursuant to its Executive Order 12114 procedures, the Agency generally follows its NEPA procedures.

This proposed rule is applicable to certain EPA actions subject to NEPA, including certain applicant-proposed projects. Because the projects are proposed by the applicants, who are non-federal entities, including small businesses and small governments, EPA does not know what projects will be proposed, when they will be proposed, or what level of NEPA review will be

required for each individual project. In this regard, EPA's NEPA review process is reactive to an applicant's request. These factors are built into this screening assessment, including assumptions about the entities likely to be subject to the regulations, the types of projects they are likely to propose, and the degree of possible economic impact based on the NEPA review process and the three levels of environmental documentation possible under this process using available historical information as future indicators. More detailed information on the small entity screening analysis can be found in the docket for this proposed rulemaking, EPA–HQ–OECA–2005–0062 (available at *http://www.regulations.gov*), and is summarized below.

Based on EPA's past experience, EPA anticipates that annually there will be approximately 170 small governments applying to EPA for STAG grants for projects subject to NEPA, and four small businesses applying to EPA for new source NPDES permits for a total of approximately 174 small entities out of potential 312 total entities. Of the 174 small entities possibly affected by this proposed rule, we have determined that the economic impact of submitting one-time environmental documentation to support a CE determination would be less than 1% of annual revenues for all small entities; and that for the one-time costs associated with submitting EA-related environmental documentation six small entities (3.4%) could experience an economic impact of 1–3%, and up to four small entities (2%) could experience an economic impact of greater than 3%. Additionally, we have also determined that approximately 57 of the 174 small entities (33%) could experience an economic impact of 1–3%, and up to 26 of the 174 small entities (15%) could experience an economic impact of greater than 3% for the one-time costs associated with submitting EIS-related environmental documentation. In all, these approximately 83 small entities represent about 48% of the estimated 174 total number of small entities that could experience a one-time economic impact of 1–3% or greater of annual revenues. Of these 83 small entities, 79 are likely to be governmental grant applicants and could be grant-eligible for EPA financial assistance with only one EIS anticipated per three years with this likelihood spread over 300 total grant applicants, including small and large governments, including tribes, and special districts.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed rule on small entities. The environmental information submitted by an applicant under the proposed rule is one-time only for EPA actions subject to NEPA based on applicant proposals; i.e., actions proposed by grantees seeking funding assistance from EPA or for an NPDES permit application initiated by the permit applicant. In either case, EPA assumes the action will directly benefit the applicant (such as a grantee seeking STAG funding for renovation of a community drinking water system, or a permit applicant seeking an NPDES permit from EPA to further the applicant's business interests). Nonetheless, if the applicant cannot afford to provide the required environmental information to EPA, then EPA would undertake the environmental review without input from the applicant. (Applicants would normally be requested to demonstrate financial hardship, including inability to provide the requested environmental information.) Grantees may be grant-eligible for certain costs associated with providing environmental information to EPA; permit applicants are not eligible for EPA financial assistance. Further, EPA has attempted to reduce the cost on all entities, including small entities, through the following provisions of the proposed rule: Section 6.300 provides that an EID is not required when the action is categorically excluded, or the applicant will prepare a draft EA and supporting documents. The Responsible Official may prepare the NEPA documents without assistance from the applicant. Section 6.302 provides that the Responsible Official may prepare generic guidance for categories of actions involving a large number of applicants; and must ensure early involvement of applicants, consult with the applicant and provide guidance describing the scope and level of environmental information required, and provide guidance on a project-by-project basis to any applicant seeking assistance. This Section also provides that the Responsible Official must consider the extent to which the applicant is capable of providing the required information, must not require the applicant to gather data or perform analyses that unnecessarily duplicate either existing data or the results of existing analyses available to EPA, and must limit the request for environmental information to that necessary for the environmental review. Section 6.303 provides that an applicant may enter into a third-party agreement with EPA. For grantees, third-party agreement contractor costs may be grant-eligible. Permit applicants are not eligible for EPA financial assistance.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year.

EPA is proposing to amend its procedures for implementing the requirements of the National

Environmental Policy Act of 1969 (NEPA). Today's proposed rule also includes minor, technical amendments to the Agency's procedures for implementing Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions.''

EPA is collecting information from certain applicants as part of the process of complying with either NEPA or Executive Order 12114. EPA's Executive Order 12114 procedures further the purpose of NEPA and provide that EPA may be guided by these procedures to the extent they are applicable. Therefore, when EPA conducts an environmental assessment pursuant to its Executive Order 12114 procedures, the Agency generally follows its NEPA procedures. For purposes of UMRA, applicant-proposed projects subject to either NEPA or Executive Order 12114 are addressed through the NEPA assessment process.

Those subject to the proposed NEPA rule include EPA employees who must comply with NEPA and certain grant and permit applicants who must submit environmental information to EPA for their proposed projects. The EPA Responsible Official is responsible for the environmental review process, including any categorical exclusion (CE) determination or the scope, accuracy, and contents of a final environmental assessment (EA) or environmental impact statement (EIS) and any associated documents. The applicant contributes by submitting environmental information to EPA as part of the environmental review process. The information submitted by grant or permit applicants is one-time only on a per-project basis for EPA actions subject to NEPA that are based on applicant proposals. Grantees are generally governmental jurisdictions, including State and local governments, and tribes applying to EPA for special projects identified in EPA's State and Tribal Assistance Grants (STAG account) or private sector applicants for new source NPDES permits issued by EPA. Applicants are required to provide environmental information to EPA as part of the environmental review process unless the EPA Responsible Official decides to prepare the NEPA documents without assistance from the applicant. If the applicant, including governmental grantees, cannot afford to provide the required environmental information to EPA, then EPA would undertake the environmental review without input from the applicant. Further, governmental grantees may be grant-eligible for certain costs associated with providing environmental information to EPA.

The NEPA review for a project may result in a CE determination, or an EA documented with a finding of no significant impact (EA/FONSI), or an EIS documented with a record of decision (EIS/ROD). For any specific project, only one of these levels of documentation is generally prepared. Applicants may submit an environmental information document (EID) to EPA as part of the environmental review process. Alternately, an applicant may submit a draft EA or a draft EIS and supporting documents. Applicants may prepare and submit the information directly, or may enter a third-party contract agreement with EPA for preparation of an EA or EIS and supporting documentation. Governmental grantees may be grant-eligible for certain costs associated with providing environmental information to EPA, including certain third-party contract costs; private sector permit applicants are not eligible for EPA financial assistance. For purposes of maximum cost estimates to applicants for UMRA purposes, EPA assumed that applicants would expend time and contractor costs to submit: (1) Information to support application of a CE with environmental information prepared directly by the applicant's contractor; or (2) a draft EA and supporting documents prepared directly by the applicant's contractor; or (3) a draft and final EIS and supporting documents prepared by the applicant's contractor under a third-party contract agreement with EPA.

Based on EPA's past experience, under the proposed rule, EPA anticipates there will be approximately 300 grantee projects annually with about 60% of these projects documented with a CE, and about 40% with an EA/FONSI. In addition, EPA estimates that one project (less than one percent of the total annual grantee projects) will have an EIS/ROD completed during a 3-year period. For permit applicants, EPA assumes there will be approximately 12 projects annually with about 11 of the projects documented with an EA/FONSI. In addition, EPA estimates one project will have an EIS/ROD completed annually. None of the projects will be documented initially with a CE. EPA estimated one-time costs for applicants to prepare the environmental documentation by including contractor hours and costs, direct labor hours and costs, and O&M for documentation submitted to EPA to support a CE determination, or an EA/FONSI, or an EIS/ROD. For a grantee, EPA estimates an applicant's one-time costs for submitting environmental information will be: $3,292 for CE documentation, or $18,340 for EA/FONSI documentation, or $324,480 for EIS/ROD documentation. For a permit applicant, EPA estimates an applicant's one-time costs for submitting environmental information will be: $53,940 for EA/FONSI documentation, or $328,880 for EIS/ROD documentation. These figures may vary depending on the complexity of issues associated with the project and the availability of relevant information, particularly for EISs. (For example, EPA's experience with a limited number of EISs has included one-time costs ranging from nominal for information submitted by letter to supplement an existing oil and gas extraction EIS to over a million dollars for new EISs for a mining project and an oil and gas extraction project with multiple complex issues.) EPA believes the calculation for this UMRA assessment is representative of most projects. On an annual one-time submission basis, EPA's aggregate estimate for applicants is $3,823,740 for contractor hours and costs, direct labor hours and costs, including third-year costs for an EIS/ROD for one grantee project. The requirement in today's proposed rule for applicants to submit one-time, project-specific environmental information does not impose substantial compliance costs on applicants, including governmental grantees, because it is not likely to result in the expenditure by applicants, including State and local governments, and tribes, in the aggregate, or the private sector, of $100 million or more in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Neither the proposed amendments to EPA's NEPA implementing regulations nor the minor, technical amendments to EPA's procedures implementing Executive Order 12114 have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed NEPA regulations do not impose new regulatory obligations on the States. Under EPA's current NEPA regulations, as well as the proposed rule, State and local governments are required to submit environmental information only when the State or local government is a project-applicant for an EPA action subject to NEPA, for example, when the State or local government applies for a grant for a special project identified in EPA's State and Tribal Assistance (STAG) account, or for a new source NPDES permit issued by EPA. The requirement to submit environmental information to EPA for the NEPA review does not impose substantial compliance costs because it is not likely to result in the expenditure by State and local governments in the aggregate of $100 million or more in any one year. Further, this requirement does not preempt State law. The proposed minor, technical amendments to EPA's procedures for implementing Executive Order 12114 do not impose new regulatory obligations on the States or alter the current relationship between the States and the Federal government. Under EPA's current Executive Order 12114 regulations, as well as the proposed amendments, States are required to submit environmental information only when the State is a project-applicant for an EPA action subject to Executive Order 12114. The requirement to submit environmental information to EPA for the Executive Order 12114 review does not impose substantial compliance costs because it is not likely to result in the expenditure by State and local governments in the aggregate of $100 million or more in any one year. Further, this requirement does not preempt State law. Thus, Executive Order 13132 does not apply to this proposed rule.

Although this proposed rule does not have federalism implications, as with EPA's current rule, some parts of the proposed NEPA regulations might require EPA to involve the States in the NEPA environmental review process. For example, § 6.202 encourages early coordination and cooperation with federal agencies, state and local governments, and tribes with jurisdiction by law or special expertise. Section 6.203 requires the Responsible Official to ensure meaningful public participation. EPA anticipates that State and local governments would participate in the public participation process. Section 6.204 of the proposed NEPA regulations lists extraordinary circumstances that would bar the Responsible Official from determining that a categorical exclusion applies to the action. The Responsible Official may ask the relevant State for assistance in determining whether the proposed action meets these criteria.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175.

Neither the proposed amendments to EPA's NEPA implementing regulations nor the minor, technical amendments to EPA's procedures implementing Executive Order 12114 impose new regulatory obligations on tribes. They will not have substantial direct effects on tribes, on the relationship between the national government and tribes, or on the distribution of power and responsibilities between the national government and tribes. Under EPA's current regulations, as well as the proposed rule, Tribes are required to submit environmental information only when the Tribes are project-applicants for EPA actions subject to NEPA or Executive Order 12114, for example, when Tribes apply for grants for special projects identified in EPA's State and Tribal Assistance (STAG) account, or for new source NPDES permits issued by EPA. The requirement to submit environmental information to EPA for the environmental review process do not impose substantial compliance costs because it is not likely to result in the expenditure by state, local, and tribal governments in the aggregate of $100 million or more in any one year. Further, these requirements do not preempt tribal law. Thus, Executive Order 13175 does not apply to this proposed rule.

Although this proposed rule does not have Executive Order 13175 implications, as with EPA's current rule, some parts of the proposed NEPA regulations might require EPA to involve tribes in the environmental review process. For example, § 6.202 encourages early coordination and cooperation with federal agencies, state and local governments, and tribes with jurisdiction by law or special expertise. Section 6.203 requires the Responsible Official to ensure meaningful public participation. EPA anticipates that tribes would participate in the public participation process as appropriate. Section 6.204 of the proposed NEPA regulations lists extraordinary circumstances that would bar the Responsible Official from determining that a categorical exclusion applies to the action. The Responsible Official may ask the relevant tribe for assistance in determining whether the proposed action meets these criteria.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule, including the proposed amendments to EPA's NEPA implementing procedures and the proposed minor, technical amendments to the Agency's procedures for implementing Executive Order 12114, is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution and Use

This proposed rule is not a ''significant energy action'' as defined in

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Today's proposed rule includes EPA's proposed amendments to its procedures for implementing the requirements of the National Environmental Policy Act of 1969 and minor, technical amendments to the Agency's procedures for implementing Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions.'' It does not impose new regulatory obligations related to energy supply, distribution, or use of energy on EPA, state or local governments, tribes, or individual applicants required to provide environmental information to EPA for certain grants or permits. Therefore, we have concluded that this proposed rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking, which includes EPA's proposed amendments to its procedures for implementing the requirements of the National Environmental Policy Act of 1969 and minor, technical amendments to the Agency's procedures for implementing Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions,'' does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA maintains an ongoing commitment to ensure environmental justice for all people, regardless of race, color, national origin, or income. Ensuring environmental justice means not only protecting human health and the environment for everyone, but also ensuring that all people are treated fairly and given the opportunity to participate meaningfully in the development, implementation, and enforcement of environmental laws, regulations, and policies. In recognizing that minority and/or low-income communities frequently may be exposed disproportionately to environmental harms and risks, EPA works to protect these and other burdened communities from adverse human health and environmental effects of its programs, consistent with existing environmental and civil rights laws, and their implementing regulations, as well as Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.'' (59 FR 7629 (Feb. 11, 1994)). Executive Order 12898 establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and/or low-income populations. In developing this proposed rule in compliance with Executive Order 12898, EPA determined that the proposed rule did not raise any environmental justice concerns.

Today's proposed rule, including the proposed amendments to EPA's NEPA implementing procedures and the proposed minor, technical amendments to the Agency's procedures for implementing Executive Order 12114, does not impose new regulatory program, policy, or activity obligations on EPA, state or local governments, tribes, or individual applicants required to provide environmental information to EPA for certain grants or permits. Therefore, we have concluded that this proposed rule is not likely to have any adverse effects on minority or low-income populations, including tribes. However, the proposed NEPA rule at § 6.201 requires that for specific projects, consistent with 40 CFR 1500.5(g) and 1502.25, the EPA Responsible Official must determine the applicability of executive orders, including Executive Order 12898, and should incorporate applicable requirements as early in the NEPA review process as possible. In addition, § 6.203(a)(5) and (c)(3)(iv) require the Responsible Official to choose public participation methods and engage in outreach designed to reach those in ''potentially affected communities where the proposed action is known or expected to have potentially significant environmental impacts or where the proposed action may have disproportionately high and adverse human health or environmental effects in any communities, including minority communities, low-income communities, or federally-recognized Indian tribal communities.'' EPA provides guidance to Responsible Officials and EPA staff on incorporating environmental justice concerns into the NEPA analysis. See ''Final Guidance For Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses, ''April 1998.

List of Subjects in 40 CFR Part 6

Environmental protection, Environmental assessments, Environmental impact statements, Environmental protection reporting, Foreign relations, Grant programs—environmental protection, Reporting and recordkeeping requirements.

Dated: December 11, 2006.

Stephen L. Johnson,

Administrator.

Therefore, for the reasons set forth in the preamble, EPA hereby proposes to amend title 40 chapter I of the Code of Federal Regulations by revising part 6 to read as follows:

PART 6—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT AND ASSESSING THE ENVIRONMENTAL EFFECTS ABROAD OF EPA ACTIONS

Subpart A—General Provisions for EPA Actions Subject to NEPA

6.100 Policy and Purpose.
6.101 Applicability.
6.102 Definitions.
6.103 Responsibilities of the NEPA Official and Responsible Officials.

Subpart B—EPA's NEPA Environmental Review Procedures

6.200 General requirements.
6.201 Coordination with other environmental review requirements.
6.202 Interagency cooperation.
6.203 Public participation.
6.204 Categorical exclusions and extraordinary circumstances.

6.205 Environmental assessments.
6.206 Findings of no significant impact.
6.207 Environmental impact statements.
6.208 Records of decision.
6.209 Filing requirements for EPA EISs.
6.210 Emergency circumstances.

Subpart C—Requirements for Environmental Information Documents and Third-Party Agreements for EPA Actions Subject to NEPA

6.300 Applicability.
6.301 Applicant requirements.
6.302 Responsible Official requirements.
6.303 Third-party agreements.

Subpart D—Assessing the Environmental Effects Abroad of EPA Actions

6.400 Purpose and policy.
6.401 Applicability.
6.402 Definitions.
6.403 Environmental review and assessment requirements.
6.404 Lead or cooperating agency.
6.405 Exemptions and considerations.
6.406 Implementation.

Authority: 42 U.S.C. 4321 *et seq.*, 7401–7671q. Subpart D also issued under 42 U.S.C. 4321, note, E.O. 12114, 44 FR 1979, 3 CFR, 1979 Comp., p. 356.

Subpart A—General Provisions for EPA Actions Subject to NEPA

§ 6.100 Policy and Purpose.

(a) The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, as implemented by the Council on Environmental Quality (CEQ) Regulations (40 CFR Parts 1500–1508), requires that Federal agencies include in their decision-making processes appropriate and careful consideration of all environmental effects of proposed actions, analyze potential environmental effects of proposed actions and their alternatives for public understanding and scrutiny, avoid or minimize adverse effects of proposed actions, and restore and enhance environmental quality to the extent practicable. The U.S. Environmental Protection Agency (EPA) will integrate these NEPA requirements as early in the Agency planning processes as possible. The environmental review process will be the focal point to ensure NEPA considerations are taken into account.

(b) Through this proposed rule, EPA adopts the CEQ's regulations (40 CFR Parts 1500–1508) implementing NEPA; subparts A through C of this part supplement those regulations, for actions proposed by EPA that are subject to NEPA requirements. Subparts A through C are to be used in conjunction with the CEQ Regulations.

§ 6.101 Applicability.

(a) Subparts A through C apply to the proposed actions of EPA that are subject to NEPA. EPA actions subject to NEPA include the award of wastewater treatment construction grants under Title II of the Clean Water Act, EPA's issuance of new source National Pollutant Discharge Elimination System (NPDES) permits under section 402 of the Clean Water Act, certain research and development projects, development and issuance of regulations, EPA actions involving renovations or new construction of facilities, and certain grants awarded for special projects identified in the State and Tribal Assistance Grants (STAG) account authorized by Congress through the Agency's annual Appropriations Act.

(b) The appropriate Responsible Official will undertake certain EPA actions required by the provisions of subparts A through C of this part.

(c) Certain procedures in subparts A through C of this part apply to the responsibilities of the NEPA Official.

(d) Certain procedures in subparts A through C of this part apply to applicants who are required to provide environmental information to EPA.

(e) When the Responsible Official decides to perform an environmental review under EPA's Voluntary NEPA Policy (see 63 FR 58045), the Responsible Official generally will follow the procedures set out in subparts A through C of this part.

(f) Subparts A through C of this part do not apply to the actions of EPA for which NEPA review is not required, including proposed actions for which analyses that have been conducted under another statute have been determined to be functionally equivalent to NEPA.

§ 6.102 Definitions.

(a) Subparts A through C of this part use the definitions found at 40 CFR part 1508. Additional definitions are listed in this subpart.

(b) Definitions. (1) *Administrator* means the Administrator of the United States Environmental Protection Agency.

(2) *Applicant* means any individual, agency, or other entity that has:

(i) Filed an application for federal assistance; or

(ii) Applied to EPA for a permit.

(3) *Assistance agreement* means an award of federal assistance in the form of money or property in lieu of money from EPA to an eligible applicant including grants or cooperative agreements.

(4) *Environmental information document (EID)* means a written analysis prepared by an applicant that provides sufficient information for the Responsible Official to undertake an environmental review and prepare either an EA and FONSI or an EIS and record of decision (ROD) for the proposed action.

(5) *Environmental review or NEPA review* means the process used to comply with section 102(2) of NEPA or the CEQ Regulations including development, supplementation, adoption, and revision of NEPA documents.

(6) *Extraordinary circumstances* means those circumstances listed in § 6.204 that may cause a significant environmental effect such that a proposed action that otherwise meets the requirements of a categorical exclusion may not be categorically excluded.

(7) *NEPA document* is a document prepared pursuant to NEPA.

(8) *NEPA Official* is the Assistant Administrator for Enforcement and Compliance Assurance, who is responsible for EPA's NEPA compliance.

(9) *Responsible Official* means the EPA official responsible for compliance with NEPA for individual proposed actions.

§ 6.103 Responsibilities of the NEPA Official and Responsible Officials.

(a) The NEPA Official will:

(1) Ensure EPA's compliance with NEPA pursuant to 40 CFR 1507.2(a) and the regulations in subparts A through C of this part.

(2) Act as EPA's liaison with the CEQ and other federal agencies, state and local governments, and federally-recognized Indian tribes on matters of policy and administrative procedures regarding compliance with NEPA.

(3) Approve procedural deviations from subparts A through C of this part.

(4) Monitor the overall timeliness and quality of EPA's compliance with subparts A through C of this part.

(5) Advise the Administrator on NEPA-related actions that involve more than one EPA office, are highly controversial, are nationally significant, or establish new EPA NEPA-related policy.

(6) Support the Administrator by providing policy guidance on NEPA-related issues.

(7) Assist EPA's Responsible Officials with establishing and maintaining adequate administrative procedures to comply with subparts A through C of this part, performing their NEPA duties, and training personnel and applicants involved in the environmental review process.

(8) Consult with Responsible Officials and CEQ regarding the addition, amendment, or deletion of a categorical exclusion.

(b) For individual proposed actions, the Responsible Official will:

(1) Ensure EPA's compliance with the CEQ regulations and subparts A through C of this part.

(2) Ensure that environmental reviews are conducted on proposed actions at the earliest practicable point in EPA's decision-making process and in accordance with the provisions of subparts A through C of this part.

(3) Ensure, to the extent practicable, early and continued involvement of interested federal agencies, state and local governments, federally-recognized Indian tribes, and affected applicants in the environmental review process.

(4) Coordinate with the NEPA Official and other Responsible Officials, as appropriate, on resolving issues involving EPA-wide NEPA policy and procedures and/or unresolved conflicts with other federal agencies, state and local governments, and federally-recognized Indian tribes, and/or advising the Administrator when necessary.

(5) Coordinate with other Responsible Officials, as appropriate, on NEPA-related actions involving their specific interests.

(6) Consistent with national NEPA guidance, provide specific policy guidance, as appropriate, and ensure that the Responsible Official's office establishes and maintains adequate administrative procedures to comply with subparts A through C of this part.

(7) Upon request of an applicant and consistent with 40 CFR 1501.8, set time limits on the NEPA review appropriate to individual proposed actions.

(8) Make decisions relating to the preparation of the appropriate NEPA documents, including preparing an EA or EIS, and signing the decision document.

(9) Monitor the overall timeliness and quality of the Responsible Official's respective office's efforts to comply with subparts A through C of this part.

(c) The NEPA Official and the Responsible Officials may delegate NEPA-related responsibilities to a level no lower than the Branch Chief or equivalent organizational level.

Subpart B—EPA's NEPA Environmental Review Procedures

§ 6.200 General requirements.

(a) The Responsible Official must determine whether the proposed action meets the criteria for categorical exclusion or whether it requires preparation of an EA or an EIS to identify and evaluate its environmental impacts. The Responsible Official may decide to prepare an EIS without first undertaking an EA.

(b) The Responsible Official must determine the scope of the environmental review by considering the type of proposed action, the reasonable alternatives, and the type of environmental impacts. The scope of an EIS will be determined as provided in 40 CFR 1508.25.

(c) During the environmental review process, the Responsible Official must:

(1) Integrate the NEPA process and the procedures of subparts A through C of this part into early planning to ensure appropriate consideration of NEPA's policies and to minimize or eliminate delay;

(2) Emphasize cooperative consultation among federal agencies, state and local governments, and federally-recognized Indian tribes before an EA or EIS is prepared to help ensure compliance with the procedural provisions of subparts A through C of this part and with other environmental review requirements, to address the need for interagency cooperation, to identify the requirements for other agencies' reviews, and to ensure appropriate public participation.

(3) Identify at an early stage any potentially significant environmental issues to be evaluated in detail and insignificant issues to be de-emphasized, focusing the scope of the environmental review accordingly;

(4) Involve other agencies and the public, as appropriate, in the environmental review process for proposed actions that are not categorically excluded to:

(i) Identify the federal, state, local, and federally-recognized Indian tribal entities and the members of the public that may have an interest in the action;

(ii) Request that appropriate federal, state, and local agencies and federally-recognized Indian tribes serve as cooperating agencies consistent with 40 CFR 1501.6 and 1508.5; and

(iii) Integrate, where possible, review of applicable federal laws and executive orders into the environmental review process in conjunction with the development of NEPA documents.

(d) When preparing NEPA documents, the Responsible Official must:

(1) Utilize a systematic, interdisciplinary approach to integrate the natural and social sciences with the environmental design arts in planning and making decisions on proposed actions subject to environmental review under subparts A through C of this part (see 40 CFR 1501.2(a) and 1507.2);

(2) Plan adequate time and funding for the NEPA review and preparation of the NEPA documents. Planning includes consideration of whether an applicant will be required to prepare an EID for the proposed action.

(3) Review relevant planning or decision-making documents, whether prepared by EPA or another federal agency, to determine if the proposed action or any of its alternatives have been considered in a prior federal NEPA document. EPA may adopt the existing document, or will incorporate by reference any pertinent part of it, consistent with 40 CFR 1506.3 and 1502.21.

(4) Review relevant environmental review document prepared by a state or local government or federally-recognized Indian tribe to determine if the proposed action or any of its alternatives have been considered in such a document. EPA will incorporate by reference any pertinent part of that document consistent with 40 CFR 1502.21.

(e) During the decision-making process for the proposed action, the Responsible Official must:

(1) Incorporate the NEPA review in decision-making on the action. Processing and review of an applicant's application must proceed concurrently with the NEPA review procedures set out in subparts A through C of this part. EPA must complete its NEPA review before making a decision on the action.

(2) Consider the relevant NEPA documents, public and other agency comments (if any) on those documents, and EPA responses to those comments, as part of consideration of the action (see 40 CFR 1505.1(d)).

(3) Consider the alternatives analyzed in an EA or EIS before rendering a decision on the action; and

(4) Ensure that the decision on the action is to implement an alternative analyzed or is within the range of alternatives analyzed in the EA or EIS (see 40 CFR 1505.1(e)).

(f) To eliminate duplication and to foster efficiency, the Responsible Official should use tiering (see 40 CFR 1502.20 and 1508.28) and incorporate material by reference (see 40 CFR 1502.21) as appropriate.

(g) For applicant-related proposed actions:

(1) The Responsible Official may request that the applicant submit information to support the application of a categorical exclusion to the applicant's pending action.

(2) The Responsible Official may gather the information and prepare the NEPA document without assistance from the applicant, or, pursuant to Subpart C of this part, have the applicant prepare an EID or a draft EA and supporting documents, or enter into

a third-party agreement with the applicant.

(3) During the environmental review process, applicants may continue to compile additional information needed for the environmental review and/or information necessary to support an application for a permit or assistance agreement from EPA.

(h) For all NEPA determinations (CEs, EA/FONSIs, or EIS/RODs) that are five years old or older, and for which the subject action has not yet been implemented, the Responsible Official must re-evaluate the proposed action, environmental conditions, and public views to determine whether to conduct a supplemental environmental review of the action and complete an appropriate NEPA document or reaffirm EPA's original NEPA determination. If there has been substantial change in the proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, the Responsible Official must conduct a supplemental environmental review of the action and complete an appropriate NEPA document.

§ 6.201 Coordination with other environmental review requirements.

Consistent with 40 CFR 1500.5(g) and 1502.25, the Responsible Official must determine the applicability of other environmental laws and executive orders, to the fullest extent possible. The Responsible Official should incorporate applicable requirements as early in the NEPA review process as possible.

§ 6.202 Interagency cooperation.

(a) Consistent with 40 CFR 1501.5, 1501.6, and 1508.5, the Responsible Official will request other appropriate federal and non-federal agencies to be joint lead or cooperating agencies in the preparation of NEPA documents for actions as a means of encouraging early coordination and cooperation with federal agencies, state and local governments, and federally-recognized Indian tribes with jurisdiction by law or special expertise.

(b) For an EPA action related to an action of any other federal agency, the Responsible Official must comply with the requirements of 40 CFR 1501.5 and 1501.6 relating to lead agencies and cooperating agencies, respectively. The Responsible Official will work with the other involved agencies to facilitate coordination and to reduce delay and duplication.

(c) To prepare a single document to fulfill both NEPA and state or local government, or federally-recognized Indian tribe requirements, consistent with 40 CFR 1506.2, the Responsible Official should enter into a written agreement with the involved state or local government, or federally-recognized Indian tribe that sets out the intentions of the parties, including the responsibilities each party intends to assume and procedures the parties intend to follow.

§ 6.203 Public participation.

(a) *General requirements.* (1) The procedures in this section apply to EPA's environmental review processes, including development, supplementation, adoption, and revision of NEPA documents.

(2) The Responsible Official will make diligent efforts to involve the public, including applicants, in the preparation of EAs or EISs consistent with 40 CFR 1501.4 and 1506.6 and applicable EPA public participation regulations (*e.g.*, 40 CFR Part 25).

(3) EPA NEPA documents will use plain language to the extent possible.

(4) The Responsible Official will, to the greatest extent possible, give notice to any state or local government, or federally-recognized Indian tribe that, in the Official's judgment, may be affected by an action for which EPA plans to prepare an EA or an EIS.

(5) The Responsible Official must use appropriate communication procedures to ensure meaningful public participation throughout the NEPA process. The Responsible Official must make reasonable efforts to involve the potentially affected communities where the proposed action is expected to have environmental impacts or where the proposed action may have human health or environmental effects in any communities, including minority communities, low-income communities, or federally-recognized Indian tribal communities.

(b) *EA and FONSI requirements.* At least thirty (30) calendar days before making the decision on whether, and if so how, to proceed with a proposed action, the Responsible Official must make available to the interested federal agencies, state and local governments, federally-recognized Indian tribes and the affected public the EA and preliminary FONSI for review and comment. The Responsible Official must respond to any substantive comments received and finalize the EA and FONSI before making a decision on the proposed action. Where circumstances make it necessary to take the action without observing the 30-calendar-day comment period, the Responsible Official must notify the NEPA Official before taking such action. If the NEPA Official determines that a reduced comment period would be in the best interest of the Government, the NEPA Official will inform the Responsible Official, as soon as possible, of this approval.

(c) *EIS and ROD requirements.* (1) As soon as practicable after the decision to prepare an EIS and before beginning the scoping process, the Responsible Official must ensure that a notice of intent (NOI) (see 40 CFR 1508.22) is published in the **Federal Register**. The NOI must briefly describe the proposed action; a preliminary list of environmental issues to be analyzed, and possible alternatives; EPA's proposed scoping process including, if available, whether, when, and where any scoping meeting will be held; and the name and contact information for the person designated by EPA to answer questions about the proposed action and the EIS. The NOI must invite comments and suggestions on the scope of the EIS.

(2) The Responsible Official must disseminate the NOI consistent with 40 CFR 1506.6.

(3) The Responsible Official must conduct the scoping process consistent with 40 CFR 1501.7 and any applicable EPA public participation regulations (e.g., 40 CFR Part 25).

(i) Publication of the NOI in the **Federal Register** begins the scoping process.

(ii) The Responsible Official must ensure that the scoping process for an EIS allows a minimum of thirty (30) days for the receipt of public comments.

(iii) The Responsible Official may hold one or more public meetings as part of the scoping process for an EPA EIS. The Responsible Official must announce the location, date, and time of public scoping meetings in the NOI or by other appropriate means, such as additional notices in the **Federal Register**, news releases to the local media, or letters to affected parties. Public scoping meetings should be held at least fifteen (15) days after public notification.

(iv) The Responsible Official must use appropriate means to publicize the availability of draft and final EISs and the time and place for public meetings or hearings on draft EISs. The methods chosen for public participation must focus on reaching persons who may be interested in the proposed action. Such persons include those in potentially affected communities where the proposed action is known or expected to have environmental impacts including minority communities, low-income

communities, or federally-recognized Indian tribal communities.

(v) The Responsible Official must circulate the draft and final EISs consistent with 40 CFR 1502.19 and any applicable EPA public participation regulations and in accordance with the 45-day public review period for draft EISs and the 30-day public review period for final EISs (see § 6.209). Consistent with § 6.209(b), the Responsible Official may establish a longer public comment period for a draft or final EIS.

(vi) After preparing a draft EIS and before preparing a final EIS, the Responsible Official must solicit the comments of appropriate federal agencies, state and/or local governments, and/or federally-recognized Indian tribes, and the public (see 40 CFR 1503.1). The Responsible Official must respond in the final EIS to substantive comments received (see 40 CFR 1503.4).

(vii) The Responsible Official may conduct one or more public meetings or hearings on the draft EIS as part of the public involvement process. If meetings or hearings are held, the Responsible Official must make the draft EIS available to the public at least thirty (30) days in advance of any meeting or hearing.

(4) The Responsible Official must make the ROD available to the public upon request.

§ 6.204 Categorical exclusions and extraordinary circumstances.

(a) A proposed action may be categorically excluded if the action fits within a category of action that is eligible for exclusion and the proposed action does not involve any extraordinary circumstances.

(1) Certain actions eligible for categorical exclusion require the Responsible Official to document a determination that a categorical exclusion applies. The documentation must include: a brief description of the proposed action; the categorical exclusion that applies to the action; and a statement confirming that and explaining why no extraordinary circumstances apply to the proposed action. The Responsible Official must make a copy of the determination document available to the public upon request. The categorical exclusions requiring this documentation are listed in paragraphs (a)(1)(i) through (a)(1)(v) of this section.

(i) Actions at EPA owned or operated facilities involving routine facility maintenance, repair, and grounds-keeping; minor rehabilitation, restoration, renovation, or revitalization of existing facilities; functional replacement of equipment, acquisition and installation of equipment, or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities.

(ii) Actions relating to existing infrastructure systems (such as sewer systems; drinking water supply systems; and stormwater systems, including combined sewer overflow systems) that involve minor upgrading, or minor expansion of system capacity or rehabilitation (including functional replacement) of the existing system and system components (such as the sewer collection network and treatment system, the system to collect, treat, store and distribute drinking water; and stormwater systems, including combined sewer overflow systems) or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities. This category does not include actions that: involve new or relocated discharges to surface or ground water; will likely result in the substantial increase in the volume or the loading of pollutant to the receiving water; will provide capacity to serve a population 30% greater than the existing population or is not supported by the state, or other regional growth plan or strategy; or directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.

(iii) Actions in unsewered communities relating to the use of proposed wastewater on-site technologies where such technologies replace existing systems.

(iv) Actions involving re-issuance of a NPDES permit for a new source providing the conclusions of the original NEPA document are still valid (including the appropriate mitigation), there will be no degradation of the receiving waters, and the permit conditions do not change or are more environmentally protective.

(v) Actions for award of grants authorized by Congress under EPA's annual Appropriations Act that are solely for reimbursement of the costs of a project that was completed prior to the date the appropriation was enacted.

(2) Certain actions eligible for categorical exclusion do not require the Responsible Official to document a determination that a categorical exclusion applies. These categorical exclusions are listed in paragraphs (a)(2)(i) through (a)(2)(x) of this section.

(i) Procedural, ministerial, administrative, financial, personnel, and management actions necessary to support the normal conduct of EPA business.

(ii) Acquisition actions (compliant with applicable procedures for sustainable or ''green'' procurement) and contracting actions necessary to support the normal conduct of EPA business.

(iii) Actions involving information collection, dissemination, or exchange; planning; monitoring and sample collection wherein no significant alteration of existing ambient conditions occurs; educational and training programs; literature searches and studies; computer studies and activities; research and analytical activities; development of compliance assistance tools; and architectural and engineering studies. These actions include those conducted directly by EPA and EPA actions relating to contracts or assistance agreements involving such actions.

(iv) Actions relating to or conducted completely within a permanent, existing contained facility, such as a laboratory, or other enclosed building, provided that reliable and scientifically sound methods are used to appropriately dispose of wastes and safeguards exist to prevent hazardous, toxic and radioactive materials in excess of allowable limits from entering the environment. Where such activities are conducted at laboratories, the Lab Director or other appropriate official must certify in writing that the laboratory follows good laboratory practices and adheres to all applicable federal, state, local and federally-recognized Indian tribal laws and regulations. This category does not include activities related to construction and/or demolition within the facility (see paragraph (a)(1)(i) of this section).

(v) Actions involving emergency preparedness planning and training activities.

(vi) Actions involving the acquisition, transfer, lease, disposition, or closure of existing permanent structures, land, equipment, materials or personal property provided that the property: has been used solely for office functions; has never been used for laboratory purposes by any party; does not require site remediation; and will be used in essentially the same manner such that the type and magnitude of the impacts will not change substantially. This category does not include activities related to construction and/or demolition of structures on the property (see paragraph (a)(1)(i) of this section).

(vii) Actions involving providing technical advice to federal agencies, state or local governments, federally-recognized Indian tribes, foreign

governments, or public or private entities.

(viii) Actions involving approval of EPA participation in international ''umbrella'' agreements for cooperation in environmental-related activities that would not commit the United States to any specific projects or actions.

(ix) Actions involving containment or removal and disposal of asbestos-containing material or lead-based paint from EPA owned or operated facilities when undertaken in accordance with applicable regulations.

(x) Actions involving new source NPDES permit modifications that make only technical corrections to the NPDES permit (such as correcting typographical errors) that do not result in a change in environmental impacts or conditions.

(b) The Responsible Official must review actions eligible for categorical exclusion to determine whether any extraordinary circumstances are involved. Extraordinary circumstances are listed in paragraphs (b)(1) through (b)(10) of this section. (See 40 CFR 1508.4.)

(1) The proposed action is known or expected to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time (see 40 CFR 1508.25(a)).

(2) The proposed action is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities.

(3) The proposed action may significantly affect federally listed threatened or endangered species or their critical habitat.

(4) The proposed action may significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value, including but not limited to, property listed on or eligible for the National Register of Historic Places.

(5) The proposed action may significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.

(6) The proposed action has the potential to cause significant adverse air quality effects.

(7) The proposed action will likely have a significant effect on the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use plans or federal land management plans.

(8) The proposed action is expected to cause significant public controversy about a potential environmental impact of the proposed action.

(9) The proposed action may be associated with providing financial assistance to a federal agency through an interagency agreement for a project that is known or expected to have potentially significant environmental impacts.

(10) The proposed action may conflict with federal, state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.

(c) The Responsible Official may request that an applicant submit sufficient information to enable the Responsible Official to determine whether a categorical exclusion applies to the applicant's proposed action or whether an exceptional circumstance applies. Pursuant to Subpart C of this part, applicants are not required to prepare EIDs for actions that are being considered for categorical exclusion.

(d) The Responsible Official must prepare an EA or EIS when a proposed action involves extraordinary circumstances.

(e) After a determination has been made that a categorical exclusion applies to an action, if new information or changes in the proposed action involve or relate to at least one of the extraordinary circumstances or otherwise indicate that the action may not meet the criteria for categorical exclusion and the Responsible Official determines that an action no longer qualifies for a categorical exclusion, the Responsible Official will prepare an EA or EIS.

(f) The Responsible Official, or other interested parties, may request the addition, amendment, or deletion of a categorical exclusion.

(1) Such requests must be made in writing, be directed to the NEPA Official, and contain adequate information to support and justify the request.

(2) Proposed new categories of actions for exclusion must meet these criteria:

(i) Actions covered by the proposed categorical exclusion generally do not individually or cumulatively have a significant effect on the human environment and have been found by EPA to have no such effect.

(ii) Actions covered by the proposed categorical exclusion generally do not involve extraordinary circumstances as set out in paragraphs (b)(1) through (b)(14) of this section and generally do not require preparation of an EIS; and

(iii) Information adequate to determine that a proposed action is properly covered by the proposed category will usually be available.

(3) The NEPA Official must determine that the addition, amendment, or deletion of a categorical exclusion is appropriate.

(g) Any addition, amendment, or deletion of a categorical exclusion will be done by rule-making and in coordination with CEQ pursuant to 40 CFR 1507.3 to amend paragraph (a)(1) or paragraph (a)(2) of this section.

§ 6.205 Environmental assessments.

(a) The Responsible Official must prepare an environmental assessment (EA) (see 40 CFR 1508.9) for a proposed action that is expected to result in environmental impacts and the significance of the impacts is not known. An EA is not required if the proposed action is categorically excluded, or if the Responsible Official has decided to prepare an EIS. (See 40 CFR 1501.3.) Types of actions that typically require the preparation of an EA include: the award of wastewater treatment construction grants under Title II of the Clean Water Act; EPA's issuance of new source NPDES permits under section 402 of the Clean Water Act; EPA actions involving renovations or new construction of facilities; certain grants awarded for special projects identified in the State and Tribal Assistance Grants (STAG) account authorized by Congress through the Agency's annual Appropriations Act; and research and development projects, such as initial field demonstration of a new technology, field trials of a new product or new uses of an existing technology, alteration of a local habitat by physical or chemical means, or actions that may result in the release of radioactive, hazardous, or toxic substances, or biota.

(b) Consistent with 40 CFR 1508.9, an EA must provide sufficient information and analysis for determining whether to prepare an EIS or to issue a FONSI (see 40 CFR 1508.9(a)), and may include analyses needed for other environmental determinations. The EA must focus on resources that might be impacted and any environmental issues that are of public concern.

(c) An EA must include:

(1) A brief discussions of:

(i) The need for the proposed action;

(ii) The alternatives, including the no action alternative (which must be assessed even when the proposed action is specifically required by legislation or a court order);

(iii) The affected environment, including baseline conditions that may be impacted by the proposed action and alternatives;

(iv) The environmental impacts of the proposed action and alternatives, including any unresolved conflicts concerning alternative uses of available resources; and

(v) Other applicable environmental laws and executive orders.

(2) A listing or summary of any coordination or consultation undertaken with any federal agency, state or local government, or federally-recognized Indian tribe regarding compliance with applicable laws and executive orders;

(3) Identification and description of any mitigation measures considered, including any mitigation measures that must be adopted to ensure the action will not have significant impacts; and

(4) Incorporation of documents by reference, if appropriate, including, when available, the EID for the action.

§ 6.206 Findings of no significant impact.

(a) The Responsible Official may issue a finding of no significant impact (FONSI) (see 40 CFR 1508.13) only if the EA supports the finding that the proposed action will not have a significant effect on the human environment. If the EA does not support a FONSI, the Responsible Official must prepare an EIS and issue a ROD before taking action on the proposed action.

(b) Consistent with 40 CFR 1508.13, a FONSI must include:

(1) The EA, or in lieu of the EA, a summary of the supporting EA that includes a brief description of the proposed action and alternatives considered in the EA, environmental factors considered, and project impacts; and

(2) A brief description of the reasons why there are no significant impacts.

(c) In addition, the FONSI, must include:

(1) Any commitments to mitigation that are essential to render the impacts of the proposed action not significant;

(2) The date of issuance; and

(3) The signature of the Responsible Official.

(d) The Responsible Official must ensure that an applicant that has committed to mitigation possesses the authority and ability to fulfill the commitments.

(e) The Responsible Official must make a preliminary FONSI available to the public in accordance with § 6.203(b) before taking action.

(f) The Responsible Official may proceed with the action subject to any mitigation measures described in the FONSI after responding to any substantive comments received on the preliminary FONSI during the 30-day comment period, or 30 days after issuance of the FONSI if no substantive comments are received.

(g) The Responsible Official must ensure that the mitigation measures necessary to the FONSI determination, at a minimum, are enforceable, and conduct appropriate monitoring of the mitigation measures.

(h) The Responsible Official may revise a FONSI at any time provided the revision is supported by an EA. A revised FONSI is subject to all provisions of paragraph (d) of this section.

§ 6.207 Environmental impact statements.

(a) The Responsible Official will prepare an environmental impact statement (EIS) (see 40 CFR 1508.11) for major actions significantly affecting the quality of the human environment, including actions for which the EA analysis demonstrates that significant impacts will occur that will not be reduced or eliminated by changes to or mitigation of the proposed action.

(1) An EIS must be prepared consistent with 40 CFR part 1502.

(2) A proposed action normally requires an EIS if it meets any of the following criteria. (See 40 CFR 1507.3(b)(2).)

(i) The proposed action would result in a discharge of treated effluent from a new or modified existing facility into a body of water and the discharge is likely to have a significant effect on the quality of the receiving waters.

(ii) The proposed action is likely to directly, or through induced development, have significant adverse effect upon local ambient air quality or local ambient noise levels.

(iii) The proposed action is likely to have significant adverse effects on surface water reservoirs or navigation projects.

(iv) The proposed action would be inconsistent with state or local government, or federally-recognized Indian tribe approved land use plans or regulations, or federal land management plans.

(v) The proposed action would be inconsistent with state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws and regulations for protection of the environment.

(vi) The proposed action is likely to significantly affect the environment through the release of radioactive, hazardous or toxic substances, or biota.

(vii) The proposed action involves uncertain environmental effects or highly unique environmental risks that are likely to be significant.

(viii) The proposed action is likely to significantly affect national natural landmarks or any property on or eligible for the National Register of Historic Places.

(ix) The proposed action is likely to significantly affect environmentally important natural resources such as wetlands, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.

(x) The proposed action in conjunction with related federal, state or local government, or federally-recognized Indian tribe projects is likely to produce significant cumulative impacts.

(xi) The proposed action is likely to significantly affect the pattern and type of land use (industrial, commercial, recreational, residential) or growth and distribution of population including altering the character of existing residential areas.

(3) EISs are typically prepared for the following actions:

(i) New regional wastewater treatment facilities or water supply systems for a community with a population greater than 100,000.

(ii) Expansions of existing wastewater treatment facilities that will increase existing discharge to an impaired water by greater than 10 million gallons per day (mgd).

(iii) Issuance of new source NPDES permit for a new major industrial discharge.

(iv) Issuance of a new source NPDES permit for a new oil/gas development and production operation on the outer continental shelf.

(v) Issuance of a new source NPDES permit for a deepwater port with a projected discharge in excess of 10 mgd.

(b) When appropriate, the Responsible Official will prepare a legislative EIS consistent with 40 CFR 1506.8.

(c) In preparing an EIS, the Responsible Official must determine if an applicant, other federal agencies or state or local governments, or federally-recognized Indian tribes are involved with the project and apply the applicable provisions of section 6.202 and Subpart C of this part.

(d) An EIS must:

(1) Comply with all requirements at 40 CFR parts 1500–1508;

(2) Analyze all reasonable alternatives and the no action alternative (which may be the same as denying the action).

Assess the no action alternative even when the proposed action is specifically required by legislation or a court order.

(3) Describe the potentially affected environment including, as appropriate, the size and location of new and existing facilities, land requirements, operation and maintenance requirements, auxiliary structures such as pipelines or transmission lines, and construction schedules.

(4) Summarize any coordination or consultation undertaken with any federal agency, state and/or local government, and/or federally-recognized Indian tribe, including copies or summaries of relevant correspondence.

(5) Summarize any public meetings during the scoping process including the date, time, place, and purpose of the meetings. The final EIS must summarize the public participation process including the date, time, place, and purpose of meetings or hearings held after publication of the draft EIS.

(6) Consider substantive comments received during the public participation process. The draft EIS must consider the substantive comments received during the scoping process. The final EIS must include or summarize all substantive comments received on the draft EIS, respond to any substantive comments on the draft EIS, and explain any changes to the draft EIS and the reason for the changes.

(7) Include the names and qualifications of the persons primarily responsible for preparing the EIS including an EIS prepared under a third-party contract (if applicable), significant background papers, and the EID (if applicable).

(e) The Responsible Official must prepare a supplemental EIS when appropriate, consistent with 40 CFR 1502.9.

§ 6.208 Records of decision.

(a) The Responsible Official may not make any decisions on the action until the time periods in 40 CFR 1506.10 have been met.

(b) A record of decision (ROD) records EPA's decision on the action. Consistent with 40 CFR 1505.2, a ROD must include:

(1) A brief description of the proposed action and alternatives considered in the EIS, environmental factors considered, and project impacts;

(2) Any commitments to mitigation; and

(3) An explanation if an environmentally preferred alternative was not selected.

(c) In addition, the ROD must include:

(1) Responses to any substantive comments on the final EIS;

(2) The date of issuance; and

(3) The signature of the Responsible Official.

(d) The Responsible Official must ensure that an applicant that has committed to mitigation possesses the authority and ability to fulfill the commitment.

(e) The Responsible Official must make a ROD available to the public.

(f) Upon issuance of the ROD, the Responsible Official may proceed with the action subject to any mitigation measures described in the ROD. The Responsible Official must ensure adequate monitoring of mitigation measures identified in the ROD.

(g) If the mitigation identified in the ROD will be included as a condition in the permit or grant, the Responsible Official must ensure that EPA has the authority to impose the conditions. The Responsible Official should ensure that compliance with assistance agreement or permit conditions will be monitored and enforced under EPA's assistance agreement and permit authorities.

(h) The Responsible Official may revise a ROD at any time provided the revision is supported by an EIS. A revised ROD is subject to all provisions of paragraph (d) of this section.

§ 6.209 Filing requirements for EPA EISs.

(a) The Responsible Official must file an EIS with the NEPA Official no earlier than the document being transmitted to commenting agencies and made available to the public. The Responsible Official must comply with any guidelines established by the NEPA Official for the filing system process and comply with 40 CFR 1506.9 and 1506.10. The review periods are computed through the filing system process and published in the **Federal Register** in the Notice of Availability.

(b) The Responsible Official may request that the NEPA Official extend the review periods for an EIS. The NEPA Official will publish notice of an extension of the review period in the **Federal Register** and notify the CEQ.

§ 6.210 Emergency circumstances.

If emergency circumstances make it necessary to take an action that has a significant environmental impact without observing the provisions of subparts A through C of this part that are required by the CEQ Regulations, the Responsible Official must consult with the NEPA Official at the earliest possible time. Actions taken without observing the provisions of subparts A through C of this part will be limited to actions necessary to control the immediate impacts of the emergency; other actions remain subject to the environmental review process. Consistent with 40 CFR 1506.11, the Responsible Official and the NEPA Official should consult with CEQ about alternative arrangements at the earliest opportunity.

Subpart C—Requirements for Environmental Information Documents and Third-Party Agreements for EPA Actions Subject to NEPA

§ 6.300 Applicability.

(a) This section applies to actions that involve applications to EPA for permits or assistance agreements.

(b) The Responsible Official is responsible for the environmental review process on EPA's action (that is, issuing the permit or awarding the assistance agreement) with the applicant contributing through submission of an EID or a draft EA and supporting documents.

(c) An applicant is not required to prepare an EID when:

(1) The action has been categorically excluded; or

(2) The applicant will prepare and submit an EA or EIS and supporting documents.

(d) The Responsible Official must notify the applicant if EPA will not require submission of an EID.

§ 6.301 Applicant requirements.

(a) The applicant must prepare an EID in consultation with the Responsible Official, unless the Responsible Official has notified the applicant that an EID is not required. The EID must be of sufficient scope and content to enable the Responsible Official to prepare an EA and FONSI or, if necessary, an EIS and ROD. The applicant must submit the EID to the Responsible Official.

(b) The applicant must consult with the Responsible Official as early as possible in the planning process to obtain guidance with respect to the appropriate level and scope of environmental information required for the EID.

(c) As part of the EID process, the applicant may consult with appropriate federal agencies, state and local governments, and federally-recognized Indian tribes and other potentially affected parties to identify their interests in the project and the environmental issues associated with the project.

(d) The applicant must notify the Responsible Official as early as possible of other federal agency, state or local government, or federally-recognized Indian tribe requirements related to the project. The applicant also must notify the Responsible Official of any private entities and organizations affected by

the proposed project. (See 40 CFR 1501.2(d)(2).)

(e) The applicant must notify the Responsible Official if, during EPA's environmental review process, the applicant:

(1) Changes its plans for the project as originally submitted to EPA; and/or

(2) Changes its schedule for the project from that originally submitted to EPA.

(f) In accordance with section 6.204 of this part, where appropriate, the applicant may request a categorical exclusion determination by the Responsible Official. If requested by the Responsible Official, the applicant must submit information to the Responsible Official regarding the application of a categorical exclusion to EPA's pending action and the applicant's project.

§ 6.302 Responsible Official requirements.

(a) Consistent with 40 CFR 1501.2(d), the Responsible Official must ensure early involvement of applicants in the environmental review process to identify environmental effects, avoid delays, and resolve conflicts.

(b) The Responsible Official must notify the applicant if a determination has been made that the action has been categorically excluded, or if EPA needs additional information to support the application of a categorical exclusion or if the submitted information does not support the application of a categorical exclusion and that an EA, or an EIS, will be required.

(c) When an EID is required for a project, the Responsible Official must consult with the applicant and provide the applicant with guidance describing the scope and level of environmental information required.

(1) The Responsible Official must provide guidance on a project-by-project basis to any applicant seeking such assistance. For major categories of actions involving a large number of applicants, the Responsible Official may prepare and make available generic guidance describing the recommended level and scope of environmental information that applicants should provide.

(2) The Responsible Official must consider the extent to which the applicant is capable of providing the required information. The Responsible Official may not require the applicant to gather data or perform analyses that unnecessarily duplicate either existing data or the results of existing analyses available to EPA. The Responsible Official must limit the request for environmental information to that necessary for the environmental review.

(d) If, prior to completion of the environmental review for a project, the Responsible Official receives notification from the applicant under section 6.301(e) and determines that its actions would result in significant impacts or would limit alternatives, the Responsible Official must notify the applicant promptly that EPA will take appropriate action to ensure that the objectives and procedures of NEPA are achieved (see 40 CFR 1506.1(b)). Such actions may include withholding grant funds or denial of permits.

(e) The Responsible Official must begin the NEPA review as soon as possible after receiving the applicant's EID or draft EA. The Responsible Official must independently evaluate the information submitted and be responsible for its accuracy (see 40 CFR 1506.5).

(f) At the request of an applicant and at the discretion of the Responsible Official, an applicant may prepare an EA or EIS and supporting documents or enter into a third-party contract pursuant to section 6.303 of this part.

(g) The Responsible Official must have reviewed and taken responsibility for the completed NEPA documents before rendering a final decision on the proposed action.

§ 6.303 Third-party agreements.

(a) If an EA or EIS is to be prepared for an action subject to subparts A through C of this part, the Responsible Official and the applicant may enter into an agreement whereby the applicant engages and pays for the services of a third-party contractor to prepare an EA or EIS and any associated documents for consideration by EPA. In such cases, the Responsible Official must approve the qualifications of the third-party contractor. The third-party contractor must be selected on the basis of ability and absence of any conflict of interest. Consistent with 40 CFR 1506.5(c), in consultation with the applicant, the Responsible Official shall select the contractor. The Responsible Official must provide guidance to the applicant and contractor regarding the information to be developed, including the project's scope, and guide and participate in the collection, analysis, and presentation of the information. The Responsible Official has sole authority for final approval of an EA or EIS.

(1) The applicant must engage and pay for the services of a contractor to prepare the EA or EIS and any associated documents without using EPA financial assistance (including required match);

(2) The Responsible Official, in consultation with the applicant, must ensure that the contractor is qualified to prepare an EA or EIS, and that the substantive terms of the contract specify the information to be developed, and the procedures for gathering, analyzing and presenting the information;

(3) The Responsible Official must prepare a disclosure statement for the applicant to include in the contract specifying that the contractor has no financial or other interest in the outcome of the project (see 40 CFR 1506.5(c)).

(4) The Responsible Official must ensure that the EA or EIS and any associated documents contain analyses and conclusions that adequately assess the relevant environmental issues.

(b) In order to make a decision on the action, the Responsible Official must independently evaluate the information submitted in the EA or EIS and any associated documents, and issue an EA or draft and final EIS. After review of, and appropriate changes to, the EA or EIS submitted by the applicant, the Responsible Official may accept it as EPA's document. The Responsible Official is responsible for the scope, accuracy, and contents of the EA or EIS and any associated documents (see 40 CFR 1506.5).

(c) A third-party agreement may not be initiated unless both the applicant and the Responsible Official agree to its creation and terms.

(d) The terms of the contract between the applicant and the third-party contractor must ensure that the contractor does not have recourse to EPA for financial or other claims arising under the contract, and that the Responsible Official, or other EPA designee, may give technical advice to the contractor.

Subpart D—Assessing the Environmental Effects Abroad of EPA Actions

§ 6.400 Purpose and policy.

(a) *Purpose.* On January 4, 1979, the President signed Executive Order 12114 entitled ''Environmental Effects Abroad of Major Federal Actions.'' The purpose of this Executive Order is to enable responsible Federal officials in carrying out or approving major Federal actions which affect foreign nations or the global commons to be informed of pertinent environmental considerations and to consider fully the environmental impacts of the actions undertaken. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and the Marine Protection, Research, and Sanctuaries Act (MPRSA) (33 U.S.C.

1401 *et seq.*). It should be noted, however, that in fulfilling its responsibilities under Executive Order 12114, EPA shall be guided by CEQ regulations only to the extent that they are made expressly applicable by this subpart. The procedures set forth below reflect EPA's duties and responsibilities as required under the Executive Order and satisfy the requirement for issuance of procedures under section 2–1 of the Executive Order.

(b) *Policy.* It shall be the policy of this Agency to carry out the purpose and requirements of the Executive Order to the fullest extent possible. EPA, within the realm of its expertise, shall work with the Department of State and the Council on Environmental Quality to provide information to other Federal agencies and foreign nations to heighten awareness of and interest in the environment. EPA shall further cooperate to the extent possible with Federal agencies to lend special expertise and assistance in the preparation of required environmental documents under the Executive Order. EPA shall perform environmental reviews of activities significantly affecting the global commons and foreign nations as required under Executive Order 12114 and as set forth under these procedures.

§ 6.401 Applicability.

(a) Administrative actions requiring environmental review. The environmental review requirements apply to the activities of EPA as follows:

(1) Major research or demonstration projects which affect the global commons or a foreign nation.

(2) Ocean dumping activities carried out under section 102 of the MPRSA which affect the related environment.

(3) Major permitting or licensing by EPA of facilities which affect the global commons or the environment of a foreign nation. This may include such actions as the issuance by EPA of hazardous waste treatment, storage, or disposal facility permits pursuant to section 3005 of the Resource Conservation and Recovery Act (42 U.S.C. 6925), NPDES permits pursuant to section 402 of the Clean Water Act (33 U.S.C. 1342), and prevention of significant deterioration approvals pursuant to Part C of the Clean Air Act (42 U.S.C. 7470 *et seq.*)

(4) Wastewater Treatment Construction Grants Program under section 201 of the Clean Water Act when activities addressed in the facility plan would have environmental effects abroad.

(5) Other EPA activities as determined by OFA and OIA (see § 6.406(c)).

(b) [Reserved].

§ 6.402 Definitions.

As used in this subpart, *environment* means the natural and physical environment and excludes social, economic and other environments; *global commons* is that area (land, air, water) outside the jurisdiction of any nation; and *responsible official* is either the EPA Assistant Administrator or Regional Administrator as appropriate for the particular EPA program. Also, an action *significantly* affects the environment if it does *significant* harm to the environment even though on balance the action may be beneficial to the environment. To the extent applicable, the responsible official shall address the considerations set forth in the CEQ regulations under 40 CFR 1508.27 in determining significant effect.

§ 6.403 Environmental review and assessment requirements.

(a) *Research and demonstration projects.* The appropriate Assistant Administrator is responsible for performing the necessary degree of environmental review on research and demonstration projects undertaken by EPA. If the research or demonstration project affects the environment of the global commons, the applicant shall prepare an environmental analysis. This will assist the responsible official in determining whether an EIS is necessary. If it is determined that the action significantly affects the environment of the global commons, then an EIS shall be prepared. If the undertaking significantly affects a foreign nation EPA shall prepare a unilateral, bilateral or multilateral environmental study. EPA shall afford the affected foreign nation or international body or organization an opportunity to participate in this study. This environmental study shall discuss the need for the action, analyze the environmental impact of the various alternatives considered and list the agencies and other parties consulted.

(b) *Ocean dumping activities.* (1) The Assistant Administrator for Water shall ensure the preparation of appropriate environmental documents relating to ocean dumping activities in the global commons under section 102 of the MPRSA. For ocean dumping site designations prescribed pursuant to section 102(c) of the MPRSA and 40 CFR part 228, and for the establishment or revision of criteria under section 102(a) of the MPRSA, EPA shall prepare appropriate environmental documents consistent with EPA's Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents dated October 29, 1998 (see 63 FR 58045).

(2) For individual permits issued by EPA under section 102(b) an environmental assessment shall be made by EPA. Pursuant to 40 CFR part 221, the permit applicant shall submit with the application an environmental analysis which includes a discussion of the need for the action, an outline of alternatives, and an analysis of the environmental impact of the proposed action and alternatives consistent with the EPA criteria established under section 102(a) of MPRSA. The information submitted under 40 CFR part 221 shall be sufficient to satisfy the environmental assessment requirement.

(c) *EPA permitting and licensing activities.* The appropriate Regional Administrator is responsible for conducting concise environmental reviews with regard to permits issued under section 3005 of the Resource Conservation and Recovery Act (RCRA permits), section 402 of the Clean Water Act (NPDES permits), and section 165 of the Clean Air Act (PSD permits), for such actions undertaken by EPA which affect the global commons or foreign nations. The information submitted by applicants for such permits or approvals under the applicable consolidated permit regulations (40 CFR parts 122 and 124) and Prevention of Significant Deterioration (PSD) regulations (40 CFR part 52) shall satisfy the environmental document requirement under Section 2–4(b) of Executive Order 12114. Compliance with applicable requirements in part 124 of the consolidated permit regulations (40 CFR part 124) shall be sufficient to satisfy the requirements to conduct a concise environmental review for permits subject to this paragraph (c).

(d) *Wastewater treatment facility planning.* 40 CFR part 6, subparts A through C, detail the environmental review process for the facilities planning process under the wastewater treatment works construction grants program. For the purpose of these regulations, the facility plan shall also include a concise environmental review of those activities that would have environmental effects abroad. This shall apply only to the Step 1 grants awarded after January 14, 1981, but on or before December 29, 1981, and facilities plans developed after December 29, 1981. Where water quality impacts identified in a facility plan are the subject of water quality agreements with Canada or Mexico, nothing in these regulations shall impose on the facility planning process coordination and consultation

requirements in addition to those required by such agreements.

(e) *Review by other Federal agencies and other appropriate officials.* The responsible officials shall consult with other Federal agencies with relevant expertise during the preparation of the environmental document. As soon as feasible after preparation of the environmental document, the responsible official shall make the document available to the Council on Environmental Quality, Department of State, and other appropriate officials. The responsible official with assistance from OIA shall work with the Department of State to establish procedures for communicating with and making documents available to foreign nations and international organizations.

§ 6.404 Lead or cooperating agency.

(a) *Lead Agency.* Section 3–3 of Executive Order 12114 requires the creation of a lead agency whenever an action involves more than one Federal agency. In implementing section 3–3, EPA shall, to the fullest extent possible, follow the guidance for the selection of a lead agency contained in 40 CFR 1501.5 of the CEQ regulations.

(b) *Cooperating Agency.* Under Section 2–4(d) of the Executive Order, Federal agencies with special expertise are encouraged to provide appropriate resources to the agency preparing environmental documents in order to avoid duplication of resources. In working with a lead agency, EPA shall to the fullest extent possible serve as a cooperating agency in accordance with 40 CFR 1501.6. When other program commitments preclude the degree of involvement requested by the lead agency, the responsible EPA official shall so inform the lead agency in writing.

§ 6.405 Exemptions and considerations.

Under section 2–5(b) and (c) of the Executive Order, Federal agencies may provide for modifications in the contents, timing and availability of documents or exemptions from certain requirements for the environmental review and assessment. The responsible official, in consultation with the Director, Office of Federal Activities (OFA), and the Assistant Administrator, Office of International Affairs (OIA), may approve modifications for situations described in section 2–5(b). The responsible official, in consultation with the Director, OFA and Assistant Administrator, OIA, shall obtain exemptions from the Administrator for situations described in section 2–5(c). The Department of State and the Council on Environmental Quality shall be consulted as soon as possible on the utilization of such exemptions.

§ 6.406 Implementation.

(a) *Oversight.* OFA is responsible for overseeing the implementation of these procedures and shall consult with OIA wherever appropriate. OIA shall be utilized for making formal contacts with the Department of State. OFA shall assist the responsible officials in carrying out their responsibilities under these procedures.

(b) *Information exchange.* OFA with the aid of OIA, shall assist the Department of State and the Council on Environmental Quality in developing the informational exchange on environmental review activities with foreign nations.

(c) *Unidentified activities.* The responsible official shall consult with OFA and OIA to establish the type of environmental review or document appropriate for any new EPA activities or requirements imposed upon EPA by statute, international agreement or other agreements.

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Federal Register

Tuesday,
December 19, 2006

Part VI

The President

Proclamation 8091—Wright Brothers Day, 2006

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Vol. 71, No. 243
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Presidential Documents

Title 3—

The President

Proclamation 8091 of December 15, 2006

Wright Brothers Day, 2006

By the President of the United States of America

A Proclamation

America has a rich history of exploration and discovery, marked by scientific and technological achievements that have transformed the world. On Wright Brothers Day, we remember two aviation pioneers from Ohio whose big dreams and extraordinary accomplishments helped change the course of human history.

On December 17, 1903, Orville and Wilbur Wright completed the first manned, powered flight in history and ushered all of mankind into a new era of possibility and promise. With Orville at the controls, the Wright brothers' small aircraft traveled 120 feet in 12 seconds above the dunes of Kitty Hawk, North Carolina. The age of flight had begun, and in the decades that followed, advancements in aviation would enable determined American risk-takers to cross oceans, break the sound barrier, and walk on the Moon.

Today, our Nation follows the Wright brothers' example of innovation as we continue to explore the frontiers of air and space. My Administration has outlined a vision for space exploration that includes a return to the Moon and a long-term human and robotic program to explore Mars and the solar system. By working to expand the realm of the possible, we can gain a better understanding of the universe and continue the journey that the Wright brothers began more than a century ago.

The Congress, by a joint resolution approved December 17, 1963, as amended (77 Stat. 402; 36 U.S.C. 143), has designated December 17 of each year as ''Wright Brothers Day'' and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim December 17, 2006, as Wright Brothers Day.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of December, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4766/P.L. 109–394

Esther Martinez Native American Languages Preservation Act of 2006 (Dec. 14, 2006; 120 Stat. 2705)

S. 2250/P.L. 109–395

Congressional Tribute to Dr. Norman E. Borlaug Act of 2006 (Dec. 14, 2006; 120 Stat. 2708)

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