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

WHEN: Tuesday, February 13, 2007
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1209

[Docket No. AMS–FV–06–0218, FV–05–710]

Mushroom Promotion, Research, and Consumer Information Order; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This document summarizes the results of an Agricultural Marketing Service (AMS) review of the Mushroom Promotion, Research and Consumer Information Program under the criteria contained in section 610 of the Regulatory Flexibility Act. Based on this review, AMS has determined that the Mushroom Promotion, Research, and Consumer Information Order should be continued without change.

ADDRESSES: Interested persons may obtain a copy of the review. Requests for copies should be sent to Deborah S. Simmons, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 0634–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244 or *deborah.simmons@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 0634–S, Washington, DC 20250–0244; telephone: (888) 720–9917 fax: (202) 205–2800; or e-mail: *sonia.jimenez@usda.gov*.

SUPPLEMENTARY INFORMATION: The Mushroom Promotion, Research, and Consumer Information Act of 1990 (Act), (7 U.S.C. 6101 *et seq.*) authorized the Mushroom Promotion, Research, and Consumer Information Program (Program) which is industry-operated and funded, with oversight by USDA. The Program's objective is to carry out an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information. It is designed to strengthen the mushroom industry's position in the marketplace, maintain and expand existing markets and uses for mushrooms, develop new markets and uses for mushrooms, and to carry out programs, plans, and projects designed to provide maximum benefits to the mushroom industry.

The Program became effective on January 8, 1993, when the Mushroom Promotion, Research, and Consumer Information Order (7 CFR part 1209) (Order) was issued. Assessments began in 1993 at the rate of 0.0025 cents per pound and have fluctuated from 0.0010 to 0.0045 cents per pound. The current rate is 0.0035 cents per pound.

Assessments under this Program are used to fund retail category management, research concerning nutritional attributes of mushrooms, foodservice training, and industry information, and to enable the Mushroom Council (Council) to exercise its duties in accordance with the Order.

The program is administered by the Council which is composed of producers and may include importers, all of whom are appointed by the Secretary of Agriculture from nominations submitted by eligible producers or importers. Producer membership on the Council is based upon mushroom production within each of the four predesignated geographic regions within the U.S. and a fifth region representing importers (when imports, on average, equal or exceed 35,000,000 pounds of mushrooms annually). All members serve terms of three years.

AMS published its plan to review the Mushroom Promotion, Research, and Consumer Information Order, (conducted under the Act), under criteria contained in Section 610 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) in the **Federal Register** on February 18, 1999. The plan was updated in the **Federal Register** on August 14, 2003 (68 FR 48574), and updated again on March 24, 2006 (71 FR 14827).

A notice of review and request for written comments was published in the **Federal Register** on December 14, 2005 (70 FR 73945). One comment was received, opposing the program in general. However, as discussed herein, AMS has determined that the Order should be continued without change.

The purpose of the review was to determine whether the Mushroom Promotion, Research, and Consumer Information Order should be continued without change, amended, or rescinded (consistent with the objectives of the Mushroom Promotion, Research, and Consumer Information Act of 1990) to minimize the impacts on small entities. In conducting this review, AMS considered whether there was a continued need for the Order; the nature of complaints or comments received from the public concerning the Order; the complexity of the Order; the extent to which the Order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local regulations; and the length of time since the Order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the Order.

Currently there are 125 producers and 19 importers covered under the Order. AMS provides Federal oversight of the Mushroom research and promotion program. The Order is not unduly complex, and AMS has not identified regulations that duplicate, overlap, or conflict with the Order. Over the years, the Order has been amended to change the number of members in each district and to add a fifth district for representation by importers. The AMS has not received complaints about the Order.

Based upon the review, AMS has determined that the Order should be continued without change. AMS plans to continue working with the mushroom industry in maintaining an effective program.

Dated: January 10, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–427 Filed 1–12–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25905; Airspace Docket No. 06–AAL–30]

RIN 2120–AA66

Revocation of Low Altitude Reporting Point; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the HERRY as an Alaskan low altitude reporting point. The FAA has determined that this reporting point should be removed from the National Airspace System (NAS), since the HERRY is no longer used as a low altitude reporting point.

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

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

SUPPLEMENTARY INFORMATION:

Background

In October 2006, it was determined that the HERRY low altitude reporting point was no longer required to support the NAS and is no longer used by the FAA.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revoking the HERRY low altitude reporting point. Accordingly, since this action only involves a change in the legal description, notice and public procedure under 5 U.S.C. 533(b) are unnecessary.

Alaskan low altitude reporting points are published in paragraph 7004 of FAA Order 7400.9P dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The low altitude reporting points listed in this document will be removed subsequently in the Order.

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, paragraph 311(a), ''Environmental Impacts: Policies and Procedures.'' This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 7004 Alaskan Low Altitude Reporting Points.

* * * * *

Herry, AK [Revoked]

* * * * *

Issued in Washington, DC on January 4, 2007.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E7–317 Filed 1–12–07; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AC33

Electronic Filing of Notices of Exemption and Exclusion Under Part 4 of the Commission's Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending Commission regulations to require that notices of exemption or exclusion under Part 4 of the Commission's regulations submitted to National Futures Association (''NFA'') be filed electronically. Under the regulations the Commission is amending, the submission of a notice through NFA's electronic exemption filing system by a person duly authorized to bind the submitter will be permitted in lieu of the manual signature currently required by each of these regulations.

In addition, the Commission also is adopting technical amendments that remove the procedure for making filings with the Commission required by Part 4, and revising other sections of Part 4 to refer to filings made with NFA rather than the Commission.

DATES: *Effective Date:* February 15, 2007.

FOR FURTHER INFORMATION CONTACT: Eileen R. Chotiner, Futures Trading Specialist, at (202) 418–5467, or Kevin P. Walek, Assistant Director, at (202) 418–5463, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: *echotiner@cftc.gov* or *kwalek@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Exemptions and Exclusions Under Part 4 of the Commission's Regulations

On October 13, 2006, the Commission published for public comment proposed amendments to Part 4 of its regulations.[1]

[1] Commission regulations cited to herein are found at 17 CFR Ch. I (2006).

Part 4 of the Commission's regulations applies to the operation of commodity pool operators (''CPOs'') and commodity trading advisors (''CTAs''). Generally, a person who operates a commodity pool must register with the Commission as a CPO,[2] and a person who manages clients' trading must register with the Commission as a CTA.[3] Under Commission Regulation 4.5, certain ''otherwise regulated persons'' are excluded from the CPO definition. These persons include registered investment companies, banks and trust companies, insurance companies, and fiduciaries of ERISA pension plans. A person who qualifies for the exclusion must file a notice of eligibility with NFA.[4]

Commission regulations also make certain exemptions from CPO and CTA registration available to persons who meet specified criteria. Regulation 4.13 permits exemption from registration for CPOs that limit their activities to small or family pools; or whose participants are highly sophisticated; or whose pools limit participants to SEC ''accredited investors'' [5] as that term is defined in the regulations promulgated by the Securities and Exchange Commission (''SEC'') and limit trading of commodity interests to a minimum amount specified in the regulation. A notice claiming exemption from registration as a CPO must be filed with NFA.

A CTA is exempt from registration if it meets criteria specified in Regulation 4.14, including: it furnishes trading advice solely to commodity pools for which it is the registered CPO or for which it is exempt from CPO registration; it provides advice solely incidental to the conduct of one of certain businesses or professions listed in the Act or the Commission's regulations; it is registered with the Commission in another capacity and its advice is solely in connection with acting in that other capacity; it does not manage client accounts or provide commodity trading advice based on, or tailored to, the financial positions of particular clients; or it is an SEC-registered investment adviser whose futures advice is incidental to providing securities trading advice to the ''otherwise regulated'' trading vehicles specified in Regulation 4.5, or to CPOs of pools operated pursuant to the exemptions in Regulations 4.13(a)(3) and (4). A notice must be filed to claim the exemption available to SEC-registered investment advisers who meet the criteria set forth in Regulation 4.14(a)(8); the other exemptions from CTA registration do not require the filing of an exemption notice to be effective.[6]

Registered CPOs are required to provide a disclosure document to prospective participants that includes disclosure of risks and information such as the business backgrounds of persons involved with the pool, investment objectives, fees, conflicts, material litigation, and past performance. The CPO must provide unaudited periodic reports and certified annual reports on the pool's financial operations to the pool's participants. Disclosure documents and annual reports also must be filed with NFA. Further, the CPO is required to make and keep specified books and records for a period of five years, and make them available for inspection by the CFTC, NFA, and the United States Department of Justice. Registered CTAs must provide to prospective participants, and file with NFA, disclosure documents containing information about their trading programs, and also must comply with specified recordkeeping requirements.

The Commission has established a simplified regulatory framework for registered CPOs and CTAs who operate or advise pools and accounts whose participants meet the criteria specified in Regulation 4.7. Relief from full compliance with the disclosure, reporting, and recordkeeping requirements is available where, for example, pool participants are CFTC or SEC registrants, ''inside employees'' of the CPO or CTA, or persons who earn $200,000 annually and who have assets worth at least $2 million. A CPO offering a pool whose futures trading is incidental to its securities trading and is limited to 10 percent of the pool's net assets may claim exemption from some disclosure, reporting and recordkeeping requirements pursuant to Regulation 4.12(b). A person claiming exemption under Regulations 4.7 or 4.12(b) must file a notice with NFA.

In a Notice and Order issued in 1997,[7] the Commission authorized NFA to process: (1) Notices of eligibility for exclusion from the definition of CPO for certain otherwise regulated persons, pursuant to Commission Regulation 4.5; (2) notices of claim for exemption from certain Part 4 requirements with respect to commodity pools and CTAs whose participants or clients are qualified eligible persons, pursuant to Commission Regulation 4.7; (3) claims of exemption from certain Part 4 requirements for CPOs with respect to pools that principally trade securities, pursuant to Commission Regulation 4.12(b); (4) statements of exemption from registration as a CPO, pursuant to Commission Regulation 4.13; and (5) notices of exemption from registration as a CTA for certain persons registered with the SEC as an investment adviser, pursuant to Regulation 4.14(a)(8). The Commission also made NFA the custodian of those records.[8]

B. Electronic Filing of Part 4 Notices

NFA petitioned the Commission to amend its regulations to require that the notices required under Regulations 4.5, 4.7, 4.12(b), 4.13, and 4.14(a)(8) be filed electronically with NFA, and that submission of a notice by a representative duly authorized to bind the person be permitted in lieu of the manual signature currently specified under each regulation that requires a notice filing. After considering the comments received, the Commission has determined to amend Regulations 4.5, 4.7, 4.12(b), 4.13, and 4.14(a)(8) as set forth herein to effectuate this purpose.

Firms that are registered with the Commission in any capacity and non-registrants will both access NFA's electronic filing system through the use of a designated user ID and password. Registered firms will establish access for appropriate staff using the security manager process in place for their existing Online Registration System (''ORS'') accounts, the process that is currently used for registration and other electronic filings with NFA.[9] In order to

[2] Regulation 4.10(d)(1) defines a pool as ''any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.''

[3] The Commodity Exchange Act (''Act'') defines a CTA as any person who ''for compensation or profit, engages in the business of advising others * * * as to the value of or the advisability of trading in'' commodity interests. 7 U.S.C. 1a(6) (2000).

[4] NFA is a registered futures association under the Act. 7 U.S.C. 21 (2000). As discussed below, the Commission has delegated to NFA the responsibility for administrating the Commission's registration program.

[5] 17 CFR 230.501(a) (2006).

[6] A statutory exemption from CTA registration exists in Section 4m(1) of the Act for a person who has not had more than 15 clients during a 12-month period and is not otherwise holding itself out as a CTA. 7 U.S.C. 6m (2000). A person who qualifies for this exemption is not required to file a notice claiming the exemption.

[7] 62 FR 52088 (October 6, 1997).

[8] At the time NFA was authorized to process these notices, Commission regulations required that copies of the notices also be filed with the Commission. In December 2002, the Commission revised its regulations to require that such notices be filed solely with NFA. 67 FR 77409 (December 18, 2002).

[9] The Commission previously has adopted amendments to its regulations to enable NFA to utilize an online system for registration functions (67 FR 38,869 (June 6, 2002)). The Commission also

Continued

enable non-registrants, who are not required to have ORS accounts, to file exemption notices, NFA has established a new process that contains similar safeguards regarding the identity of the filers and provides the non-registrant with the ability to establish one or more system users. For both registrants and non-registrants, the person who submits a notice must be a representative duly authorized to bind the submitter. The person or firm that is making the filing, or on whose behalf the filing is made, is responsible for ensuring that only persons who are duly authorized to bind the filer are granted the ability to submit notices.

The electronic filing system will allow filers to select the applicable exemption type and complete a form that will provide the information required for the exemption filing. Each form contains a statement by the representative submitting the form that the information contained therein is accurate and complete, to the best of his or her knowledge, and that the submitter is duly authorized to bind the person making the claim. Submission of the electronic form will record the data regarding the filing in NFA's database system. The system also will allow the filer to create a printer-friendly version of exemption notices for the filer's records.

The amendments will no longer require persons filing the notices with NFA to do so in paper form. Therefore, the Commission has concluded that electronic transmission of a written notification to participants, such as by electronic mail or facsimile, is consistent with the requirement to provide the information in writing and is amending each of the regulations with a participant notification requirement, with the exception of Regulation 4.5, to make explicit that notice may be delivered through electronic transmission. In adopting such amendment, the Commission has reasoned that the provision of written notice necessarily requires that the exemption filer establish with the participant a method to deliver the written communication. Should a participant have provided an email address or facsimile number to the exemption filer for the purpose of receiving communications from that person, the participant can reasonably be expected to receive such written communications from the party, including the written notification required under Commission regulations, through such method of electronic transmission.

As discussed in the proposal, the Commission is not revising Regulation 4.5 with respect to disclosure to participants. Regulation 4.5 requires that the qualifying entity disclose in writing to participants that it is operating pursuant to the terms of Regulation 4.5. When it adopted Regulation 4.5, the Commission noted that the qualifying entity may satisfy this requirement by including the information in any document that its other federal or state regulator requires to be furnished routinely to participants. If no such document is furnished routinely, the information may be disclosed in any instrument establishing the entity's investment policies and objectives that the other regulator requires to be made available to the entity's participants.[10] Therefore, the Commission is amending Regulation 4.5 to contain clarification regarding the provision of disclosure according to the requirements of other regulators.

C. Technical Amendments

As proposed, the Commission is removing and reserving Regulation 4.2, which specifies technical requirements, such as address, for material filed with the Commission under Part 4 of its regulations. Amendments to Commission regulations adopted in 2002 [11] no longer require that any filings required under Part 4 be submitted to the Commission and thus the continued existence of Regulation 4.2 is no longer necessary. Further, two provisions within Part 4 inadvertently were not amended in 2002 and continue to include references to filing with the Commission. Accordingly, the Commission is adopting technical amendments to Regulations 4.8 and 4.12(b) to conform these sections to the current filing requirements in the other regulations to which they refer.

II. Comments

The Commission received two comment letters on the proposed amendments, from NFA and the Committee on Futures Regulation of the New York City Bar Association (''Bar Association''). NFA supported the proposed amendments and stated that electronic filing of Part 4 notices would increase efficiency, reduce staff time currently devoted to processing notices, and eliminate data entry errors because the person claiming the notice will enter the information directly into the system. Both NFA and the Bar Association commented regarding Advisory 18–96, which is discussed in detail in Section III, below.

III. Advisory 18–96

NFA also petitioned the Commission to amend Advisory 18–96, which was issued by the Commission's former Division of Trading and Markets, now the Division of Clearing and Intermediary Oversight.[12] Advisory 18–96 makes available exemptions from disclosure and reporting requirements under Regulations 4.21 and 4.22, and specified recordkeeping requirements under Regulation 4.23, to registered CPOs of commodity pools organized and operated outside the United States and offered solely to non-United States persons.[13] In considering NFA's petition, the Commission reexamined Advisory 18–96 and concluded that additional exemptions from CPO registration adopted in 2003 have essentially superseded the provisions of Advisory 18–96. Specifically, Regulation 4.13(a)(4) permits a CPO to claim exemption from CPO registration where the pool is offered pursuant to an exemption from registration under the Securities Act of 1933 and its participants are limited to natural persons who are qualified eligible persons (''QEPs'') under Regulation 4.7(a)(2), and non-natural persons that are either QEPs under Regulation 4.7 or accredited investors under 17 CFR 230.501(a)(1)–(3), (a)(7) and (a)(8). Since non-United States persons are included in the definition of QEP in Regulation 4.7(a)(2), CPOs meeting the criteria of Advisory 18–96 may instead claim the exemption available under Regulation 4.13(a)(4), which offers more extensive relief than that available under Advisory 18–96.

Based on the overlap between the terms of Advisory 18–96 and Regulation 4.13(a)(4), the Commission suggested in the proposing release that it may be appropriate to supersede Advisory 18–96 prospectively, and requested comments on this approach. The Commission asked in particular for comment on whether there are any conflicts between the criteria and relief in Advisory 18–96 and Regulation 4.13(a)(4), and whether the unavailability of Advisory 18–96 on a prospective basis would result in any adverse consequences for CPOs. The

adopted amendments to its regulations to require electronic filing of financial statements of commodity pools (71 FR 8939 (February 22, 2006)) and introducing brokers (71 FR 67462 (November 22, 2006)).

[10] 50 FR 15879 (April 23, 1985).

[11] See note 2.

[12] In 1997, the Commission also authorized NFA to process notices of exemption pursuant to Advisory 18–96. See note 1. Since 1997, NFA has received approximately 500 notices of exemption pursuant to Advisory 18–96.

[13] ''Non-United States person'' is defined in Regulation 4.7(a)(1)(iv).

Commission proposed that CPOs that have previously claimed relief under Advisory 18–96 would be permitted to continue to rely on the terms of Advisory 18–96, or could choose to claim exemption pursuant to Regulation 4.13(a)(4).

The Bar Association's sole comment related to Advisory 18–96. The letter noted that, while most the provisions of Advisory 18–96 have been superseded, there is still a benefit to retaining Advisory 18–96. Specifically, unlike Regulation 4.13(a)(4), the Advisory does not contain a requirement that a CPO inform participants in writing regarding the CPO's unregistered status and exemption from certain requirements. The Bar Association asserted that practitioners who advise offshore hedge funds believe that it is unnecessary and potentially confusing to the non-U.S. domiciled investors to explain why the sponsor is not registered with a U.S. futures regulator, and recommended that Advisory 18–96 be retained as an option for CPOs.

NFA agreed in its comment letter that section (a) of Advisory 18–96 could be retired without consequence due to the existence of Regulation 4.13(a)(4), but suggested that the Commission consider the consequences of superseding section (b) of the Advisory. Section (b) of Advisory 18–96 provides relief from the requirement that a CPO maintain a pool's books and records at the CPO's main business office inside the U.S. where the main business office of the pool is located outside the U.S., as long as the CPO maintains the pool's original books and records at the pool's main office located outside the U.S., keeps duplicate books and records of the commodity pool at a designated office in the U.S., and makes the original records available within 72 hours upon the request of the Commission, the United States Department of Justice or NFA. NFA noted that pools that qualify for relief under Section (b) of Advisory 18–96 do not necessarily qualify for relief under Regulation 4.13(a)(4); therefore, superseding the Advisory would preclude new offshore pools from taking advantage of this relief.

Based on the comments received, the Commission has determined that it should retain provisions of Advisory 18–96 that continue to be applicable to the activities of U.S. CPOs operating offshore pools. Accordingly, Advisory 18–96 will remain in effect, and relief may continue to be claimed by CPOs by filing a paper notice with NFA. The Commission will further consider whether it would be appropriate to propose future amendments to Part 4 to codify the relief provided by Advisory 18–96.

IV. Amendments

Regulations 4.5, 4.7, 4.12(b), 4.13, and 4.14(a)(8) require that the notice claiming the exclusion or exemption available pursuant to each such regulation must be filed in paper form. The Commission is amending Regulations 4.5, 4.7, 4.12(b), 4.13, and 4.14(a)(8) Regulation to provide that the notice claiming exclusion or exemption must be filed electronically with NFA through compliance with NFA's electronic filing procedures.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission previously has established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[14] The proposed rule amendments will not place any burdens, whether new or additional, on CPOs and CTAs who would be affected hereunder, as the proposed amendments simply alter the mechanism for filing notices of exemption and do not affect the substance of those filings or the nature of the qualifying criteria. The Commission's proposal solicited public comment on this analysis.[15] No comments were received. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action it is taking herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

This rulemaking alters the method of collection of information required under Commission regulations, but does not alter the substance of the filings. Therefore, the Commission certified in its proposal that the proposed rule amendments, if promulgated in final form, would not impact the total annual reporting or recordkeeping burden associated with the applicable collection of information. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission submitted a copy of this section to the Office of Management and Budget (''OMB'') for its review. No comments were received in response to the Commission's invitation in the notice of proposed rulemaking[16] to comment on any change in the potential paperwork burden associated with these rule amendments.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by Section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission's proposal contained an analysis of its consideration of these costs and benefits and solicited public comment thereon.[17] No comments were received with respect to the analysis of the Commission's consideration. Therefore, pursuant to such consideration, the Commission has decided to adopt these amendments as discussed above.

List of Subjects in 17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer Protection, Reporting and recordkeeping requirements.

■ Accordingly, 17 CFR Chapter I is amended as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

[14] 47 FR 18618 (April 30, 1982).

[15] 71 FR 60454 at 60456 (October 1, 2006).

[16] Id.

[17] 71 FR at 54791–2.

Authority: 7 U.S.C. 1a, 2, 4, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

■ 2. Remove and reserve § 4.2.

■ 3. Revise paragraphs (c) introductory text, (c)(2)(i), (d)(1) and (2), and (f) of § 4.5 to read as follows:

§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term ''commodity pool operator.''

* * * * *

(c) Any person who desires to claim the exclusion provided by this section shall file electronically a notice of eligibility with the National Futures Association through its electronic exemption filing system; Provided, however, That a plan fiduciary who is not a named fiduciary as described in paragraph (a)(4) of this section may claim the exclusion through the notice filed by the named fiduciary.

* * * * *

(2) * * *

(i) Will disclose in writing to each participant, whether existing or prospective, that the qualifying entity is operated by a person who has claimed an exclusion from the definition of the term ''commodity pool operator'' under the Act and, therefore, who is not subject to registration or regulation as a pool operator under the Act; Provided, that such disclosure is made in accordance with the requirements of any other federal or state regulatory authority to which the qualifying entity is subject. The qualifying entity may make such disclosure by including the information in any document that its other federal or state regulator requires to be furnished routinely to participants or, if no such document is furnished routinely, the information may be disclosed in any instrument establishing the entity's investment policies and objectives that the other regulator requires to be made available to the entity's participants; and

* * * * *

(d)(1) Each person who has claimed an exclusion hereunder must, in the event that any of the information contained or representations made in the notice of eligibility becomes inaccurate or incomplete, amend the notice electronically through National Futures Association's electronic exemption filing system as may be necessary to render the notice of eligibility accurate and complete.

(2) This amendment required by paragraph (d)(1) of this section shall be filed within fifteen business days after the occurrence of such event.

* * * * *

(f) Any notice required to be filed hereunder must be filed by a representative duly authorized to bind the person specified in paragraph (a) of this section.

* * * * *

■ 4. In § 4.7, revise paragraph (d)(1) to read as follows:

§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

* * * * *

(d) Notice of claim for exemption. (1) A notice of a claim for exemption under this section must:

(i) Provide the name, main business address, main business telephone number and the National Futures Association commodity pool operator or commodity trading advisor identification number of the person claiming the exemption;

(ii)(A) Where the claimant is a commodity pool operator, provide the name(s) of the pool(s) for which the request is made; Provided, That a single notice representing that the pool operator anticipates operating single-investor pools may be filed to claim exemption for single-investor pools and such notice need not name each such pool;

(B) Where the claimant is a commodity trading advisor, contain a representation that the trading advisor anticipates providing commodity interest trading advice to qualified eligible persons;

(iii) Contain representations that:

(A) Neither the commodity pool operator or commodity trading advisor nor any of its principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act unless such disqualification arises from a matter which was previously disclosed in connection with a previous application for registration if such registration was granted or which was disclosed more than thirty days prior to the filing of the notice under this paragraph (d);

(B) The commodity pool operator or commodity trading advisor will comply with the applicable requirements of § 4.7; and

(C) Where the claimant is a commodity pool operator, that the exempt pool will be offered and operated in compliance with the applicable requirements of § 4.7;

(iv) Specify the relief claimed under § 4.7;

(v) Where the claimant is a commodity pool operator, state the closing date of the offering or that the offering will be continuous;

(vi) Be filed by a representative duly authorized to bind the commodity pool operator or commodity trading advisor;

(vii) Be filed electronically with the National Futures Association through its electronic exemption filing system; and

(viii)(A)(*1*) Where the claimant is a commodity pool operator, except as provided in paragraph (d)(1)(ii)(A) of this section with respect to single-investor pools and in paragraph (d)(1)(viii)(A)(*2*) of this section, be received by the National Futures Association:

(*i*) Before the date the pool first enters into a commodity interest transaction, if the relief claimed is limited to that provided under paragraphs (b)(2), (3) and (4) of this section; or

(*ii*) Prior to any offer or sale of any participation in the exempt pool if the claimed relief includes that provided under paragraph (b)(1) of this section.

(*2*) Where participations in a pool have been offered or sold in full compliance with Part 4, the notice of a claim for exemption may be filed with the National Futures Association at any time; Provided, That the claim for exemption is otherwise consistent with the duties of the commodity pool operator and the rights of pool participants and that the commodity pool operator notifies the pool participants of his intention, absent objection by the holders of a majority of the units of participation in the pool who are unaffiliated with the commodity pool operator within twenty-one days after the date of the notification, to file a notice of claim for exemption under § 4.7 and such holders have not objected within such period. A commodity pool operator filing a notice under this paragraph (d)(1)(viii)(A)(*2*) shall either provide disclosure and reporting in accordance with the requirements of Part 4 to those participants objecting to the filing of such notice or allow such participants to redeem their units of participation in the pool within three months of the filing of such notice.

(B) Where the claimant is a commodity trading advisor, be received by the Commission before the date the trading advisor first enters into an agreement to direct or guide the commodity interest account of a qualified eligible person pursuant to § 4.7.

* * * * *

■ 5. In § 4.8, revise paragraphs (a) and (b) to read as follows:

§ 4.8 Exemption from certain requirements of rule 4.26 with respect to pools offered or sold in certain offerings exempt from registration under the Securities Act.

(a) Notwithstanding paragraph (d) of § 4.26 and subject to the conditions specified herein, the registered commodity pool operator of a pool offered or sold solely to ''accredited investors'' as defined in 17 CFR 230.501 in an offering exempt from the registration requirements of the Securities Act of 1933 pursuant to Rule 505 or 506 of Regulation D, 17 CFR 230.505 or 230.506, may solicit, accept and receive funds, securities and other property from prospective participants in that pool upon filing with the National Futures Association and providing to such participants the Disclosure Document for the pool.

(b) Notwithstanding paragraph (d) of § 4.26 and subject to the conditions specified herein, the registered commodity pool operator of a pool offered or sold in an offering exempt from the registration requirements of the Securities Act of 1933 pursuant to Rule 505 or 506 of Regulation D, 17 CFR 230.505 or 230.506, that is operated in compliance with, and has filed the notice required by § 4.12(b) may solicit, accept and receive funds, securities and other property from prospective participants in that pool upon filing with the National Futures Association and providing to such participants the Disclosure Document for the pool.

* * * * *

■ 6. In § 4.12, revise paragraphs (b)(1)(ii), (b)(3) and (b)(5)(i) to read as follows:

§ 4.12 Exemption from provisions of part 4.

* * * * *

(b) * * *

(1) * * *

(ii) Each existing participant and prospective participant in the pool for which it makes such request is informed in writing of the restrictions set forth in paragraph (b)(1)(i) (C) and (D) of this section prior to the date the pool commences trading commodity interests. The pool operator may furnish this information by way of the pool's Disclosure Document, Account Statement, a separate notice or other similar means, including written communication delivered through electronic transmission.

* * * * *

(3) Any registered commodity pool operator who desires to claim the relief available under this § 4.12(b) must file electronically a claim of exemption with National Futures Association through its electronic exemption filing system. Such claim must:

(i) Provide the name, main business address and main business telephone number of the registered commodity pool operator, or applicant for such registration, making the request;

(ii) Provide the name of the commodity pool for which the request is being made;

(iii) Contain representations that the pool will be operated in compliance with § 4.12(b)(1)(i) and the pool operator will comply with the requirements of § 4.12(b)(1)(ii);

(iv) Specify the relief sought under § 4.12(b)(2); and

(v) Be filed by a representative duly authorized to bind the pool operator.

* * * * *

(5) * * *

(i) If a claim of exemption has been made under § 4.12(b)(2)(i), the commodity pool operator must make a statement to that effect on the cover page of each offering memorandum, or amendment thereto, that it is required to file with the National Futures Association pursuant to § 4.26.

* * * * *

■ 7. In § 4.13, revise paragraphs (a)(5), (b)(1) introductory text, (b)(1)(iii), (b)(2) and (b)(4), and revise paragraph (e)(2), to read as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

* * * * *

(a) * * *

(5)(i) Eligibility for exemption under this section is subject to the person furnishing in written communication physically delivered or delivered through electronic transmission to each prospective participant in the pool:

(A) A statement that the person is exempt from registration with the Commission as a commodity pool operator and that therefore, unlike a registered commodity pool operator, it is not required to deliver a Disclosure Document and a certified annual report to participants in the pool; and

(B) A description of the criteria pursuant to which it qualifies for such exemption from registration.

(ii) The person must make these disclosures by no later than the time it delivers a subscription agreement for the pool to a prospective participant in the pool.

(b)(1) Any person who desires to claim the relief from registration provided by this section, must file electronically a notice of exemption from commodity pool operator registration with the National Futures Association through its electronic exemption filing system. The notice must:

* * * * *

(iii) Be filed by a representative duly authorized to bind the person.

(2) The person must file the notice by no later than the time it delivers a subscription agreement for the pool to a prospective participant in the pool; Provided, That where a person registered with the Commission as a commodity pool operator intends to withdraw from registration in order to claim exemption hereunder, the person must notify its pool's participants in written communication physically delivered or delivered through electronic transmission that it intends to withdraw from registration and claim the exemption, and it must provide each such participant with a right to redeem its interest in the pool prior to the person filing a notice of exemption from registration.

* * * * *

(4) Each person who has filed a notice of exemption from registration under this section must, in the event that any of the information contained or representations made in the notice becomes inaccurate or incomplete, amend the notice through National Futures Association's electronic exemption filing system as may be necessary to render the notice accurate and complete. This amendment must be filed electronically within 15 business days after the pool operator becomes aware of the occurrence of such event.

* * * * *

(e)(2) If a person operates one or more commodity pools described in paragraph (a)(3) or (a)(4) of this section, and one or more commodity pools for which it must be, and is, registered as a commodity pool operator, the person is exempt from the requirements applicable to a registered commodity pool operator with respect to the pool or pools described in paragraph (a)(3) or (a)(4) of this section; *Provided,* That the person:

(i) Furnishes in written communication physically delivered or delivered through electronic transmission to each prospective participant in a pool described in paragraph (a)(3) or (a)(4) of this section that it operates:

(A) A statement that it will operate the pool as if the person was exempt from registration as a commodity pool operator;

(B) A description of the criteria pursuant to which it will so operate the pool;

(ii) Complies with paragraph (c) of this section; and

(iii) Provides to each existing participant in a pool that the person elects to operate as described in paragraph (a)(3) or (a)(4) of this section a right to redeem the participant's interest in the pool, and informs each such participant of that right no later than the time the person commences to operate the pool as described in paragraph (a)(3) or (a)(4) of this section.

* * * * *

■ 8. In § 4.14, introductory text of paragraph (a) and introductory text of paragraph (a)(8) is republished and paragraph (a)(8)(iii)(A) introductory text and paragraphs (a)(8)(iii)(A)(*3*), (a)(8)(iii)(B) and (a)(8)(iii)(D) are revised to read as follows:

§ 4.14 Exemption from registration as a commodity trading advisor.

* * * * *

(a) A person is not required to register under the Act as a commodity trading advisor if:

* * * * *

(8) It is a registered as an investment adviser under the Investment Advisers Act of 1940 or with the applicable securities regulatory agency of any State, or it is exempt from such registration, or it is excluded from the definition of the term ''investment adviser'' pursuant to the provisions of section 202(a)(2) and 202(a)(11) of the Investment Advisers Act of 1940, *Provided, That:*

* * * * *

(iii)(A) A person who desires to claim the relief from registration provided by this § 4.14(a)(8) must file electronically a notice of exemption from commodity trading advisor registration with the National Futures Association through its electronic exemption filing system. The notice must:

* * * * *

(*3*) Be filed by a representative duly authorized to bind the person.

(B) The person must file the notice by no later than the time it delivers an advisory agreement for the trading program pursuant to which it will offer commodity interest advice to a client; Provided, That where the advisor is registered with the Commission as a commodity trading advisor, it must notify its clients in written communication physically delivered or delivered through electronic transmission that it intends to withdraw from registration and claim the exemption and must provide each such client with a right to terminate its advisory agreement prior to the person filing a notice of exemption from registration.

* * * * *

(D) Each person who has filed a notice of exemption from registration under this section must, in the event that any of the information contained or representations made in the notice becomes inaccurate or incomplete, amend the notice electronically through National Futures Association's electronic exemption filing system as may be necessary to render the notice accurate and complete. This amendment must be filed within 15 business days after the trading advisor becomes aware of the occurrence of such event.

* * * * *

Issued in Washington, DC, on January 5, 2007 by the Commission.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. E7–174 Filed 1–12–07; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO–P–2005–0015]

RIN 0651–AB75

Changes to Implement Priority Document Exchange Between Intellectual Property Offices

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) has established a 21st Century Strategic Plan to transform the Office into a more quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system. One goal of the 21st Century Strategic Plan is the electronic exchange of information and documents between intellectual property offices. Consistent with this goal, the Office is revising the rules of practice to provide for the electronic transfer of certified copies of applications for which priority is claimed under the Paris Convention (priority applications) from other intellectual property offices with which the Office has negotiated priority document exchange agreements. The Office is also revising the rules of practice to permit applicants to request that the Office permit other participating intellectual property offices to electronically retrieve certified copies of United States patent applications without payment of a fee. This electronic exchange of copies of priority documents will benefit applicants by reducing the cost of ordering paper certified copies of priority applications for filing in other participating intellectual property offices, and will benefit participating intellectual property offices by reducing the administrative costs associated with handling paper copies of priority documents and scanning them into their electronic image record management systems.

DATES: *Effective Date:* January 16, 2007.

FOR FURTHER INFORMATION CONTACT: Diana Oleksa, ((571) 272–3291), Legal Advisor for IT Policy, Office of Patent Cooperation Treaty Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, or Robert A. Clarke ((571) 272–7735), Deputy Director, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, at *PatentEFW.comments@uspto.gov* or directly by phone, or by facsimile to (571) 273–7735, marked to the attention of Ms. Oleksa, or by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: The Office has established a 21st Century Strategic Plan to transform the Office into a more quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system. One goal of the 21st Century Strategic Plan is the electronic exchange of information and documents between intellectual property offices. The Office plans to leverage its image file wrapper (IFW) technology by negotiating agreements with other patent offices to permit the Office to obtain and provide electronic copies of priority documents. *See* 35 U.S.C. 2(b)(6) (authorizes the Office, subject to certain conditions, to use the services, records, facilities, or personnel of any instrumentality or foreign patent and trademark office or international organization to perform functions on its behalf) and 11 (authorizes the Office to exchange copies of specifications and drawings of United States patents and published applications for patents for those of other NAFTA or WTO member countries). Agreements to obtain and provide such copies have been established with the European Patent Office (EPO) and its member states, and are being considered with the Japan Patent Office (JPO), both of which offices will have the technical ability to provide and retrieve certified electronic copies of priority documents via

automated mechanisms. An intellectual property office with which the Office has such an agreement will be referred to as a ''participating intellectual property office.''

Consistent with this goal, the Office is revising the rules of practice in title 37 of the Code of Federal Regulations (CFR) to provide for the electronic transfer of certified copies of priority documents from other intellectual property offices with which the Office has negotiated priority document exchange agreements. The Office is also revising the rules of practice to permit applicants to request that the Office permit other participating intellectual property offices to electronically retrieve certified copies of United States patent applications without payment of a fee. This electronic exchange of copies of priority documents will benefit applicants by reducing the cost of ordering paper certified copies of priority documents for filing in other participating intellectual property offices, and will benefit participating intellectual property offices by reducing the administrative costs associated with handling paper copies of priority applications and scanning them into electronic image record management systems.

This direct electronic exchange of copies of priority documents is an exception to the requirement that applicant must provide a certified copy of a counterpart foreign application to be entitled to a right of priority under 35 U.S.C. 119(a)–(d). The American Inventors Protection Act of 1999 (AIPA), Pub. L. 106–113, 113 Stat. 1501, 1501A–552 through 1501A–591 (1999), amended 35 U.S.C. 119(b) to (*inter alia*) provide that: ''[t]he Director **may require** a certified copy of the original foreign application, specification, and drawings upon which it is based, a translation if not in the English language, and such other information as the Director considers necessary.'' *See* 35 U.S.C. 119(b)(3) (2000) (emphasis added). Prior to the enactment of the AIPA, 35 U.S.C. 119(b) required that a certified copy of the original foreign application be filed in the Office for an application to be entitled to a right of priority under 35 U.S.C. 119(a)–(d). *See* 35 U.S.C. 119(b) (1994) (''[n]o application for patent shall be entitled to this right of priority unless a claim therefor and a certified copy of the original foreign application, specification, and drawings upon which it is based are filed in the Patent and Trademark Office before the patent is granted, or at such time during the pendency of the application as required by the Commissioner not earlier than six months after the filing of the application in this country'').

If an applicant makes a proper request and an electronic copy of the counterpart foreign application is imported from another participating intellectual property office by the Office, the obligation to provide a certified copy of the foreign application would be satisfied (although the applicant may be required to provide an English-language translation of a non-English language foreign application under certain circumstances or such other information as the Director considers necessary). The agreements would also permit another participating intellectual property office to obtain electronic copies of priority documents from the Office (at no charge to the applicant) when an applicant furnishes the Office with written authority or after the application has been published.

The agreements will enable a participating intellectual property office (*e.g.*, the JPO, EPO, or the Office) to obtain an electronic copy of a priority document that was filed in another participating intellectual property office in accordance with the terms of the agreement. Likewise, the agreements will also enable a participating intellectual property office to obtain an electronic copy of a priority document that was filed in a non-participating intellectual property office from a participating intellectual property office in which a certified copy of the priority document has been filed and stored. The Office will provide forms for applicants to: (1) Request that the Office retrieve an electronic copy of an earlier filed foreign application (PTO/SB/38); and (2) permit other participating intellectual property offices to retrieve an electronic copy of an application filed in the Office (PTO/SB/39). Use of Office forms is strongly encouraged.

The first form (PTO/SB/38) will permit applicants to request that the Office retrieve an electronic copy of any foreign application filed in an intellectual property office participating with the Office in a direct agreement to retrieve electronic copies of priority documents. The foreign application may have been filed directly with the participating intellectual property office, in which case the applicant would merely request that the Office retrieve an electronic copy of the priority application for which priority was claimed. Alternatively, the applicant may request that the Office retrieve an electronic copy of a foreign application originally filed in a non-participating intellectual property office that is stored in a patent application file in a participating intellectual property office. The Office intends to post a notification of such agreements in the *Official Gazette* including the date when applicants may take advantage of these agreements and any special provisions made in the agreement. If the foreign application was originally filed in a non-participating intellectual property office, but is stored in an application file or dossier of a participating intellectual property office, the request form must indicate the participating intellectual property office application number which contains the certified copy of the foreign application.

Upon receipt of a timely filed request, the Office anticipates that at least two attempts will be made to retrieve a copy of the foreign application from the participating office. Applicants should consult the private Patent Application Information Retrieval (PAIR) system to determine if the copy of the foreign application was retrieved by the Office. Applicants are encouraged to contact the Electronic Business Center, rather than the examiner, if the counterpart foreign application has not been entered in the application file.

The copy of the counterpart foreign application retrieved by the Office will be included in the Office's IFW system records pertaining to the application for which the counterpart foreign application was requested. Applicants will be able to inspect the counterpart foreign application through the private PAIR system. In addition, once the application has been published under 35 U.S.C. 122(b) or issued as a patent, any member of the public will be able to inspect the counterpart foreign application through the public PAIR system.

The second form (PTO/SB/39) would be used to provide the Office with written authority to provide a copy of a patent application to participating foreign intellectual property offices at no cost to the applicant. Such written authority would be treated as authorizing the Office to provide the participating intellectual property offices indicated in the written authority with a copy of the application-as-filed as well as a copy of the application-as-filed of its parent applications stored in electronic image form. Once an application is published under 35 U.S.C. 122(b), the application is open to the public and therefore the applicant's written authority is not necessary to permit other participating intellectual property offices to retrieve a certified copy of the priority application or a copy of the complete application file.

Discussion of Specific Rules

Section 1.14

Sections 1.14(a)(1)(iii), (a)(1)(v), (a)(1)(vi), and (a)(1)(vii) are amended to change their reference to § 1.14(h) to a reference to § 1.14(i) for consistency with the redesignating of § 1.14(h) as § 1.14(i).

Section 1.14(a)(2) is amended to add ''in a published patent document or in an application as set forth'' to more clearly explain that the Office will provide information about a patent application if the application is identified in a published patent document such as a patent document of a foreign intellectual property office.

Section 1.14(b) is amended to delete the reference to ''paragraphs (a)(1)(i) through (a)(1)(vi)''. The reference to the specific paragraphs in § 1.14 that define when an application may be made available is not necessary, and the reference to only paragraphs (a)(1)(i) through (a)(1)(vi) is overly limiting as the Office may elect to only provide electronic access in other situations as well (*e.g.*, where the application is maintained in the IFW system and has been published, the file may be made available through the public PAIR system).

Current § 1.14(h) is redesignated as § 1.14(i), and a new § 1.14(h) is added. New § 1.14(h) defines under what circumstances an electronic copy of an application-as-filed may be retrieved from the Office by a participating intellectual property office. Section 1.14(h)(1) indicates that access to an application-as-filed may be provided to any participating foreign intellectual property office if the application contains written authority granting such access. The Office will publish a list of participating foreign intellectual property offices in the *Official Gazette*. In addition, § 1.14(h)(1) would indicate that the written authority should be submitted prior to the filing of a subsequent foreign application, in which priority is claimed to the patent application, with a participating intellectual property office. The written authority should be submitted prior to the filing of a subsequent foreign application to ensure that it is likely that the authorized participating foreign intellectual property office will be successful in its attempt to retrieve a copy of the priority application from the Office. However, a participating foreign intellectual property office would be able to retrieve an electronic copy of a priority application from the Office at no cost to the applicant without written authority if the application was published before a request for a copy of the priority application was received by the Office.

Section 1.14(h)(2) indicates that the written authority must include the title of the invention (§ 1.71(a)), comply with the requirements of § 1.14(c), and be submitted on a separate document (§ 1.4(c)). Accordingly, § 1.14(h)(2) requires the written authority to be signed by: (1) an applicant; (2) an attorney or agent of record; (3) an authorized official of an assignee of record, made of record pursuant to § 3.71 of this chapter; or (4) a registered attorney or agent named in the papers accompanying the application papers filed under § 1.53 or the national stage documents filed under § 1.495, if an executed oath or declaration pursuant to § 1.63 or § 1.497 has not been filed.

Section 1.14(h)(3) indicates that written authority provided under § 1.14(h)(1) will be treated as authorizing the Office to provide the participating foreign intellectual property offices indicated in the written authority: (1) A copy of the application-as-filed; and (2) a copy of the application-as-filed for any application the filing date of which is claimed by the application in which the written authority has been filed.

Section 1.19

Section 1.19(b)(1)(iv) is added to indicate there is no fee for providing a foreign intellectual property office with a copy of an application as filed pursuant to a priority document exchange agreement (*see* § 1.14(h)).

Section 1.55

Section 1.55(d) is added to permit the acceptance of an electronic copy of a counterpart foreign application under 35 U.S.C. 119(b) or Patent Cooperation Treaty (PCT) Rule 17 received from a participating intellectual property office, as an alternative to requiring the certified copy of such foreign application from the applicant. If the foreign application was filed in a participating intellectual property office and the applicant requests, in a separate document, that the Office obtain a copy of the foreign application from the participating intellectual property office, the Office will attempt to do so. If the Office is successful in its attempt to retrieve the electronic copy before the patent is granted, the applicant would be relieved of the existing duty to provide a certified copy of the foreign application. The applicant can confirm that the Office has received a copy of the foreign application by viewing the records in the private PAIR system.

Section 1.55(d) also indicates that a copy of a foreign application obtained from a participating intellectual property office, where the foreign application was filed in a non-participating intellectual property office, will also be considered to satisfy the certified copy requirement. Thus, for example, an electronic copy of a foreign application from a participating intellectual property office will be considered to satisfy the requirement for a ''certified copy of the foreign application'' under § 1.55 if an applicant: (1) Files a foreign application in a non-participating intellectual property office; (2) files a copy of the foreign application in a participating intellectual property office; (3) files a U.S. application with a proper request under § 1.55(d); and (4) the Office obtains an electronic copy of the foreign application from the participating intellectual property office.

Section 1.55(d) is an exception to the existing certified copy requirement. Section 1.55(d)(1) addresses the situation where the foreign application was filed in a participating foreign intellectual property office. Sections 1.55(d)(1)(i) through (d)(1)(iii) define under what circumstances a copy of a foreign application, obtained in accordance with an international agreement from a participating foreign intellectual property office, is an acceptable alternative to the current procedure of filing a certified copy of the foreign application. Section 1.55(d)(1)(i) indicates that, in order to take advantage of the international agreement, the applicant must file, in a separate document, a request that the Office obtain a copy of the foreign application from a participating foreign intellectual property office. A request form (PTO/SB/38) will be provided on the Office's Internet Web site for this purpose. Section 1.55(d)(1)(ii) indicates that the foreign application must be identified in the oath or declaration (§ 1.63(c)) or an application data sheet (§ 1.76(a)(6)). Section 1.55(d)(1)(iii) indicates that the Office must receive the copy before the patent is granted (consistent with the general rule in § 1.55(a)(2)). Section 1.55(d)(1)(iii) also indicates that the request should be made within the later of four months from the filing date of the application or sixteen months from the filing date of the foreign application in order to facilitate receipt of the copy of the foreign application by the Office before patent grant.

Section 1.55(d)(2) addresses the situation where the foreign application was originally filed in a non-participating foreign intellectual property office, but a copy of the foreign application was filed in an application subsequently filed in a participating foreign intellectual property office.

Under these circumstances, the request under § 1.55(d)(1)(i) must identify the participating foreign intellectual property office and the application number of the subsequent application in which the copy of the foreign application was filed. It is envisioned that the agreement with certain participating intellectual property offices may obviate the need for this information in the future.

This change to § 1.55 does not affect the requirement in § 1.55(a)(4) that applicant provide an English language translation of a non-English language foreign application (together with a statement that the translation of the certified copy is accurate) when the application is involved in an interference (§ 1.630), when necessary to overcome the date of a reference relied upon by the examiner, or when specifically required by the examiner.

Rule Making Considerations

Administrative Procedure Act

This notice adopts changes to the rules of practice that facilitate electronic image record management of patent application files. The changes are limited to permitting and facilitating direct exchange of priority documents among intellectual property offices. Therefore, these rule changes involve interpretive rules, or rules of agency practice and procedure. *See Bachow Communications Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are ''rules of agency organization, procedure, or practice'' and exempt from the Administrative Procedure Act's notice and comment requirement); *see also Merck & Co., Inc.* v. *Kessler,* 80 F.3d 1543, 1549–50, 38 USPQ2d 1347, 1351 (Fed. Cir. 1996) (the rules of practice promulgated under the authority of former 35 U.S.C. 6(a) (now in 35 U.S.C. 2(b)(2)) are not substantive rules (to which the notice and comment requirements of the Administrative Procedure Act apply)), and *Fressola* v. *Manbeck,* 36 USPQ2d 1211, 1215 (D.D.C. 1995) (''it is extremely doubtful whether any of the rules formulated to govern patent or trade-mark practice are other than 'interpretive rules, general statements of policy, * * * procedure, or practice.' '') (quoting C.W. Ooms, *The United States Patent Office and the Administrative Procedure Act,* 38 Trademark Rep. 149, 153 (1948)). Accordingly, prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law).

Regulatory Flexibility Act

As discussed previously, the changes in this final rule involve rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). As prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553 (or any other law) for the changes in this final rule, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for the changes in this final rule. *See* 5 U.S.C. 603.

Executive Order 13132

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this final rule have been previously reviewed and approved by OMB under control number 0651–0031.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office; and (2) Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Section 1.14 is amended by revising paragraph (a)(1)(iii), (a)(1)(v), (a)(1)(vi), (a)(1)(vii), the introductory text of paragraph (a)(2), and paragraph (b), redesignating paragraph (h) as paragraph (i), and adding a new paragraph (h) to read as follows:

§ 1.14 Patent applications preserved in confidence.

(a) * * *

(1) * * *

(iii) *Published pending applications.* A copy of the application-as-filed, the file contents of the application, or a specific document in the file of a pending application that has been published as a patent application publication may be provided to any person upon request, and payment of the appropriate fee set forth in § 1.19(b). If a redacted copy of the application was used for the patent application publication, the copy of the specification, drawings, and papers may be limited to a redacted copy. The Office will not provide access to the paper file of a pending application that has been published, except as provided in paragraph (c) or (i) of this section.

* * * * *

(v) *Unpublished pending applications (including provisional applications) whose benefit is claimed.* A copy of the file contents of an unpublished pending application may be provided to any person, upon written request and payment of the appropriate fee (§ 1.19(b)), if the benefit of the application is claimed under 35 U.S.C. 119(e), 120, 121, or 365 in an application that has issued as a U.S. patent, an application that has published as a statutory invention registration, a U.S. patent application

publication, or an international patent application publication that was published in accordance with PCT Article 21(2). A copy of the application-as-filed, or a specific document in the file of the pending application may also be provided to any person upon written request, and payment of the appropriate fee (§ 1.19(b)). The Office will not provide access to the paper file of a pending application, except as provided in paragraph (c) or (i) of this section.

(vi) *Unpublished pending applications (including provisional applications) that are incorporated by reference or otherwise identified.* A copy of the application as originally filed of an unpublished pending application may be provided to any person, upon written request and payment of the appropriate fee (§ 1.19(b)), if the application is incorporated by reference or otherwise identified in a U.S. patent, a statutory invention registration, a U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2). The Office will not provide access to the paper file of a pending application, except as provided in paragraph (c) or (i) of this section.

(vii) *When a petition for access or a power to inspect is required.* Applications that were not published or patented, that are not the subject of a benefit claim under 35 U.S.C. 119(e), 120, 121, or 365 in an application that has issued as a U.S. patent, an application that has published as a statutory invention registration, a U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2), or are not identified in a U.S. patent, a statutory invention registration, a U.S. patent application publication, or an international patent application that was published in accordance with PCT Article 21(2), are not available to the public. If an application is identified in the file contents of another application, but not the published patent application or patent itself, a granted petition for access (see paragraph (i)), or a power to inspect (see paragraph (c)) is necessary to obtain the application, or a copy of the application.

(2) Information concerning a patent application may be communicated to the public if the patent application is identified in a published patent document or in an application as set forth in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. The information that may be communicated to the public (*i.e.,* status information) includes:

* * * * *

(b) *Electronic access to an application.* Where a copy of the application file or access to the application may be made available pursuant to this section, the Office may at its discretion provide access to only an electronic copy of the specification, drawings, and file contents of the application.

* * * * *

(h) *Access by a Foreign Intellectual Property Office.* (1) Access to the application-as-filed may be provided to any foreign intellectual property office participating with the Office in a bilateral or multilateral priority document exchange agreement (participating foreign intellectual property office), if the application contains written authority granting such access. Written authority under this paragraph should be submitted prior to filing a subsequent foreign application with a participating intellectual property office in which priority is claimed to the patent application.

(2) Written authority provided under paragraph (h)(1) of this section must include the title of the invention (§ 1.71(a)), comply with the requirements of paragraph (c) of this section, and be submitted on a separate document (§ 1.4(c)).

(3) Written authority provided under paragraph (h)(1) of this section will be treated as authorizing the Office to provide to all participating foreign intellectual property offices indicated in the written authority in accordance with their respective agreements with the Office:

(i) A copy of the application-as-filed; and

(ii) A copy of the application-as-filed with respect to any application the filing date of which is claimed by the application in which written authority under paragraph (h)(1) of this section is filed.

* * * * *

■ 3. Section 1.19 is amended by adding paragraph (b)(1)(iv) to read as follows:

§ 1.19 Document supply fees.

* * * * *

(b) * * *

(1) * * *

(iv) If provided to a foreign intellectual property office pursuant to a priority document exchange agreement (see § 1.14(h)(1)) 0.00

* * * * *

■ 4. Section 1.55 is amended by adding a new paragraph (d) to read as follows:

§ 1.55 Claim for foreign priority.

* * * * *

(d)(1) The requirement in this section for the certified copy of the foreign application will be considered satisfied if:

(i) The applicant files a request, in a separate document, that the Office obtain a copy of the foreign application from a foreign intellectual property office participating with the Office in a bilateral or multilateral priority document exchange agreement (participating foreign intellectual property office (see § 1.14(h)(1));

(ii) The foreign application is identified in the oath or declaration (§ 1.63(c)) or an application data sheet (§ 1.76(a)(6)); and

(iii) The copy of the foreign application is received by the Office within the period set forth in paragraph (a) of this section. Such a request should be made within the later of four months from the filing date of the application or sixteen months from the filing date of the foreign application.

(2) If the foreign application was filed at a foreign intellectual property office that is not participating with the Office in a priority document exchange agreement, but a copy of the foreign application was filed in an application subsequently filed in a participating foreign intellectual property office, the request under paragraph (d)(1)(i) of this section must identify the participating foreign intellectual property office and the application number of the subsequent application in which a copy of the foreign application was filed.

Dated: December 18, 2006.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E7–113 Filed 1–9–07; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket No. EPA–R02–OAR–2006–0615, FRL–8268–9]

Approval and Promulgation of Plans for Designated Facilities; New Jersey; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a request from the New Jersey Department of

Environmental Protection (NJDEP) for delegation of authority to implement and enforce the following three Federal plans: Municipal Solid Waste Landfills (MSW Landfills); Hospital/Medical/Infectious Waste Incinerators (HMIWI); and Small Municipal Waste Combustion Units (Small MWC). On November 8, 1999, August 15, 2000 and January 31, 2003 respectively, EPA promulgated the Federal plans for MSW Landfills, HMIWI and Small MWCs to fulfill the requirements of sections 111(d)/129 of the Clean Air Act (CAA). The Federal plans impose emission limits and control requirements for existing affected facilities located in areas not covered by an approved and currently effective State plan.

On May 15, 2006, NJDEP signed Memorandums of Agreement (MOAs) which act as the mechanism for the transfer of EPA authority to NJDEP. The intended effect is to approve MOAs that define the policies, responsibilities, and procedures by which the Federal plans for MSW Landfills, HMIWI and Small MWCs will be administered on behalf of EPA by NJDEP.

EPA proposed approval of NJDEP's delegation request on August 31, 2006.

DATES: *Effective Date:* This rule will be effective February 15, 2007.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Office of Energy, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella (*Gardella.Anthony@epa.gov*), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3892.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) is approving the New Jersey Department of Environmental Protection's (NJDEP's) request for delegation of authority of three Federal plans. The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section.

I. What Action Is EPA Taking Today?
II. What Are the Details of EPA's Specific Action?
III. What Comments Were Received and How Has EPA Responded to Them?
IV. What Are EPA's Conclusions?
V. Statutory and Executive Order Reviews

I. What Action Is EPA Taking Today?

EPA is approving NJDEP's request for delegation of authority to implement and enforce three Federal plans and to adhere to the terms and conditions prescribed in the Memorandums of Agreement (MOAs) signed between EPA and NJDEP, as further explained below. NJDEP requested delegation of authority of the following three Federal plans: Municipal Solid Waste Landfills (MSW Landfills); Hospital/Medical/Infectious Waste Incinerators (HMIWI); and Small Municipal Waste Combustion Units (Small MWC). The Federal plans were promulgated by EPA to implement emission guidelines pursuant to sections 111(d) and 129 of the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.* (CAA). The purpose of this delegation is to acknowledge NJDEP's ability to implement a program and to transfer primary implementation and enforcement responsibility from EPA to NJDEP for existing sources of MSW Landfills, HMIWI and Small MWC. While NJDEP is delegated the authority to implement and enforce the three Federal plans, nothing in the delegation agreement shall prohibit EPA from implementing and enforcing the Federal plans for MSW Landfills, HMIWI and Small MWC.

II. What Are the Details of EPA's Specific Action?

On May 13, 2005, NJDEP submitted to EPA a request for delegation of authority from EPA to implement and enforce the Federal plans for existing MSW Landfills, HMIWI and Small MWC. EPA prepared the MOAs that define the policies, responsibilities, and procedures by which the Federal plans will be administered by both NJDEP and EPA, pursuant to the following: ''Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991,'' 40 CFR part 62, subpart GGG, 40 CFR 62.14350–14356; ''Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before June 20, 1996,'' 40 CFR part 62, subpart HHH, 40 CFR 62.14400–14495 and ''Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999,'' 40 CFR part 62, subpart JJJ, 40 CFR 62.15000–15410. The MOAs are the mechanism for the transfer of responsibility between EPA and NJDEP.

On April 24, 2006, Alan J. Steinberg, EPA Region 2 Administrator, signed the three MOAs and forwarded them to NJDEP for signature. On May 15, 2006, Lisa P. Jackson, NJDEP Commissioner, signed the MOAs, thereby agreeing to the terms and conditions of the MOAs and accepting responsibility to implement and enforce the policies, responsibilities and procedures of the Federal plans for MSW Landfills, HMIWI, and Small MWC. The transfer of authority to NJDEP became effective on May 15, 2006. EPA proposed approval on August 31, 2006 (71 FR 51790).

III. What Comments Were Received and How Has EPA Responded to Them?

There were no comments received on EPA's proposed approval of NJDEP's request for delegation of the three Federal plans.

IV. What Are EPA's Conclusions?

For reasons described in this action and in EPA's proposal action, EPA is approving NJDEP's request for delegation of the three Federal plans. For further details, the reader is referred to the proposal action.

V. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This

action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 19, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: January 4, 2007.

Alan J. Steinberg,

Regional Administrator, Region 2.

■ Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 62 U.S.C. 7401–7671q.

Subpart FF—New Jersey

■ 2. Part 62 is amended by adding new § 62.7605 and an undesignated heading to subpart FF to read as follows:

Air Emissions from Existing Municipal Solid Waste Landfills, Small Municipal Waste Combustion Units, and Hospital/Medical/Infectious Waste Incinerators.

§ 62.7605 Identification of plan—delegation of authority.

(a) Letter from the New Jersey Department of Environmental Protection (NJDEP), submitted May 13, 2005, requesting delegation of authority from EPA to implement and enforce the following three Federal plans: Municipal Solid Waste Landfills (MSW Landfills), Hospital/Medical/Infectious Waste Incinerators (HMIWI) and Small Municipal Waste Combustion Units (Small MWCs). The Federal plans will be administered by both NJDEP and EPA, pursuant to the following: ''Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991,'' 40 CFR part 62, subpart GGG; ''Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before June 20, 1996,'' 40 CFR part 62, subpart HHH; and ''Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999,'' 40 CFR part 62, subpart JJJ.

(b) Identification of sources: The three Federal plans apply to existing facilities as follows: MSW Landfills which commenced construction, reconstruction, or modification before May 30, 1991 and a MSW Landfill that has accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition; HMIWIs that combust any amount of hospital, medical or infectious waste and that commenced construction on or before June 20, 1996; and Small MWCs with a capacity to combust at least 35 tons per day of municipal solid waste or refuse-derived fuel but no more than 250 tons per day of municipal solid waste or refuse-derived fuel and if the Small MWC commenced construction on or before August 30, 1999.

(c) On April 24, 2006, EPA prepared and signed Memorandums of Agreement (MOAs) between EPA and NJDEP that define the policies, responsibilities and procedures pursuant to the three Federal plans identified in (a) above by which the Federal plans will be administered by both NJDEP and EPA. On May 15, 2006, Lisa P. Jackson, NJDEP Commissioner, signed the MOAs, therefore agreeing to the terms and conditions of the MOAs and accepting responsibility to enforce and implement the policies, responsibilities, and procedures for MSW Landfills, HMIWIs and Small MWCs.

(d) The delegation became fully effective on May 15, 2006, the date the MOAs were signed by the NJDEP Commissioner.

[FR Doc. E7–413 Filed 1–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA–RO7–RCRA–2006–0878; FRL–8269–1]

Adequacy of Nebraska Municipal Solid Waste Landfill Program; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received adverse comment, we are withdrawing the direct final rule for Adequacy of Nebraska Municipal Solid Waste Landfill Program, published on November 16, 2006.

DATES: Effective January 16, 2007, EPA withdraws the direct final rule

published at 71 FR 66686 on November 16, 2006.

FOR FURTHER INFORMATION CONTACT: Chilton McLaughlin, Solid Waste/Pollution Prevention Branch, EPA Region 7, 901 North 5th Street, Kansas City, Kansas 66101, telephone (913) 551–7666, *Mclaughlin.chilton@epa.gov*.

SUPPLEMENTARY INFORMATION: Because EPA received adverse comment, we are withdrawing the direct final rule for Adequacy of Nebraska Municipal Solid Waste Landfill Program published on November 16, 2006 (71 FR 66686). We stated in that direct final rule that if we received adverse comment by January 16, 2007, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. On December 8, 2006, the **Federal Register** published a correction notice (71 FR 71241) establishing December 18, 2006, as the date by which EPA would receive comment. We subsequently received an adverse comment on that direct final rule. We will address that comment in a subsequent final action. As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period in this action.

List of Subjects

40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment disposal, Water pollution control.

Authority: This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: January 9, 2007.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. E7–414 Filed 1–12–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 010807A]

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2007 A and B Season Allowances of Pollock in Statistical Area 620 in the Gulf of Alaska

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the A and B season allowances of pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary because the current A and B season allowances of pollock in Statistical Area 620 of the GOA are incorrectly specified and to ensure the A and B season catch of pollock in Statistical Area 620 of the GOA does not exceed the appropriate amount, based on the best available scientific information for pollock in the GOA. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 16, 2007, through 2400 hrs, A.l.t., April 15, 2007, unless otherwise modified or superceded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 31, 2007.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- FAX to 907–586–7557;
- E-mail to *620PLCKADJUSTMENT@noaa.gov* and include the subject line of the e-mail comment the document identifier: 620PLCKADJUSTMENT (E-mail comments, with or without attachments, are limited to 5 megabytes); or
- Webform at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2007 total allowable catch of pollock in Statistical Area 620 of the GOA is 24,275 metric tons (mt) as established by the 2006 and 2007 harvest specification for groundfish in the GOA (71 FR 10870, March 3, 2006). The A season allowance is 8,910 mt and the B season allowance is 10,663 mt for pollock in Statistical area 620 of the GOA as established by the 2006 and 2007 harvest specification for groundfish in the GOA (71 FR 10870, March 3, 2006).

In December 2006, the Council recommended 2007 A and B season allowances of pollock in Statistical Area 620 of 7,357 mt and 8,924 mt, respectively. This amount is less than the A and B season allowances currently established by the 2006 and 2007 harvest specification for groundfish in the GOA (71 FR 10870, March 3, 2006). The A and B season allowances as recommended by the Council are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2006, which is the best available scientific information for this fishery.

In accordance with § 679.25(a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined, based on the November 2006 SAFE report for this fishery, that the current A and B season allowances of pollock in Statistical Area 620 of the GOA are incorrectly specified. Consequently, the Regional Administrator is adjusting the 2007 A and B season allowances of pollock in Statistical Area 620 of the GOA to 7,357 mt and 8,924 mt, respectively.

Pursuant to § 679.20(a)(5)(iv), Tables 6, 13, and 16 of the 2006 and 2007 final harvest specifications for groundfish in the GOA (71 FR 10870, March 3, 2006) are revised for the 2007 A and B season allowances of pollock in Statistical Area 620 of the GOA consistent with this adjustment.

TABLE 6 - FINAL 2007 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC.

[Values are rounded to the nearest metric ton]

Area Apportionments Resulting From Seasonal Distribution of Biomass				
Season	Shumagin (Area 610)	Chirikof (Area 620)	Kodiak (Area 630)	Total
A	3,352 (21.63%)	7,357 (52.76%)	3,234 (20.87%)	13,943 (100%)
B	3,352 (21.63%)	8,924 (64.87%)	1,481 (9.56%)	13,757 (100%)
C	8,159 (52.65%)	2,351 (15.17%)	4,986 (32.18%)	15,496 (100%)
D	8,159 (52.65%)	2,351 (15.17%)	4,986 (32.18%)	15,496 (100%)
Annual Total	23,022	20,983	14,687	58,692

TABLE 13 - FINAL 2007 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS.

[Values are in metric tons]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2007 TAC	2007 non-exempt AFA catcher vessel sideboard
Pollock	A Season (W/C areas only)			
	January 20 - February 25			
	Shumagin (610)	0.6112	3,352	2,049
	Chirikof (620)	0.1427	7,357	1,050
	Kodiak (630)	0.2438	3,234	788
	B Season (W/C areas only)			
	March 10 - May 31			
	Shumagin (610)	0.6112	3,352	2,049
	Chirikof (620)	0.1427	8,924	1,274
	Kodiak (630)	0.2438	1,481	361
	C Season (W/C areas only)			
	August 25 - September 15			
	Shumagin (610)	0.6112	8,159	4,987
	Chirikof (620)	0.1427	2,351	335
	Kodiak (630)	0.2438	4,986	1,216
	D Season (W/C areas only)			
	October 1 - November 1			
	Shumagin (610)	0.6112	8,159	4,987
	Chirikof (620)	0.1427	2,351	335
	Kodiak (630)	0.2438	4,986	1,216
	Annual			
	WYK (640)	0.3499	1,426	499
	SEO (650)	0.3499	6,157	2,154
Pacific cod	A Season[1]			
	January 1 - June 10			
	W inshore	0.1423	7,813	1,112
	W offshore	0.1026	868	89
	C inshore	0.0722	11,019	796
	C offshore	0.0721	1,224	88
	B Season[2]			
	September 1 - December 31			
	W inshore	0.1423	5,209	741
	W offshore	0.1026	579	59
	C inshore	0.0722	7,346	530
	C offshore	0.0721	816	59
	Annual			
	E inshore	0.0079	2,404	19
	E offshore	0.0078	267	2
Flatfish deep-water	W	0.0000	421	
	C	0.0670	4,145	278
	E	0.0171	4,111	70

TABLE 13 - FINAL 2007 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS.—Continued

[Values are in metric tons]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2007 TAC	2007 non-exempt AFA catcher vessel sideboard
Rex sole	W	0.0010	1,096	1
	C	0.0402	5,207	209
	E	0.0153	2,397	37
Flathead sole	W	0.0036	2,000	7
	C	0.0261	5,000	131
	E	0.0048	2,153	10
Flatfish shallow-water	W	0.0156	4,500	70
	C	0.0598	13,000	777
	E	0.0126	2,472	31
Arrowtooth flounder	W	0.0021	8,000	17
	C	0.0309	25,000	773
	E	0.0020	5,000	10
Sablefish	W trawl gear	0.0000	472	0
	C trawl gear	0.0720	1,126	81
	E trawl gear	0.0488	257	13
Pacific ocean perch	W	0.0623	4,290	267
	C	0.0866	7,660	663
	E	0.0466	2,776	129
Shortraker rockfish	W	0.0000	153	0
	C	0.0237	353	8
	E	0.0124	337	4
Rougheye rockfish	W	0.0000	133	0
	C	0.0237	596	14
	E	0.0124	235	3
Other rockfish	W	0.0034	577	2
	C	0.2065	386	80
	E	0.0000	517	0
Northern rockfish	W	0.0003	1,483	0
	C	0.0336	3,608	121
Pelagic shelf rockfish	W	0.0001	1,463	0
	C	0.0000	3,318	0
	E	0.0067	749	5
Thornyhead rockfish	W	0.0308	513	16
	C	0.0308	989	30
	E	0.0308	707	22
Big skates	W	0.0090	695	6
	C	0.0090	2,250	20
	E	0.0090	599	5
Longnose skates	W	0.0090	65	1
	C	0.0090	1,969	18
	E	0.0090	861	8
Other skates	GW	0.0090	1,617	15
Demersal shelf rockfish	SEO	0.0020	410	1

TABLE 13 - FINAL 2007 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS.—Continued

[Values are in metric tons]

Species	Apportionments and allocations by area/ season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2007 TAC	2007 non-exempt AFA catcher vessel sideboard
Atka mackerel	Gulfwide	0.0309	1,500	46
Other species	Gulfwide	0.0090	12,229	110

[1]The Pacific cod A season for trawl gear does not open until January 20.
[2]The Pacific cod B season for trawl gear closes November 1.

TABLE 16 - FINAL 2007 GOA NON AMERICAN FISHERIES ACT CRAB VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS.

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by area/ season/processor/gear	Ratio of 1996–2000 non-AFA CV catch to 1996–2000 total harvest	2007 TAC	2007 non-AFA crab vessel sideboard
Pollock	A Season (W/C areas only)			
	January 20 - March 10			
	Shumagin (610)	0.0098	3,352	33
	Chirikof (620)	0.0031	7,357	23
	Kodiak (630)	0.0002	3,234	1
	B Season (W/C areas only)			
	March 10 - May 31			
	Shumagin (610)	0.0098	3,352	33
	Chirikof (620)	0.0031	8,924	28
	Kodiak (630)	0.0002	1,481	0
	C Season (W/C areas only)			
	August 25 - October 1			
	Shumagin (610)	0.0098	8,159	80
	Chirikof (620)	0.0031	2,351	7
	Kodiak (630)	0.0002	4,986	1
	D Season (W/C areas only)			
	October 1 - November 1			
	Shumagin (610)	0.0098	8,159	80
	Chirikof (620)	0.0031	2,351	7
	Kodiak (630)	0.0002	4,986	1
	Annual			
	WYK (640)	0.0000	1,426	0
	SEO (650)	0.0000	6,157	0
Pacific cod	A Season[1]			
	January 1 - June 10			
	W inshore	0.0902	7,813	705
	W offshore	0.2046	868	178
	C inshore	0.0383	11,019	422
	C offshore	0.2074	1,224	254
	B Season[2]			
	September 1 - December 31			
	W inshore	0.0902	5,209	470
	W offshore	0.2046	579	118
	C inshore	0.0383	7,346	281
	C offshore	0.2074	816	169
	Annual			
	E inshore	0.0110	2,404	26
	E offshore	0.0000	267	0
Flatfish deep-water	W	0.0035	421	1
	C	0.0000	4,145	0
	E	0.0000	4,111	0
Rex sole	W	0.0000	1,096	0
	C	0.0000	5,207	0

TABLE 16 - FINAL 2007 GOA NON AMERICAN FISHERIES ACT CRAB VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS.—Continued

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by area/ season/processor/gear	Ratio of 1996–2000 non-AFA CV catch to 1996–2000 total harvest	2007 TAC	2007 non-AFA crab vessel sideboard
	E	0.0000	2,397	0
Flathead sole	W	0.0002	2,000	0
	C	0.0004	5,000	2
	E	0.0000	2,153	0
Flatfish shallow-water	W	0.0059	4,500	27
	C	0.0001	13,000	1
	E	0.0000	2,472	0
Arrowtooth flounder	W	0.0004	8,000	3
	C	0.0001	25,000	3
	E	0.0000	5,000	0
Sablefish	W trawl gear	0.0000	472	0
	C trawl gear	0.0000	1,126	0
	E trawl gear	0.0000	257	0
Pacific ocean perch	W	0.0000	4,290	0
	C	0.0000	7,660	0
	E	0.0000	2,776	0
Shortraker rockfish	W	0.0013	153	0
	C	0.0012	353	0
	E	0.0009	337	0
Rougheye rockfish	W	0.0067	133	1
	C	0.0047	596	3
	E	0.0008	235	0
Other rockfish	W	0.0035	577	2
	C	0.0033	386	1
	E	0.0000	517	0
Northern rockfish	W	0.0005	1,483	1
	C	0.0000	3,608	0
Pelagic shelf rockfish	W	0.0017	1,463	2
	C	0.0000	3,318	0
	E	0.0000	749	0
Thornyhead rockfish	W	0.0047	513	2
	C	0.0066	989	7
	E	0.0045	707	3
Big skates	W	0.0392	695	27
	C	0.0159	2,250	36
	E	0.0000	599	0
Longnose skate	W	0.0392	65	3
	C	0.0159	1,969	36
	E	0.0000	861	0
Other skates	GW	0.0176	1,617	28
Demersal shelf rockfish	SEO	0.0000	410	0
Atka mackerel	Gulfwide	0.0000	1,500	0

TABLE 16 - FINAL 2007 GOA NON AMERICAN FISHERIES ACT CRAB VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS.—Continued

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by area/ season/processor/gear	Ratio of 1996–2000 non-AFA CV catch to 1996–2000 total harvest	2007 TAC	2007 non-AFA crab vessel sideboard
Other species	Gulfwide	0.0176	12,229	215

[1]The Pacific cod A season for trawl gear does not open until January 20.
[2]The Pacific cod B season for trawl gear closes November 1.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 679.25(c)(2) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate A and B season allowances of pollock in Statistical Area 620 of the GOA based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 19, 2006, and additional time for prior public comment would result in conservation concerns.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 31, 2007.

This action is required by § 679.22 and is exempt from review under Executive Order 12866.

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

Dated: January 8, 2007.

James P. Burgess,

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

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Proposed Rules

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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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. AMS–FV–06–0172; FV06–929–610 Review]

Cranberries Grown in the States of Massachusetts, et al.; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This action summarizes the results under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA), of an Agricultural Marketing Service (AMS) review of Marketing Order No. 929 regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

ADDRESSES: Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax:(202) 720–8938; E-mail: *moab.docketclerk@usda.gov* or Internet: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; Telephone: (301) 734–5243, Fax: (301) 734–5275, or E-mail: *Patricia.Petrella@usda.gov* or *Kenneth.Johnson@usda.gov.*

SUPPLEMENTARY INFORMATION: Marketing Order 929, as amended (7 CFR part 929), regulates the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674).

The Cranberry Marketing Committee (Committee) is established under the marketing order and works with AMS in overseeing program operations. The Committee consists of 13 grower members and 9 grower alternate members representing four districts. Membership is allocated among producers representing the cooperative marketing association and independent producers (those not affiliated with the cooperative marketing association). The cooperative marketing association nominates its representatives, while independent member representatives are nominated and elected through a mail balloting process.

Currently, there are approximately 1,250 cranberry growers and approximately 50 handlers. The majority of the growers and handlers may be classified as small entities. The regulations implemented under the orders are applied uniformly to all size entities, and are designed to benefit all entities, regardless of size.

AMS published in the **Federal Register** (64 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Order 929, under criteria contained in section 610 of the RFA (5 U.S.C. 601–612). An updated plan was published in the **Federal Register** on January 4, 2002 (67 FR 525), and again on August 14, 2003 (68 FR 48574). Accordingly, AMS published a notice of review and request for written comments on the cranberry marketing order in the July 12, 2005, issue of the **Federal Register** (70 FR 39987). The deadline for comments ended September 12, 2005. Numerous comments were received and they are discussed later in this document.

The review was undertaken to determine whether the cranberry marketing order should be continued without change, amended, or rescinded to minimize the impacts of small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the marketing order; (2) the nature of complaints or comments received from the public concerning the marketing order; (3) the complexity of the marketing order; (4) the extent to which the marketing order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

The marketing order authorizes the following activities: Volume control to help stabilize cranberry supplies and prices, and strengthen market conditions; generic promotion programs to increase demand in domestic and foreign markets; and reporting requirements used by the Committee to obtain production, shipment, and other marketing information used by the industry in making sound marketing decisions, and in furthering marketing order goals. Funds to administer the marketing order are obtained from handler assessments.

Based on the potential benefits of the marketing order to producers, handlers, and consumers, AMS has determined that the order should continue without change.

In regard to complaints or comments received from the public concerning the marketing order, USDA has received 23 comments from cranberry growers and other interested parties.

Six comments were in favor of the continuation of the marketing order. Several made suggestions for changes to the order or its operations, and others considered the marketing order to be a very valuable tool. The commenters suggested the following changes to the order. The suggestions include: (1) Enlarging the production area by adding the States of Maine and Delaware, and the entire State of New York. This issue was considered during the most recent amendment proceeding. It was not supported by the evidence of record and was not adopted by USDA; (2) Support for the redistricting and reallocation of members on the Committee and appointment of a subcommittee to investigate this issue. The order authorizes redistricting and reallocation of members. A subcommittee on this issue was appointed in 2005. At this time, no recommendations have been made or approved by the Committee to redistrict or reallocate membership; and (3) Urging USDA to make more timely decisions on volume control recommendations made by the Committee to help growers and handlers

plan accordingly. The rulemaking process requires USDA to provide adequate notice to interested parties and opportunity for comment. Steps are taken to complete this process efficiently.

Seventeen comments were received in opposition. Some of the commenters expressed the belief that the portions of the production area where cranberry production has not dramatically changed over the past ten years should not be subject to volume controls, when implemented. Also, they believe that handlers who can sell all of the fruit they acquire should be exempted from volume controls. The commenters believe that only handlers with an oversupply of cranberries should be regulated. Similar opposing comments were from growers in the State of Oregon. Most urged that volume regulation not be invoked and, if it is, producers in Oregon should be exempt. The commenters believe that Oregon growers suffered financially when volume regulations were implemented in 2000–01 and 2001–02 because Oregon cranberry farms are small and do not significantly impact the overall supply. In addition, they would like the marketing order rescinded to end the negative impacts on production for small producers in small production areas.

Modifications to the volume regulation provisions were considered during the most recent cranberry amendment proceeding. Many changes were made to improve the process to the benefit of producers and handlers and were supported in a producer referendum. Any additional modifications, including providing exemptions, would require further amendment to the order.

Marketing order issues and programs are discussed at public meetings, and all interested persons are allowed to express their views. All comments are considered in the decision making process by the Committee and USDA before any program changes are implemented.

In considering the order's complexity, AMS has determined that the marketing order is not unduly complex.

During the review, the order was also checked for duplication and overlap with other regulations. AMS did not identify any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the marketing order for cranberries.

As stated previously, the order was established in 1962. During this time, AMS and the cranberry industry have continuously monitored marketing operations. Changes in regulations have been implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of these evaluations is to assure that the marketing order and the regulations implemented under it fit the needs of the industry and are consistent with the Act.

The Committee meets whenever needed, but at least bi-annually, to discuss the marketing order and the various regulations issued thereunder, and to determine if, or what, changes may be necessary to reflect current industry practices. As a result, regulatory changes have been made numerous times over the years to address industry operation changes and to improve program administration. In 2002, the Committee made several recommendations to improve the order's volume control provisions. Amendment hearings were held in several parts of the cranberry production area to receive evidence regarding the Committee's recommendations. A referendum was held in December 2004 to determine producer and processor support for the proposed amendments. The proposed amendments were favored by both producers and processors voting in the referendum.

Accordingly, AMS has determined that the cranberry marketing order should be continued. The marketing order was established to help the cranberry industry work with USDA to solve marketing problems. The marketing order regulations on volume control, research and promotional activities, and reporting requirements continue to be beneficial to producers, handlers, and consumers. AMS will continue to work with the cranberry industry in maintaining an effective program.

Dated: January 9, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–424 Filed 1–12–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. AMS–FV–06–0174; FV06–929–1 PR]

Cranberries Grown in the States of Massachusetts, et al.; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Cranberry Marketing Committee (Committee) for the 2006–2007 fiscal year and subsequent fiscal years from $0.18 to $0.28 per barrel. Authorization to assess cranberry handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The Committee locally administers the marketing order which regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The fiscal year began September 1, 2006, and ends August 31, 2007. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by February 15, 2007.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: *moabdocket.clerk@usda.gov;* or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.ams/usda.gov/fv/moab/html.*

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, Maryland 20737; telephone: (301) 734–5243, Fax: (301) 734–5275, or E-mail at *Patricia.Petrella@usda.gov* or *Kenneth.Johnson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries produced in the States of Massachusetts, Rhode Island,

Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, cranberries are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable cranberries beginning September 1, 2006, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the 2006–2007 and subsequent fiscal years from $0.18 to $0.28 per pound of cranberries.

The cranberry marketing order provides authority for the Committee, with approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of cranberries. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

Authority to fix the rate of assessment to be paid by each handler and to collect such assessment appears in § 929.41 of the order. In addition, § 929.45 of the order provides that the Committee, with the approval of the USDA, may establish or provide for the establishment of production research, marketing research, and market development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of cranberries. The expense of such projects is paid from funds collected pursuant to § 929.41 (Assessments), or from such other funds as approved by the USDA.

For the 2001–2002 fiscal year, the Committee recommended, and USDA approved, an assessment rate of $0.18 per barrel of cranberries handled that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on August 28, 2006, and recommended 2006–2007 expenditures of $3,522,062 and an assessment rate of $0.28 per pound of cranberries. The Committee passed the assessment rate increase by a vote of 12 to 2. Those not supporting the recommendation wanted a lesser increase. In comparison, last year's budgeted expenses were $2,612,265. The assessment rate of $0.28 is $0.10 higher than the rate currently in effect.

The Committee recommended the $0.10 per barrel increase to cover increased costs. The Committee has expanded its contributions to the export market development program from $50,000 in 1999 to $480,000 in 2006. The Committee has increased funding of the export market development program as target markets have expanded from two in 1999 (Japan and Germany), to five in 2006 (Japan, Germany, Mexico, France and Australia) with contingency plans to expand activities regionally within Europe and in South Korea. According to the Committee, cranberries and cranberry products going into export markets have steadily increased from 10 percent of the annual cranberry production during the 1999–2000 fiscal period to approximately 24 percent of the annual production in the 2005–2006 fiscal period.

In order to expand and maintain activities within the target markets, the Committee has used funds from its reserve account to meet the costs of educating consumers and the trade industry.

Since the last increase published in the **Federal Register** on February 14, 2002, at 67 FR 6843, the assessment rate has not been increased to compensate for increases in the costs of goods and services, costs contributable to increasing the Committee membership and to pay back funds taken from the reserve for the expanding export market development program. As a result, the reserve has continued to decrease until it is at a point where the Committee is unable to meet the order's reserve funding requirements or balance its budget without an increase in assessments and/or cutback in program activities. The Committee recommended the assessment rate increase to continue to expand the generic export market development program and have sufficient funding to meet its operational expenses. Without this increase, the Committee would have to curtail expansion of the export market development program.

All cranberry handlers regulated under the marketing order would pay the proposed assessment rate. However, certain organic handlers may be exempt from paying assessments for market promotion activities pursuant to 7 CFR 900.700.

The major expenditures recommended by the Committee for the 2006–2007 fiscal year include $500,000 for domestic promotion, $480,000 for export promotion, $154,116 for personnel, $103,500 for meetings, and $107,527 for administrative expenses. Budgeted expenses for major items in 2005–2006 were $488,225 for domestic promotion, $147,420 for personnel, $105,500 for meetings, and $116,542 for administrative expenses. The Committee recommended an increased assessment rate to generate larger revenue to meet its operational and export promotion expenses and keep its reserves at an acceptable level.

In deriving the recommended assessment rate, the Committee determined assessable cranberry production for the upcoming fiscal period at 6,506,000 barrels. Therefore, total assessment income for the 2006–2007 fiscal year is estimated at $1,821,680 (6,506,000 barrels × $0.28). This amount plus $1,767,600 from USDA's Foreign Agricultural Service's Market Access Program and adequate funds in the reserve and interest income would be adequate to cover budgeted expenses. Funds in the reserve (approximately $541,122) would be kept within the approximately one fiscal period's expenses as recommended by

the Committee consistent with § 929.42(a) of the order.

The assessment rate established in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Committee or other available information.

Although the assessment rate would be effective for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2006–2007 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of cranberries who are subject to regulation under the cranberry marketing order and approximately 1250 producers of cranberries in the regulated area. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. The majority of producers and handlers of cranberries under the order are considered small entities under SBA's standards.

The principal demand for cranberries is in the form of processed products. Cranberries are dried, frozen, canned, and juiced. During the 2001–2002 fiscal year through the 2005–2006 fiscal year, approximately 91 percent of the U.S. cranberry crop, or 5.4 million barrels, was processed annually.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to cranberry production has leveled off over the last several crop years. Bearing acres have declined slightly from a high of 39,600 acres in the 2003–2004 fiscal year to 39,100 in the 2005–2006 fiscal year. Wisconsin and Massachusetts lead the nation in cranberry acreage, with approximately 81 percent of the total, and production also at approximately 81 percent of the total U.S. cranberry crop each year.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2006–2007 fiscal period and subsequent periods from $0.18 to $0.28 per barrel of cranberries.

The Committee discussed continuing the existing assessment rate, but concluded that it needed the additional funds to devote to its export market development and promotion program and replenish its financial reserve which would be funded through assessments.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the cranberry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large cranberry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2006–2007 fiscal period began September 1, 2006, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable cranberries handled during such period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is proposed to be amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 929.236 is revised to read as follows:

§ 929.236 Assessment rate.

On and after September 1, 2006, an assessment rate of $.28 per barrel is established for cranberries.

Dated: January 10, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–428 Filed 1–12–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AMS–FV–06–00187; FV07–930–1 PR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2006–2007 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on the establishment of final free and restricted percentages for the 2006–2007 crop year. The percentages are 55 percent free and 45 percent restricted and will establish the proportion of cherries from the 2006 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body that locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: Comments must be received by February 15, 2007.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW, Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or *E-mail: moabdocket.clerk@usda.gov*; or *Internet: http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; Telephone: (301) 734–5243, or Fax: (301) 734–5275, or E-mail at *Patricia.Petrella@usda.gov* or *Kenneth.Johnson@usda.gov.*

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or *E-mail: Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule establishes final free and restricted percentages for tart cherries for the 2006–2007 crop year, beginning July 1, 2006, through June 30, 2007. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (to obtain diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; District four—New York; District seven—Utah; and District eight—Washington. Districts five, six and nine (Oregon, Pennsylvania, and Wisconsin, respectively) will not be regulated for the 2006–2007 season.

The order prescribes under § 930.52 that those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded six million pounds. A district not meeting the six million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the Districts of Oregon, Pennsylvania, and Wisconsin, handlers in those districts would not be subject to volume regulation during the 2006–2007 crop year.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tends to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, because tart cherries are processed either into cans or frozen, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order prescribes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year before new crop supplies are available for marketing.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast. If the resulting number is positive, this represents the estimated over-production, which would be the restricted percentage tonnage. The restricted percentage tonnage is then divided by the sum of the USDA crop forecast or by an average of such other crop estimates for the regulated districts to obtain percentages for the regulated districts. The Board is required to establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the complement being the preliminary free tonnage percentage. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board is required to announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 22, 2006, and computed, for the 2006–2007 crop year, an optimum supply of 182 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds, or such other amount, as the Board with the approval of the Secretary, may establish.

The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop for the entire production area was 256 million pounds; a 25 million pound carryin (based on Board estimates) was subtracted from the optimum supply of 182 million pounds which resulted in 2006–2007 tonnage requirements (adjusted optimum supply) of 157 million pounds. The carryin figure reflects the amount of cherries that handlers actually had in inventory at the beginning of the 2006–2007 crop year. Subtracting the adjusted optimum supply of 157 million pounds from the USDA crop estimate (256 million pounds) results in a surplus of 99 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (249 million pounds) and resulted in a restricted percentage of 40 percent for the 2006–2007 crop year. The free percentage was 60 percent (100 percent minus 40 percent). The Board established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2006–2007 year:

		Millions of pounds
Optimum Supply Formula:		
(1) Average sales of the prior three years		182
(2) Plus desirable carryout		0
(3) Optimum supply calculated by the Board at the June meeting		182
Preliminary Percentages:		
(4) USDA crop estimate		256
(5) Carryin held by handlers as of July 1, 2006		25
(6) Adjusted optimum supply for current crop year (Item 3 minus Item 5)		157
(7) Surplus (Item 4 minus Item 6)		99
(8) USDA crop estimate for regulated districts		249
	Free	Restricted
(9) Preliminary percentages (item 7 divided by item 8 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	60	40

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry.

USDA establishes final free and restricted percentages through the informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage designated by USDA and 100 percent is the final restricted percentage. The Board met on September 9, 2006, to recommend final free and restricted percentages.

The actual production reported by the Board was 263 million pounds, which is a 7 million pound increase from the USDA crop estimate of 256 million pounds.

A 31 million pound carryin (based on handler reports) was subtracted from the Board's optimum supply of 182 million pounds, yielding an adjusted optimum supply for the current crop year of 151 million pounds. The adjusted optimum supply of 151 million pounds was subtracted from the actual production of 263 million pounds, which resulted in a 112 million pound surplus. The total surplus of 112 million pounds is divided by the 251 million-pound volume of tart cherries produced in the regulated districts. This results in a 45 percent restricted percentage and a corresponding 55 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand

information available in September for the 2006–2007 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	182
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board	182
Final Percentages:	
(4) Board reported production	263
(5) Plus carryin held by handlers as of July 1, 2006	31
(6) Adjusted optimum supply (Item 3 minus Item 5) available for current crop year	151
(7) Surplus (Item 4 minus Item 6)	112
(8) Production in regulated districts	251

	Percentages	
	Free	Restricted
(9) Final Percentages (item 7 divided by item 8 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	55	45

USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal would be met by this action which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive on the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 18 million pounds would be made available to handlers this season in accordance with USDA Guidelines. This release would be made available to every handler and released to such handler in proportion to the handler's percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount remains in the inventory reserve.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 2001/2002 through 2005/2006, approximately 93.8 percent of the U.S. tart cherry crop, or 214.3 million pounds, was processed annually. Of the 214.3 million pounds of tart cherries processed, 62 percent was frozen, 26 percent was canned, and 12 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 37,050 acres in 2005/2006. This represents a 26 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 73 percent of the total and produces about 70 percent of the U.S. tart cherry crop each year.

The 2006/2007 crop is moderate in size at 263 million pounds. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 million pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the ''marketing margin.''

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, because tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to states or districts with a 3-year average of production greater than six million pounds, and to states or districts in which the production is 50 percent or more of the previous 5-year processed production average.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the costs for storage, interest, and handling of the stored cherries.

The price that growers receive for their crop is largely determined by the total production and carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in lower grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The econometric model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan, along with the districts in Utah, New York, and Washington are the restricted areas for this crop year and their combined total production is 251 million pounds. A free percentage of 55 percent results in 138 million pounds is available to be shipped to primary markets from these four states. Production levels of 3.4 million pounds for Oregon, 4.5 million pounds for Pennsylvania, and 4.3 million pounds for Wisconsin (the unregulated areas in 2006–2007), result in an additional 12.2 million pounds available for primary market shipments.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 18 million pounds being available for the primary market. The 138 million pounds from Michigan, Utah, Washington, and New York, the 12.2 million pounds from the other producing states, the 18 million pound release, and the 31 million pound carryin inventory gives a total of 199.2 million pounds being available for the primary markets.

The econometric model is used to estimate the difference between grower prices with and without restrictions. With volume controls, grower prices are estimated to be approximately $0.025 per pound higher than without volume controls.

The use of volume controls is estimated to have a positive impact on grower's total revenues. With restrictions, revenues are estimated to be $6.0 million higher than without restrictions. The without restrictions scenario assumes that all tart cherries produced would be delivered to processors for payments.

It is concluded that the 45 percent volume control would not unduly burden producers, particularly smaller growers. The 45 percent restriction would be applied to the growers in Michigan, New York, Utah, and Washington. The growers in the other three States covered under the marketing order will benefit from this restriction.

Recent grower prices have been as high as $0.44 per pound in 2002–03 when there was a crop failure. Prices in the last two crop years have been $0.33 in 2004 and $0.24 per pound in 2005. At current production levels, yield is estimated at approximately 7,112 pounds per acre. At this level of yield, the cost of production is estimated to be $0.31 per pound (Cost of Production Tart Cherries in Northwestern Michigan, Nugent, Kole, Thornton, Bardenhagen). Thus, this year's grower price even with regulation is estimated to be below the cost of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to start to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carryin inventories, a decrease in grower prices of $0.0039 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products. The use of reserve cherries in the production shortened 2002–2003 crop year proved to be very useful and beneficial to growers and packers.

In discussing the possibility of marketing percentages for the 2006–2007 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled;

(3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2006 of the free and restricted percentages proposed to be established by this rule (55 percent free and 45 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2006–2007 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 9, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements under the tart cherry marketing order have been previously approved by OMB and assigned OMB Number 0581–0177.

Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would need to be in place as soon as possible since handlers are already shipping tart cherries from the 2006–2007 crop. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.255 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.255 Final free and restricted percentages for the 2006–2007 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2006, which shall be free and restricted, respectively, are designated as follows: Free percentage, 55 percent and restricted percentage, 45 percent.

Dated: January 9, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–423 Filed 1–12–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. AMS–FV–06–0177; FV06–946–1 PR]

Irish Potatoes Grown in Washington; Modification of Administrative Rules Governing Committee Representation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on modifications to the administrative rules governing committee representation under the Washington potato marketing order. The marketing order regulates the handling of Irish potatoes grown in Washington, and is administered locally by the State of Washington Potato Committee (Committee). This rule would reestablish districts within the production area, reestablish the Committee with fewer members, and

reapportion members among districts. These changes would result in more efficient administration of the program while providing for more effective representation of the Washington fresh potato industry on the Committee.

DATES: Comments must be received by March 19, 2007.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov*; or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-Mail: *Teresa.Hutchinson@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule invites comments on proposed modifications to the administrative rules governing committee representation under the Washington potato marketing order. This rule would reestablish districts within the production area, reestablish the Committee with fewer members, and reapportion members among the new districts. Specifically, this rule would reestablish the order's five districts as three districts; decrease Committee membership from fifteen members and fifteen alternate members to nine members and nine alternate members; and reapportion the members such that one handler member and alternate member, and two producer members and their respective alternate members would be elected from each of the three reestablished districts. These changes would result in more efficient administration of the program while providing for more effective representation of the fresh potato industry on the Committee. The Committee unanimously recommended these changes at a meeting held on June 6, 2006, with a request that they be made effective on July 1, 2007.

The order provides in § 946.22 that USDA, upon recommendation of the Committee, may reestablish districts, may reapportion members among districts, may change the number of members and alternate members, and may change the composition by changing the ratio of members, including their alternates. In recommending any such changes, the order requires that the Committee consider the following: (1) Shifts in acreage within districts and within the production area during recent years; (2) the importance of new production in its relation to existing districts; (3) the equitable relationship between Committee apportionment and districts; and (4) other relevant factors.

As previously noted, the Committee currently has fifteen members, with membership apportioned among five districts. Sections 946.31 and 946.103 currently define the districts as follows:

District No. 1—The counties of Ferry, Stevens, Pend Oreille, Spokane, Whitman, and Lincoln, plus the East Irrigation District of the Columbia Basin Project, plus the area of Grant County not included in either the Quincy or South Irrigation Districts which lies east of township vertical line R27E, plus the area of Adams County not included in either of the South or Quincy Irrigation Districts.

District No. 2—The counties of Kittitas, Douglas, Chelan, and Okanogan, plus the Quincy Irrigation District of the Columbia Basin Project, plus the area of Grant County not included in the East or South Irrigation Districts which lies west of township line R28E.

District No. 3—The counties of Benton, Klickitat, and Yakima.

District No. 4—The counties of Walla Walla, Columbia, Garfield, and Asotin, plus the South Irrigation District of the Columbia Basin Project, plus the area of Franklin County not included in the South District.

District No. 5—All of the remaining counties in the State of Washington not included in Districts No. 1, 2, 3, and 4 of this section.

Further, §§ 946.25 and 946.104 currently provide in part that each of the five districts are represented as follows: District No. 1: Three producer members and one handler member; District No. 2: Two producer members and one handler member; District No. 3: Two producer members and one handler member; District No. 4: Two producer members and one handler member; District No. 5: One producer member and one handler member.

The Committee's districts were last reestablished on July 1, 1975, largely due to changes in the production area brought about by the Columbia Basin Project (CBP). The CBP is a large scale irrigation project administered by the Bureau of Reclamation, U.S. Department of Interior. The CBP is comprised of three irrigation districts centered in Grant County, Washington.

The Committee's districts were originally established using county boundaries, whereas the 1975 redistricting process reestablished the districts by utilizing existing county and township lines, as well as the three irrigation districts formed under the CBP. As a consequence, the Committee utilized the CBP irrigation district

boundaries in redistricting. At the time, the boundaries of the three irrigation districts were well known to producers in the area. However, as more producers installed wells to irrigate their potatoes, the CBP irrigation district boundaries became less relevant.

Also, the Committee reports that it is having difficulty recruiting members. This recruitment issue is largely due to a decreasing number of qualified individuals willing to take the time away from their families and farms to serve on the Committee.

Finally, the Washington State Potato Commission (Commission), an agency of the State of Washington, has recently reestablished its production area into three districts. The Committee recommended reestablishing the order's districts to align with the Commission's new districts.

After comparing current acreage and production statistics, as well as the current number of fresh potato producers in each of the order's five districts to statistics for the Commission's three new districts, the Committee found that reestablishment of its districts from five to three would not only be feasible, but could enhance the Committee's administration of the order. In considering the trend towards less industry participation on the Committee, as well as the decreasing relative size of the fresh potato producer population (the 5 year average fresh production is 13% of the total Washington potato production), the Committee also determined that it could more effectively serve the industry if it were to reestablish with as few as nine members.

The Committee currently is comprised of ten producer members and five handler members and their respective alternates. The Committee felt that this ratio—two producer members to each handler member—should also be used in reestablishing and reapportioning the Committee. Based on statistical information available from USDA, the Committee therefore determined that the reestablished Committee should be comprised of nine members—six producer members and three handler members—with two producer members and respective alternates, and one handler member and respective alternate representing each of the three new districts.

In determining how to appropriately divide the production area into three districts, as well as the correct apportionment of nine members in three new districts, the Committee reviewed the relative differences in fresh production and acreage estimates in Washington's various potato producing counties. Using data from the USDA's National Agriculture Statistics Service (NASS), the Committee's research indicated that proposed District No. 1 would have 41 percent of the fresh potato producers, 36 percent of the fresh potato production, and 32 percent of the fresh potato acreage in the order's production area. Proposed District No. 2 would have 31 percent of the producers, 43 percent of the production, and 36 percent of the acreage. Finally, proposed District No. 3 would have 28 percent of the producers, 21 percent of the production, and 32 percent of the acreage.

Although these statistics show that the number of fresh potato farms and the related production figures are not evenly divided among the proposed districts, acreage figures are nearly equal. Additionally, the Committee reports that there are widely variable yields among the various table-stock potato varieties produced in Washington's diverse production areas. In equitably apportioning the proposed nine members among the three districts, the Committee chose not to provide districts that predominately produce a lower yielding variety of potato with less representation on the Committee. As previously noted, the Committee's recommendation therefore includes provision that two producer members and one handler member, as well as their respective alternates, would represent each district.

The proposed districts would provide consistency in the Washington potato industry. All of Grant County would be located in the reestablished District No. 1 instead of being divided between Districts No. 1, 2 and 4, as is currently the case. As proposed in this rule, District No. 1 would consist of the counties of Douglas, Chelan, Okanogan, Grant, Adams, Ferry, Stevens, Pend Oreille, Spokane, Whitman, and Lincoln. District No. 2 would consist of the counties of Kittitas, Yakima, Klickitat, Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin. Finally, District No. 3 would consist of all the remaining counties in the State of Washington not included in Districts No. 1 and 2 (essentially all of the counties west of the Cascade Mountains).

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of Washington potatoes subject to regulation under the order and approximately 267 potato producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

During the 2005–2006 marketing year, 10,516,095 hundredweight of Washington potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of $7.80 per hundredweight, the Committee estimates that 43 handlers, or about 96 percent, had annual receipts of less than $6,500,000.

In addition, based on information provided by NASS, the average producer price for Washington potatoes for the 2005 marketing year (the most recent period that final statistics are available) was $5.60 per hundredweight. The average annual producer revenue for each of the 267 Washington potato producers is therefore calculated to be approximately $220,562. In view of the foregoing, the majority of the handlers and producers of Washington potatoes may be classified as small entities.

This rule would modify §§ 946.103 and 946.104 of the order's administrative rules and regulations by reestablishing the order's districts from the current five districts to three districts, reestablishing the Committee with nine members rather than fifteen members, and reapportioning the membership such that each district is represented by two producers and one handler and their respective alternates. This rule would be effective July 1, 2007. Authority for reestablishing the districts, as well as reestablishing and reapportioning the Committee is provided in § 946.22 of the order.

The Committee believes that these proposed changes would not negatively impact handlers and producers in terms of cost. Costs for Committee meetings should actually decrease because of the reduction in the number of members and their respective alternates traveling

to meetings. Such savings could ultimately be passed on to handlers and producers in the form of reduced assessments. The benefits for this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed various alternative reductions in Committee size and how to reapportion fewer members among the districts. Ultimately, the Committee determined that reducing its size to nine members would best mitigate the problems associated with recruitment of qualified members.

Since this rule would modify the administrative rules governing committee representation by reestablishing districts, reestablishing the Committee, and reapportioning members among districts, additional reporting or recordkeeping requirements would not be imposed on either small or large potato handlers. The information collection requirements contained in this rule have been previously approved by the Office of Management and Budget under No. 0581–0178, Vegetable and Specialty Crops. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

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

The Committee's meeting was widely publicized throughout the Washington potato industry and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the February 9, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is proposed to be amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 946.103 is revised to read as follows:

§ 946.103 Reestablishment of districts.

Pursuant to § 946.22, on and after July 1, 2007, the following districts are reestablished:

(a) District No. 1—the counties of Douglas, Chelan, Okanogan, Grant, Adams, Ferry, Stevens, Pend Oreille, Spokane, Whitman, and Lincoln.

(b) District No. 2—the counties of Kittitas, Yakima, Klickitat, Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin.

(c) District No. 3—all of the remaining counties in the State of Washington, not included in Districts No. 1 and No. 2 of this paragraph.

3. Section 946.104 is revised to read as follows:

§ 946.104 Reestablishment and Reapportionment of committee.

(a) Pursuant to § 946.22, on and after July 1, 2007, the State of Washington Potato Committee consisting of nine members, of whom six shall be producers and three shall be handlers, is hereby reestablished. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) Pursuant to § 946.22, on and after July 1, 2007, membership representation of the State of Washington Potato Committee shall be reapportioned among the districts of the production area so as to provide that each of the three districts as defined in § 946.103 are represented by two producer members and one handler member and their respective alternates.

Dated: January 9, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–425 Filed 1–12–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1207

[Docket No. AMS–FV–06–0219; FV–05–711]

Potato Research and Promotion Plan; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This document summarizes the results of an Agricultural Marketing Service (AMS) review of the Potato Research and Promotion Program, under the criteria contained in Section 610 of the Regulatory Flexibility Act. Based upon its review, AMS has determined that the Potato Research and Promotion Plan should be continued without change.

ADDRESSES: Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 0634–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; telephone (202) 720–9915; Fax (202) 205–2800; or e-mail: *Daniel.Manzoni@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 0634–S, Washington, DC 20250–0244; telephone: (888) 720–9917; fax: (202) 205–2800; or e-mail: *Sonia.Jimenez@usda.gov.*

SUPPLEMENTARY INFORMATION: The Potato Research and Promotion Act of 1971, as amended, (7 U.S.C. 2611 *et seq.*) authorized the Potato Research and Promotion Program which is industry operated and funded, with oversight by USDA. The Program's objective is to carry out an effective and continuous coordinated program of research, development, advertising, and promotion designed to strengthen potatoes' competitive position, and to maintain and expand domestic and foreign markets for potatoes and potato products.

The Program became effective on March 9, 1972, and was implemented

on September 15, 1972, when the Potato Research and Promotion Plan (Plan) (7 CFR part 1207) was issued. The plan was amended in May 1984, to increase the maximum assessment rate from 1 cent per hundredweight to 0.5 percent of the previous 10-year average price received by growers. The Plan was amended again on March 8, 2006, to increase the assessment rate from 2 cents per hundredweight to 2.5 cents per hundredweight.

Assessments under this Program are used to fund promotional campaigns and to conduct research in the areas of U.S. marketing, and international marketing and to enable the Potato Board (Board) to exercise its duties in accordance with the Plan.

The Plan is administered by the Board, which is composed of producer members, importer members, and one public member appointed by the Secretary of Agriculture from nominations submitted by eligible groups. Producer membership on the Board is based upon potato production within each State. Importer members, limited to five, are based upon the amount of potatoes, potato products, and seed potatoes imported into the U.S. All members serve terms of three years.

AMS published in the **Federal Register** (63 FR 8014; February 18, 1999) its plan to review certain regulations, including the Potato Research and Promotion Plan, (conducted under the Potato Research and Promotion Act), under criteria contained in Section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612). The Plan to review certain regulations was updated in the **Federal Register** on August 14, 2003 (68 FR 48574), and updated again on March 24, 2006 (71 FR 14827).

AMS published a notice of review and request for written comments in the **Federal Register** on December 14, 2005 (70 FR 73945). The comment period ended on February 13, 2006. AMS received three written comments. One commenter encouraged the Board to place more emphasis on the nutritional benefits of potatoes. The Board routinely conducts research into the nutritional benefits of potatoes and uses that information to promote the benefits of potatoes. A second commenter questioned why potato research is needed and suggested that the program be terminated. However, the Board does not conduct production research. The Board establishes and carries out research and development projects and studies in order to encourage, expand, improve or more efficiently market and utilize potatoes. The third commenter merely sent their organizational structure and did not provide any substantive comment.

The review was undertaken to determine whether the Potato Research and Promotion Plan should be continued without change, amended, or rescinded (consistent with the objectives of the Potato Research and Promotion Act of 1971) to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the Potato Research and Promotion Plan; (2) the nature of complaints or comments received from the public concerning the Potato Research and Promotion Plan; (3) the complexity of the Potato Research and Promotion Plan; (4) the extent to which the Potato Research and Promotion Plan overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local regulations; and (5) the length of time since the Potato Research and Promotion Plan has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the Potato Research and Promotion Plan.

Currently, there are approximately 1,353 handlers, 5,223 producers, and 300 importers of potatoes and potato products who are subject to the provisions of the Plan. Producers of less than 5 acres of potatoes are exempt from assessment.

AMS provides Federal oversight of the Potato Research and Promotion Plan. The Plan is not unduly complex, and AMS has not identified any Federal rules, or State and local regulations that duplicate, overlap, or conflict with the Plan. Over the years, regulation changes have been made to address industry operation changes and to improve program administration. The goal of these evaluations is to assure that the Plan and the regulations implemented under it fit the needs of the industry and are consistent with the Act.

Based upon its review, AMS has determined that the Plan should be continued without change. AMS plans to continue working with the potato industry in maintaining an effective program.

Dated: January 10, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–426 Filed 1–12–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 060928250–6250–01; I.D. 092506A]

RIN 0648–AU90

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: On November 15, 2006, NMFS proposed to revise the regulations implementing the Atlantic Large Whale Take Reduction Plan (ALWTRP) by expanding the southeast U.S. restricted area to include waters out to 35 nautical miles from the South Carolina coast and modifying regulations pertaining to gillnetting within the southeast U.S. restricted area. The proposed action was determined to be necessary to protect northern right whales from serious injury or mortality from entanglement in gillnet gear in their calving area in Atlantic Ocean waters off the Southeastern U.S. With this notice, NMFS is reopening the public comment period for 15 days beginning January 16, 2007.

DATES: Written comments on this proposed rule must be received by 5 p.m. EST on January 31, 2007. Comments received between the close of the first comment period on December 15, 2006, and the reopening of the comment period on January 16, 2007 will be considered timely received.

ADDRESSES: Written comments should be identified by the Regulatory Information Number (RIN) ''0648–AU90'' and submitted by any of the following methods:

- E-mail: *sewhalerule.comments@noaa.gov*. Include RIN 0648–AU90 in the subject line of the message.
- Mail: Assistant Regional Administrator for Protected Resources, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Facsimile (fax) to: 727–824–5309, Attn: Assistant Regional Administrator, Protected Resources, NMFS.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number or RIN for this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Laura Engleby, 727–824–5312, or Barb Zoodsma, 904–321–2806. Individuals who use telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. eastern time, Monday through Friday, excluding Federal holidays.

Electronic Access: Regulations and background documents for the ALWTRP can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 2006, NMFS published a proposed rule to revise the regulations implementing the ALWTRP by expanding the southeast U.S. restricted area and modifying regulations pertaining to gillnetting within the southeast U.S. restricted area (71 FR 66482). That proposed rule allowed for a NMFS' 30–day public comment period, which ended on December 15, 2006.

NMFS subsequently received requests from the State of North Carolina and the Marine Mammal Commission (MMC) to extend the comment period. These requests stated that more time is necessary for the North Carolina public and members of the MMC to more fully review and provide comments on the proposed rule. Therefore, NMFS is reopening the public comment period for 15 additional days to allow additional time for these requesters and other interested parties to provide comments while ensuring permanent protections are in place for right whales before the end of the calving season. In this notice, NMFS is reopening the public comment period for 15 days from January 16, 2007 until January 31, 2007.

Authority: 16 U.S.C. 1361 *et seq.*; § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

Dated: Januaary 8, 2007.

Samuel D. Rauch III,

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

[FR Doc. E7–367 Filed 1–12–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 061229343–6343–01; I.D. 121406A]

RIN 0648–AV03

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes to approve and implement changes to the Pacific Halibut Catch Sharing Plan (Plan) for the International Pacific Halibut Commission's (IPHC or Commission) regulatory Area 2A off Washington, Oregon, and California (Area 2A). NMFS proposes to implement the portions of the Plan and management measures that are not implemented through the IPHC, which includes the sport fishery management measures for Area 2A. NMFS also proposes to revise the Area 2A non-treaty commercial fishery closed areas, codified at 50 CFR part 300, subpart E. These actions are intended to enhance the conservation of Pacific halibut, to provide greater angler opportunity where available, to protect yelloweye rockfish and other overfished groundfish species from incidental catch in the halibut fisheries, and to ensure consistency between Federal groundfish and halibut regulations and between State and Federal regulations.

DATES: Comments on the proposed changes to the Plan and on the proposed domestic Area 2A halibut management measures must be received no later than 5 p.m., local time on February 2, 2007.

ADDRESSES: Copies of the Plan, Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), and/or Categorical Exclusion (CE) are available from D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070. Electronic copies of the Plan, including proposed changes for 2007, and of the CE and draft RIR/IRFA are also available at the NMFS Northwest Region website: *http://www.nwr.noaa.gov*, click on ''Groundfish & Halibut.''

You may submit comments on the proposed Plan and domestic Area 2A halibut management measures or supporting documents, identified by I.D. 121406A, by any of the following methods:

- E-mail: *PHalibut2007.nwr@noaa.gov*. Include the I.D. number 121406A in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, Attn: Jamie Goen, 7600 Sand Point Way NE, Seattle, WA 98115–0070.
- Fax: 206–526–6736, Attn: Jamie Goen.

FOR FURTHER INFORMATION CONTACT: Jamie Goen or Yvonne deReynier (Northwest Region, NMFS), phone: 206–526–6150, fax: 206–526–6736 or e-mail: *jamie.goen@noaa.gov* or *yvonne.dereynier@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act (Halibut Act) of 1982, at 16 U.S.C. 773c, gives the Secretary of Commerce (Secretary) general responsibility for implementing the provisions of the Halibut Convention between the United States and Canada (Halibut Convention). It requires the Secretary to adopt regulations as may be necessary to carry out the purposes and objectives of the Halibut Convention and the Halibut Act. Section 773c of the Halibut Act authorizes the regional fishery management councils to develop regulations governing the Pacific halibut catch in their corresponding U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Each year between 1988 and 1995, the Pacific Fishery Management Council (Pacific Council) had developed a catch sharing plan in accordance with the Halibut Act to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-treaty harvesters and among non-treaty commercial and sport fisheries in Area 2A.

In 1995, NMFS implemented the Pacific Council-recommended long-term Plan (60 FR 14651, March 20, 1995). In each of the intervening years between 1995 and the present, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries. The Plan allocates 35 percent of the Area 2A TAC plus 25,000 lb (11.3 mt) to Washington treaty Indian tribes in Subarea 2A–1 and 65 percent minus 25,000 lb (11.3 mt) to non-Indian fisheries in Area 2A. The annual shift of 25,000 lb (11.3 mt) from the non-tribal to the tribal fisheries has been made in response to a court order; 2007 is the final year that this shift must be made. The allocation to non-Indian fisheries is

divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into a directed commercial fishery that is allocated 85 percent of the commercial allocation and an incidental catch in the salmon troll fishery that is allocated 15 percent of the commercial allocation. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53.30′ N. lat.), Oregon, and California. North of 46°53.30′ N. lat. (Pt. Chehalis), the Plan allows for incidental halibut retention in the primary limited entry longline sablefish fishery when the overall Area 2A TAC is above 900,000 lb (408.2 mt). The Plan also divides the sport fisheries into seven geographic subareas, each with separate allocations, seasons, and bag limits.

The Area 2A TAC will be set by the IPHC at its annual meeting on January 16–19, 2007, in Victoria, BC. NMFS requests public comments on the Pacific Council's recommended modifications to the Plan and the proposed domestic fishing regulations by February 2, 2007. This allows the public the opportunity to consider the final Area 2A TAC before submitting comments on the proposed rule. The States of Washington and Oregon will conduct public workshops shortly after the IPHC meeting to obtain input on the sport season dates. After the Area 2A TAC is known and after NMFS reviews public comments and comments from the states, NMFS will issue a final rule for the Area 2A Pacific halibut fisheries concurrent with the IPHC regulations for the 2007 Pacific halibut fisheries.

Pacific Council Recommended Changes to the Plan and Domestic Fishing Regulations

Each year, the states (Washington Department of Fish and Wildlife (WDFW) and Oregon Department of Fish and Wildlife (ODFW)) and tribes consider whether changes to the Plan are needed or desired by their fishery participants. Fishery managers from the states hold public meetings before both the September and November Pacific Council meetings to get public input on revisions to the Plan. At the September 2006 Pacific Council meeting, WDFW recommended several changes to the Plan and ODFW and the tribes announced that they had no proposals for revising the Plan in 2007. Following the meeting, the states again reviewed their proposals with the public and drafted their recommended revisions for review by the Pacific Council.

At its November 13–17, 2006, meeting in Del Mar, CA, the Pacific Council considered the results of state-sponsored workshops on the proposed changes to the Plan, NMFS-proposed changes to the Plan, and public comments, and made final recommendations for modifications to the Plan as follows:

(1) Constrain the Washington North Coast subarea June fishery to two specific nearshore areas on the first Tuesday and Thursday following June 17;

(2) Reopen the Washington North Coast subarea June fishery in the entire north coast subarea on the first Saturday following June 17;

(3) If sufficient quota remains, reopen the entire Washington North Coast subarea for one day on the first Thursday following June 24, otherwise, reopen the nearshore areas on the first Thursday following June 24 for up to four days per week (Thursday-Sunday) until the quota is taken;

(4) Set aside 5 percent of the Washington South Coast subarea quota for the nearshore fishery once the primary fishery has closed;

(5) Set the Washington South Coast subarea nearshore fishery as a 2–day per week fishery, open Fridays and Saturdays;

(6) Implement additional closed areas (Yelloweye Rockfish Conservation Areas, or YRCAs) off the coast of Washington that would affect commercial and sport halibut fisheries;

(7) Remove latitude/longitude coordinates from the Plan but refer to the regulations in which they are published to reduce duplication;

(8) Remove language referring to salmon troll fishery July-September season;

(9) Add a definition of the Bonilla-Tatoosh line; and

(10) Decrease the California possession limit on land from two daily limits to one daily limit statewide to conform with state regulation.

Proposed Changes to the Plan

NMFS is proposing to approve the Pacific Council recommendations and to implement the above-described changes by making the following changes to the Plan:

In section (e) of the Plan, Non-Indian Commercial Fisheries, revise the last sentence of paragraph (1) to read as follows:

The secondary management objective is to harvest the remaining troll quota as an incidental catch during the remainder of the salmon troll fishery.

In section (e) of the Plan, Non-Indian Commercial Fisheries, revise paragraph (1)(iii) to read as follows:

If the overall quota for the non-Indian, incidental commercial troll fishery has not been harvested by salmon trollers during the May/June fishery, additional landings of halibut caught incidentally during salmon troll fisheries will be allowed in July and will continue until the amount of halibut that was initially available as quota for the troll fishery is taken or until the end of the season date for commercial halibut fishing determined by the IPHC and implemented in IPHC regulation. Landing restrictions implemented for the May/June salmon troll fishery will apply for as long as this fishery is open. Notice of the July opening of this fishery will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. Halibut retention in the salmon troll fishery will be allowed after June only if the opening has been announced on the NMFS hotline.

In section (e) of the Plan, Non-Indian Commercial Fisheries, add paragraph (1)(v) to read as follows:

Under the Pacific Coast groundfish regulations at 50 CFR 660.383, fishing with salmon troll gear is prohibited within the Salmon Troll Yelloweye Rockfish Conservation Area (YRCA). The Salmon Troll YRCA is an area off the northern Washington coast and is defined by straight lines connecting latitude and longitude coordinates. Coordinates for the Salmon Troll YRCA are specified in groundfish regulations at 50 CFR 660.390 and in salmon regulations at 50 CFR 660.405.

In section (e) of the Plan, Non-Indian Commercial Fisheries, revise the fourth sentence of paragraph (2) to read as follows:

Any such closed areas will be described annually in Federal halibut regulations published in the **Federal Register** and specifically defined at 50 CFR 300.63(e).

In section (e) of the Plan, Non-Indian Commercial Fisheries, add a third paragraph to paragraph (3) to read as follows:

Under Pacific Coast groundfish regulations at 50 CFR 660.382, fishing with limited entry fixed gear is prohibited within the North Coast Commercial Yelloweye Rockfish Conservation Area (YRCA) and the Non-Trawl Rockfish Conservation Area (RCA). The North Coast Commercial YRCA is an area off the northern Washington coast, overlapping the northern part of the North Coast Recreational YRCA. The Non-Trawl RCA is an area off the Washington coast. These closed areas are defined by

straight lines connecting latitude and longitude coordinates. Coordinates for the North Coast Commercial YRCA are specified in groundfish regulations at 50 CFR 660.390. Coordinates for the Non-Trawl RCA are specified in groundfish regulations at 50 CFR 660.393.

In section (f) of the Plan, Sport Fisheries, revise the sixth sentence through the remainder of paragraph (1)(ii) to read as follows:

The fishery will then reopen for two days on the first Tuesday and Thursday following June 17, in the following nearshore areas only:

A. WDFW Marine Catch Area 4B, which is all waters west of the Sekiu River mouth, as defined by a line extending from 48°17.30′ N. lat., 124°23.70′ W. long. north to 48°24.10′ N. lat., 124°23.70′ W. long., to the Bonilla-Tatoosh line, as defined by a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35.73′ N. lat., 124°43.00′ W. long.) south of the International Boundary between the U.S. and Canada (at 48°29.62′ N. lat., 124°43.55′ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

B. Shoreward of the recreational halibut 30–fm boundary line, a modified line approximating the 30–fm depth contour from the Bonilla-Tatoosh line south to the Queets River. Coordinates for the closed area will be specifically defined annually in federal halibut regulations published in the **Federal Register**.

The fishery will reopen for one day on the first Saturday following June 17 in the entire north coast subarea. If sufficient quota remains, the fishery would reopen, as a first priority, in the entire north coast subarea for one day on the first Thursday following June 24. If there is insufficient quota remaining to reopen the entire north coast subarea for another day, then the nearshore areas described above would reopen on the first Thursday following June 24, up to four days per week (Thursday-Sunday), until the remaining subarea quota is projected to be taken. No sport fishing for halibut is allowed after September 30. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the nearshore areas for another fishing day, then any remaining quota may be transferred inseason to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline. The daily bag limit in all fisheries is one halibut per person with no size limit.

Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). The North Coast Recreational YRCA is a C-shaped area off the northern Washington coast and is defined by straight lines connecting latitude and longitude coordinates. Coordinates for the North Coast Recreational YRCA are specified in groundfish regulations at 50 CFR 660.390 and will be specifically defined annually in federal halibut regulations published in the **Federal Register**.

In section (f) of the Plan, Sport Fisheries, revise the fifth sentence through the remainder of paragraph (1)(iii) to read as follows:

The south coast subarea quota will be allocated as follows: 95 percent for the primary fishery, and 5 percent for the nearshore fishery, once the primary fishery has closed. The fishery will open on May 1. If May 1 falls on a Friday or Saturday, the fishery will open on the following Sunday. The primary fishery will be open Sunday through Thursday in all areas, except where prohibited, and the nearshore fishery will be open 7 days per week in the area from 47°25.00′ N. lat. south to 46°58.00′ N. lat. and east of 124°30.00′ W. long. The primary fishery will continue until September 30, or until 95% of the quota is achieved, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining to reopen the primary fishery for another fishing day, then any remaining quota may be used to accommodate incidental catch in the nearshore area from 47°25.00′ N. lat. south to 46°58.00′ N. lat. and east of 124°30.00′ W. long. on Fridays, and Saturdays, until the remaining quota is projected to be taken. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the nearshore areas for another fishing day, then any remaining quota may be transferred inseason to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline. The daily bag limit is one halibut per person, with no size limit.

Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA. The South Coast Recreational YRCA is an area off the southern Washington coast and is defined by straight lines connecting latitude and longitude coordinates. Coordinates for the South Coast Recreational YRCA are specified in groundfish regulations at 50 CFR 660.390 and will be specifically defined annually in Federal halibut regulations published in the **Federal Register**.

In section (f) of the Plan, Sport Fisheries, replace the eighth sentence of paragraph (1)(v), including the coordinates, to read as follows:

Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. The Stonewall Bank YRCA is an area off central Oregon, near Stonewall Bank, and is defined by straight lines connecting latitude and longitude coordinates. Coordinates for the Stonewall Bank YRCA are specified in groundfish regulations at 50 CFR 660.390 and will be specifically defined annually in federal halibut regulations published in the **Federal Register**.

In section (f) of the Plan, Sport Fisheries, revise paragraph (3) to read as follows:

Possession limits. The sport possession limit on land in Washington is two daily bag limits, regardless of condition, but only one daily bag limit may be possessed on the vessel. The sport possession limit on land in Oregon is three daily bag limits, regardless of condition, but only one daily bag limit may be possessed on the vessel. The sport possession limit on land in California and on the vessel is one daily bag limit, regardless of condition.

Proposed 2007 Sport Fishery Management Measures

NMFS is proposing sport fishery management measures that are necessary to implement the Plan in 2007. The 2007 TAC for Area 2A will be determined by the IPHC at its annual meeting on January 16–19, 2007, in Victoria, BC. Because the 2007 TAC has not yet been determined, these proposed sport fishery management measures use the IPHC's preliminary 2007 Area 2A TAC recommendation of 1,020,000 lb (463 mt), which is lower than the 2006 TAC of 1,380,000 lb (626 mt). The proposed sport fishery regulations are based on the preliminary 2007 Area 2A TAC of 1,020,000 lb (463 mt). Where season dates are not indicated, those dates will be provided in the final rule, following determination of the 2007 TAC and consultation with the states and the public. In Section 25 of the annual domestic management measures, ''Sport Fishing for Halibut,'' paragraph (4)(b) is proposed to read as follows:

* * * * *

(4)* * *

(b) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the inseason actions in § 300.63(c). All sport fishing in Area 2A is managed on a ''port of landing'' basis, whereby any halibut landed into a port counts toward the quota for the area in

which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(i) The area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17.30′ N. lat., 124°23.70′ W. long. north to 48°24.10′ N. lat., 124°23.70′ W. long., is not managed inseason relative to its quota. This area is managed by setting a season that is projected to result in a catch of 57,393 lb (26 mt).

(A) The fishing season in eastern Puget Sound (east of 123°49.50′ W. long., Low Point) is (season dates will be provided by NMFS in the final rule) and the fishing season in western Puget Sound (west of 123°49.50′ W. long., Low Point) is (season dates will be provided by NMFS in the final rule), 5 days a week (Thursday through Monday). (The final determination of the season dates would be based on the allowable harvest level and projected 2007 catch rates after the 2007 TAC is set by the IPHC.)

(B) The daily bag limit is one halibut of any size per day per person.

(ii)The quota for landings into ports in the area off the north Washington coast, west of the line described in paragraph (4)(b)(i) of this section and north of the Queets River (47°31.70′ N. lat.), is 108,030 lb (49 mt).

(A)The fishing seasons are:

(*1*) Commencing on May 15 and continuing 3 days a week (Tuesday, Thursday, and Saturday) until 77,782 lb (35 mt) are estimated to have been taken and the season is closed by the Commission.

(*2*) On June 19 and 21, the fishery will open only in the nearshore areas defined at the end of this paragraph. The fishery will open for one day on June 23 in the entire north coast subarea. If sufficient quota remains, the fishery would reopen, as a first priority, in the entire north coast subarea for one day on June 28. If there is insufficient quota remaining to reopen the entire north coast subarea on June 28, then the nearshore areas described below would reopen on June 28, up to four days per week (Thursday-Sunday), until the overall quota of 108,030 lb (49 mt) are estimated to have been taken and the area is closed by the Commission, or until September 30, whichever is earlier. After June 23, any fishery opening will be announced on the NMFS hotline at 800–662–9825. No halibut fishing will be allowed after June 23 unless the date is announced on the NMFS hotline. The nearshore areas for Washington's North Coast fishery are defined as follows:

(*i*) WDFW Marine Catch Area 4B, which is all waters west of the Sekiu River mouth, as defined by a line extending from 48°17.30′ N. lat., 124°23.70′ W. long. north to 48°24.10′ N. lat., 124°23.70′ W. long., to the Bonilla-Tatoosh line, as defined by a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35.73′ N. lat., 124°43.00′ W. long.) south of the International Boundary between the U.S. and Canada (at 48°29.62′ N. lat., 124°43.55′ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(*ii*) Shoreward of the recreational halibut 30–fm boundary line, a modified line approximating the 30–fm depth contour from the Bonilla-Tatoosh line south to the Queets River. The recreational halibut 30–fm boundary line is defined by the following coordinates in the order listed:

(1) 48°24.79′ N. lat., 124°44.07′ W. long.;

(2) 48°24.80′ N. lat., 124°44.74′ W. long.;

(3) 48°23.94′ N. lat., 124°44.70′ W. long.;

(4) 48°23.51′ N. lat., 124°45.01′ W. long.;

(5) 48°22.59′ N. lat., 124°44.97′ W. long.;

(6) 48°21.75′ N. lat., 124°45.26′ W. long.;

(7) 48°21.23′ N. lat., 124°47.78′ W. long.;

(8) 48°20.32′ N. lat., 124°49.53′ W. long.;

(9) 48°16.72′ N. lat., 124°51.58′ W. long.;

(10) 48°10.00′ N. lat., 124°52.58′ W. long.;

(11) 48°05.63′ N. lat., 124°52.91′ W. long.;

(12) 47°56.25′ N. lat., 124°52.57′ W. long.;

(13) 47°40.28′ N. lat., 124°40.07′ W. long.;

and connecting back to 47°31.70′ N. lat., 124°37.03′ W. long.

(B) The daily bag limit is one halibut of any size per day per person.

(C) Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is a C-shaped area off the northern Washington coast intended to protect yelloweye rockfish. The North Coast Recreational YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 48°18.00′ N. lat.; 125°18.00′ W. long.;

(2) 48°18.00′ N. lat.; 124°59.00′ W. long.;

(3) 48°11.00′ N. lat.; 124°59.00′ W. long.;

(4) 48°11.00′ N. lat.; 125°11.00′ W. long.;

(5) 48°04.00′ N. lat.; 125°11.00′ W. long.;

(6) 48°04.00′ N. lat.; 124°59.00′ W. long.;

(7) 48°00.00′ N. lat.; 124°59.00′ W. long.;

(8) 48°00.00′ N. lat.; 125°18.00′ W. long.;

and connecting back to 48°18.00′ N. lat.; 125°18.00′ W. long.

(iii) The quota for landings into ports in the area between the Queets River, WA (47°31.70′ N. lat.) and Leadbetter Point, WA (46°38.17′ N. lat.), is 42,739 lb (19 mt).

(A) The fishing season commences on May 1 and continues 5 days a week (Sunday through Thursday) in all waters (the primary fishery), except that in the area from 47°25.00′ N. lat. south to 46°58.00′ N. lat. and east of 124°30.00′ W. long. (the Washington South coast, northern nearshore area), the fishing season commences on May 1 and continues 7 days a week. The south coast subarea quota will be allocated as follows: 40,602 lb (18 mt), 95 percent, for the primary fishery, and 2,137 lb (1.0 mt), 5 percent, for the northern nearshore fishery, once the primary fishery has closed. The primary fishery will continue from May 1 until 40,602 lb (18 mt) are estimated to have been taken and the season is closed by the Commission, or until September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining to reopen the primary fishery for another fishing day, then any remaining quota may be used to accommodate incidental catch in the northern nearshore area from 47°25.00′ N. lat. south to 46°58.00′ N. lat. and east of 124°30.00′ W. long. on Fridays and Saturdays, until 42,739 lb (19 mt) is projected to be taken and the fishery is closed by the Commission. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the northern nearshore area for another fishing day, then any remaining quota may be transferred inseason to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline.

(B) The daily bag limit is one halibut of any size per day per person.

(C) Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the South Coast Recreational YRCA. A vessel fishing in the South Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the South Coast Recreational YRCA with or without halibut on board. The South Coast Recreational YRCA is an area off the southern Washington coast intended to protect yelloweye rockfish. The South Coast Recreational YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 46°58.00′ N. lat., 124°48.00′ W. long.;

(2) 46°55.00′ N. lat., 124°48.00′ W. long.;

(3) 46°58.00′ N. lat., 124°49.00′ W. long.;

(4) 46°55.00′ N. lat., 124°49.00′ W. long.;

and connecting back to 46°58.00′ N. lat., 124°48.00′ W. long.

(iv) The quota for landings into ports in the area between Leadbetter Point, WA (46°38.17′ N. lat.) and Cape Falcon, OR (45°46.00′ N. lat.), is 16,060 lb (7.3 mt).

(A) The fishing season commences on May 1, and continues 7 days a week until 11,242 lb (5 mt) are estimated to have been taken and the season is closed by the Commission or until July 21, whichever is earlier. The fishery will reopen on August 3 and continue 3 days a week (Friday through Sunday) until 16,060 lb (7 mt) have been taken and the season is closed by the Commission, or until September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred inseason to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each state in proportion to its contribution.

(B) The daily bag limit is one halibut of any size per day per person.

(C) Pacific Coast groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod when allowed by Pacific Coast groundfish regulations, if halibut are on board the vessel.

(v) The quota for landings into ports in the area off Oregon between Cape Falcon (45°46.00′ N. lat.) and Humbug Mountain (42°40.50′ N. lat.), is 186,066 lb (84 mt).

(A) The fishing seasons are:

(*1*) The first season (the ''inside 40–fm'' fishery) commences May 1 and continues 7 days a week through October 31, in the area shoreward of a boundary line approximating the 40–fm (73–m) depth contour, or until the sub-quota for the central Oregon ''inside 40–fm'' fishery (14,885 lb (6.8 mt)) or any inseason revised subquota is estimated to have been taken and the season is closed by the Commission, whichever is earlier. The boundary line approximating the 40–fm (73–m) depth contour between 45°46.00′ N. lat. and 42°40.50′ N. lat. is defined by straight lines connecting all of the following points in the order stated:

(1) 45°46.00′ N. lat., 124°04.49′ W. long.;

(2) 45°44.34′ N. lat., 124°05.09′ W. long.;

(3) 45°40.64′ N. lat., 124°04.90′ W. long.;

(4) 45°33.00′ N. lat., 124°04.46′ W. long.;

(5) 45°32.27′ N. lat., 124°04.74′ W. long.;

(6) 45°29.26′ N. lat., 124°04.22′ W. long.;

(7) 45°20.25′ N. lat., 124°04.67′ W. long.;

(8) 45°19.99′ N. lat., 124°04.62′ W. long.;

(9) 45°17.50′ N. lat., 124°04.91′ W. long.;

(10) 45°11.29′ N. lat., 124°05.19′ W. long.;

(11) 45°05.79′ N. lat., 124°05.40′ W. long.;

(12) 45°05.07′ N. lat., 124°05.93′ W. long.;

(13) 45°03.83′ N. lat., 124°06.47′ W. long.;

(14) 45°01.70′ N. lat., 124°06.53′ W. long.;

(15) 44°58.75′ N. lat., 124°07.14′ W. long.;

(16) 44°51.28′ N. lat., 124°10.21′ W. long.;

(17) 44°49.49′ N. lat., 124°10.89′ W. long.;

(18) 44°44.96′ N. lat., 124°14.39′ W. long.;

(19) 44°43.44′ N. lat., 124°14.78′ W. long.;

(20) 44°42.27′ N. lat., 124°13.81′ W. long.;

(21) 44°41.68′ N. lat., 124°15.38′ W. long.;

(22) 44°34.87′ N. lat., 124°15.80′ W. long.;

(23) 44°33.74′ N. lat., 124°14.43′ W. long.;

(24) 44°27.66′ N. lat., 124°16.99′ W. long.;

(25) 44°19.13′ N. lat., 124°19.22′ W. long.;

(26) 44°15.35′ N. lat., 124°17.37′ W. long.;

(27) 44°14.38′ N. lat., 124°17.78′ W. long.;

(28) 44°12.80′ N. lat., 124°17.18′ W. long.;

(29) 44°09.23′ N. lat., 124°15.96′ W. long.;

(30) 44°08.38′ N. lat., 124°16.80′ W. long.;

(31) 44°08.30′ N. lat., 124°16.75′ W. long.;

(32) 44°01.18′ N. lat., 124°15.42′ W. long.;

(33) 43°51.60′ N. lat., 124°14.68′ W. long.;

(34) 43°42.66′ N. lat., 124°15.46′ W. long.;

(35) 43°40.49′ N. lat., 124°15.74′ W. long.;

(36) 43°38.77′ N. lat., 124°15.64′ W. long.;

(37) 43°34.52′ N. lat., 124°16.73′ W. long.;

(38) 43°28.82′ N. lat., 124°19.52′ W. long.;

(39) 43°23.91′ N. lat., 124°24.28′ W. long.;

(40) 43°20.83′ N. lat., 124°26.63′ W. long.;

(41) 43°17.96′ N. lat., 124°28.81′ W. long.;

(42) 43°16.75′ N. lat., 124°28.42′ W. long.;

(43) 43°13.98′ N. lat., 124°31.99′ W. long.;

(44) 43°13.71′ N. lat., 124°33.25′ W. long.;

(45) 43°12.26′ N. lat., 124°34.16′ W. long.;

(46) 43°10.96′ N. lat., 124°32.34′ W. long.;

(47) 43°05.65′ N. lat., 124°31.52′ W. long.;

(48) 42°59.66′ N. lat., 124°32.58′ W. long.;

(49) 42°54.97′ N. lat., 124°36.99′ W. long.;

(50) 42°53.81′ N. lat., 124°38.58′ W. long.;

(51) 42°50.00′ N. lat., 124°39.68′ W. long.;

(52) 42°49.14′ N. lat., 124°39.92′ W. long.;

(53) 42°46.47′ N. lat., 124°38.65′ W. long.;

(54) 42°45.60′ N. lat., 124°39.04′ W. long.;

(55) 42°44.79′ N. lat., 124°37.96′ W. long.;

(56) 42°45.00′ N. lat., 124°36.39′ W. long.;

(57) 42°44.14′ N. lat., 124°35.16′ W. long.;

(58) 42°42.15′ N. lat., 124°32.82′ W. long.; and

(59) 42°40.50′ N. lat., 124°31.98′ W. long.;

(*2*) The second season (spring season), which is for the ''all-depth'' fishery, is

open on (dates will be provided by NMFS in the final rule). The projected catch for this season is 128,386 lb (58 mt). If sufficient unharvested catch remains for additional fishing days, the season will re-open. Dependent on the amount of unharvested catch available, the potential season re-opening dates will be: (dates will be provided by NMFS in the final rule). If NMFS decides inseason to allow fishing on any of these re-opening dates, notice of the re-opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the re-opening dates unless the date is announced on the NMFS hotline. (The final determination of the season dates would be based on the allowable harvest level and projected 2007 catch rates and on a public meeting held by ODFW after the 2007 TAC is set by the IPHC.)

(*3*) If sufficient unharvested catch remains, the third season (summer season), which is for the ''all-depth'' fishery, will be open on (dates will be provided by NMFS in the final rule), or until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, totaling 171,181 lb (78 mt), are estimated to have been taken and the area is closed by the Commission, or October 31, whichever is earlier. NMFS will announce on the NMFS hotline in July whether the fishery will re-open for the summer season in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline. Additional fishing days may be opened if a certain amount of quota remains after August 5 and September 2. If after August 5, greater than or equal to 60,000 lb (27.2 mt) remains in the combined all-depth and inside 40–fm (73–m) quota, the fishery may re-open every Friday through Sunday, beginning August 10 - 12, and ending October 26 - 28. If after September 2, greater than or equal to 30,000 lb (13.6 mt) remains in the combined all-depth and inside 40–fm (73–m) quota, and the fishery is not already open every Friday through Sunday, the fishery may re-open every Friday through Sunday, beginning September 7 - 9, and ending October 26 - 28. After September 2, the bag limit may be increased to two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open and what the bag limit is.

(B) The daily bag limit is one halibut of any size per day per person, unless otherwise specified. NMFS will announce on the NMFS hotline any bag limit changes.

(C) During days open to all-depth halibut fishing, no Pacific Coast groundfish may be taken and retained, possessed or landed, except sablefish when allowed by Pacific Coast groundfish regulations, if halibut are on board the vessel.

(D) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40–fm (73–m) depth contour, halibut possession and retention by vessels operating seaward of a boundary line approximating the 40–fm (73–m) depth contour is prohibited.

(E) Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not be in possession of any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut on board. The Stonewall Bank YRCA is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 44°37.46 N. lat.; 124°24.92 W. long.;

(2) 44°37.46 N. lat.; 124°23.63 W. long.;

(3) 44°28.71 N. lat.; 124°21.80 W. long.;

(4) 44°28.71 N. lat.; 124°24.10 W. long.;

(5) 44°31.42 N. lat.; 124°25.47 W. long.;

and connecting back to 44°37.46 N. lat.; 124°24.92 W. long.

(vi) The area south of Humbug Mountain, Oregon (42°40.50′ N. lat.) and off the California coast is not managed inseason relative to its quota. This area is managed on a season that is projected to result in a catch of 6,067 lb (2.8 mt).

(A) The fishing season will commence on May 1 and continue 7 days a week until October 31.

(B) The daily bag limit is one halibut of any size per day per person.

Area 2A Non-Treaty Commercial Fishery Closed Areas

Since 2003, large closed areas have applied to commercial vessels operating in the directed non-treaty commercial fishery for halibut in Area 2A. The Area 2A non-treaty commercial fishery closed areas implement the Plan and previously appeared in the annual halibut management measures published in the **Federal Register**. Beginning in 2006, this section was codified into regulatory language at 50 CFR part 300, subpart E. Coordinates for the boundary lines approximating the 30–fm and 100–fm depth contours for the closed areas are being revised to to better approximate depth contours. Therefore, NMFS is proposing new coordinates for these boundary lines in this proposed rule.

Classification

NMFS has prepared an RIR/IRFA and a CE on the proposed changes to the Plan and annual domestic Area 2A halibut management measures. Copies of these documents are available from NMFS (see **ADDRESSES**).

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows:

A fish-harvesting business is considered a ''small'' business by the Small Business Administration (SBA) if it has annual receipts not in excess of $4.0 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For wholesale businesses, a small business is one that employs not more than 100 people. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $6.5 million. All of the businesses that would be affected by this action are considered small businesses under Small Business Administration guidance.

The proposed changes to the Plan, which allocates the catch of Pacific halibut among users in Washington, Oregon and California, would: constrain the Washington North Coast subarea June fishery to two specific nearshore areas on the first Tuesday and Thursday following June 17; reopen the Washington North Coast subarea June fishery in the entire north coast subarea on the first Saturday following June 17; if sufficient quota remains, reopen the entire Washington North Coast subarea for one day on the first Thursday following June 24, otherwise, reopen the nearshore areas on the first Thursday following June 24 for up to four days per week (Thursday-Sunday) until the quota

is taken; set aside 5 percent of the Washington South Coast subarea quota for the nearshore fishery once the primary fishery has closed; set the Washington South Coast subarea nearshore fishery as a 2–day per week fishery, open Fridays and Saturdays; implement additional closed areas (Yelloweye Rockfish Conservation Areas, or YRCAs) off the coast of Washington that would affect commercial and sport halibut fisheries; remove latitude/longitude coordinates from the Plan but refer to where in the regulations they are published to reduce duplication; remove language referring to salmon troll fishery July-September season; add a definition of the Bonilla-Tatoosh line; and decrease the California possession limit on land from two daily limits to one daily limit statewide to conform with state regulation. NMFS also proposes to implement the portions of the Plan and management measures that are not implemented through the IPHC, which includes the sport fishery management measures for Area 2A and to revise Area 2A non-treaty commercial fishery closed areas specified at 50 CFR 300.63. These actions are intended to enhance the conservation of Pacific halibut, to provide greater angler opportunity where available, to protect yelloweye rockfish and other overfished groundfish species from incidental catch in the halibut fisheries, and to ensure consistency between Federal groundfish and halibut regulations and between State and Federal regulations.

As mentioned in the preamble, WDFW and ODFW held state meetings and crafted alternatives to adjust management of the sport halibut fisheries in their respective states. These alternatives were then narrowed down by the states and brought to the Council at the Council's September and November 2006 meetings. Generally, by the time the alternatives reach the Council, and because they have been through the state public review process, they are narrowed down into the proposed action and status quo. There were no alternatives that could have similarly improved angler enjoyment of and participation in the fisheries while simultaneously protecting halibut and co-occurring groundfish species from overharvest.

In 1995, NMFS implemented the Plan, when the TAC was 520,000 pounds (236 mt). In each of the intervening years between 1995 and the present, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries, even though the TAC reached levels of over 1,000,000 pounds (454 mt), with a peak of 1,480,000 pounds (671 mt) in 2004. Since 2004, there has been very little change in the total allowable catch and sector allocations. In 2005, the Area 2A Halibut TAC set by the IPHC was 1.33 million pounds (603 mt) and for 2006 it was 1.38 million pounds (626 mt). However, preliminary estimates of the 2007 TAC are lower than the TAC levels since 2001. The preliminary 2007 Area 2A TAC of 1.02 million pounds (463 mt) is lower than previous years due to the IPHC's new stock assessment information, revised selectivity assumptions and revised harvest policy. This is a 26–percent decline from the 2006 TAC. As this is a sizable decline, there may be changes to the regulations described in this proposed rule due to IPHC recommendations at their annual meeting in January 2007 or as an outcome of the state public workshops held after the IPHC meeting. Expectations are that any proposed changes in the regulations will be ones that seek to mitigate the adverse impacts of the decline of the TAC in order to maximize available fishing opportunities and benefits to fishing communities.

Six hundred sixty two vessels were issued IPHC licenses to retain halibut in 2006. IPHC issues licenses for: the directed commercial fishery in Area 2A, including licenses issued to retain halibut caught incidentally in the primary sablefish fishery (298 licenses in 2006); incidental halibut caught in the salmon troll fishery (224 licenses in 2006); and the charterboat fleet (140 licenses in 2006). No vessel may participate in more than one of these three fisheries per year. Individual recreational anglers and private boats are the only sectors that are not required to have an IPHC license to retain halibut.

Specific data on the economics of halibut charter operations is unavailable. However, in January 2004, the Pacific States Marine Fisheries Commission (PSMFC) completed a report on the overall West Coast charterboat fleet. In surveying charterboat vessels concerning their operations in 2000, the PSMFC estimated that there were about 315 charterboat vessels in operation off Washington and Oregon. In 2000, IPHC licensed 130 vessels to fish in the halibut sport charter fishery. Comparing the total charterboat fleet to the 130 and 140 IPHC licenses in 2000 and 2006, respectively, approximately 41 to 44 percent of the charterboat fleet could participate in the halibut fishery. The PSMFC has developed preliminary estimates of the annual revenues earned by this fleet and they vary by size class of the vessels and home state. Small charterboat vessels range from 15 to 30 ft (4.572 to 9.144 m), and typically carry 5 to 6 passengers. Medium charterboat vessels range from 31 to 49 ft (9.44 to 14.93 m) in length and typically carry 19 to 20 passengers. (Neither state has large vessels of greater than 49 ft (14.93 m) in their fleet.) Average annual revenues from all types of recreational fishing, whalewatching and other activities ranged from $7,000 for small Oregon vessels to $131,000 for medium Washington vessels. Estimates from the RIR show the recreational halibut fishery generated approximately $2.5 million in personal income to West Coast communities, while the non-tribal commercial halibut fishery generated approximately $1.8 million in income impacts. Because these estimated impacts for the entire halibut fishery overall are less than the SBA criteria for individual businesses, these data confirm that charterboat and commercial halibut vessels qualify as small entities under the Regulatory Flexibility Act (RFA).

These changes are authorized under the Pacific Halibut Act, implementing regulations at 50 CFR 300.60 through 300.65, and the Pacific Council process of annually evaluating the utility and effectiveness of Area 2A Pacific halibut management under the Plan. Given the TAC, the proposed sport management measures implement the Plan by managing the recreational fishery to meet the differing fishery needs of the various areas along the coast according to the Plan's objectives. The proposed commercial management measures will allow the fishery access to a portion of the Area 2A TAC while protecting overfished rockfish species that co-occur with halibut. The measures will be very similar to last year's management measures. The changes to the Plan and domestic management measures are minor changes and are intended to increase flexibility in management and opportunity to harvest available quota. There are no large entities involved in the halibut fisheries; therefore, none of these changes to the Plan and domestic management measures will have a disproportionate negative effect on small entities versus large entities.

These changes do not include any reporting or recordkeeping requirements. These changes will also not duplicate, overlap or conflict with other laws or regulations. Consequently, these changes to the Plan and annual domestic Area 2A halibut management measures are not expected to meet any of the RFA tests of having a ''significant'' economic impact on a

''substantial number'' of small entities. Nonetheless, NMFS has prepared a IRFA. Through this proposed rule, NMFS is requesting comments on these conclusions.

This action has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to Executive Order 13175, the Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. At section 302(b)(5), the Magnuson-Stevens Fishery Conservation and Management Act establishes a seat on the Pacific Council for a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho.

The U.S. Government formally recognizes that the 12 Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the tribes' usual and accustomed (U and A) fishing areas (described at 50 CFR 300.64). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the proposed changes to the Plan, have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

List of Subjects in 50 CFR Part 300

Fishing, Fisheries, and Indian fisheries.

Dated: January 9, 2007.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*

2. In § 300.63, paragraphs (e), (f) and (g) are revised to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

* * * * *

(e) *Area 2A Non-Treaty Commercial Fishery Closed Areas.*

(1) Non-treaty commercial vessels operating in the directed commercial fishery for halibut in Area 2A are required to fish outside of a closed area, known as the Rockfish Conservation Area (RCA), that extends along the coast from the U.S./Canada border south to 40°10′ N. lat. Between the U.S./Canada border and 46°16′ N. lat., the eastern boundary of the RCA is the shoreline. Between 46°16′ N. lat. and 40°10′ N. lat., the RCA is defined along an eastern boundary approximating the 30–fm (55–m) depth contour. Coordinates for the 30–fm (55–m) boundary are listed at § 300.63 (f). Between the U.S./Canada border and 40°10′ N. lat., the RCA is defined along a western boundary approximating the 100–fm (183–m) depth contour. Coordinates for the 100–fm (183–m) boundary are listed at § 300.63 (g).

(2) Non-treaty commercial vessels operating in the incidental catch fishery during the sablefish fishery north of Pt. Chehalis, WA, in Area 2A are required to fish outside of a closed area. Under Pacific Coast groundfish regulations at 50 CFR 660.382, fishing with limited entry fixed gear is prohibited within the North Coast Commercial Yelloweye Rockfish Conservation Area (YRCA). It is unlawful to take and retain, possess, or land halibut taken with limited entry fixed gear within the North Coast Commercial YRCA. The North Coast Commercial Yelloweye Rockfish Conservation Area YRCA is an area off the northern Washington coast, overlapping the northern part of North Coast Recreational YRCA, and is defined by straight lines connecting latitude and longitude coordinates. Coordinates for the North Coast Commercial YRCA are specified in groundfish regulations at 50 CFR 660.390.

(3) Non-treaty commercial vessels operating in the incidental catch fishery during the salmon troll fishery in Area 2A are required to fish outside of a closed area. Under the Pacific Coast groundfish regulations at 50 CFR 660.383, fishing with salmon troll gear is prohibited within the Salmon Troll Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for commercial salmon troll vessels to take and retain, possess, or land fish within the Salmon Troll YRCA. The Salmon Troll YRCA is an area off the northern Washington coast and is defined by straight lines connecting latitude and longitude coordinates. Coordinates for the Salmon Troll YRCA are specified in groundfish regulations at 50 CFR 660.390 and in salmon regulations at 50 CFR 660.405.

(f) The 30–fm (55–m) depth contour between 46°16′ N. lat. and 40°10′ N. lat. is defined by straight lines connecting all of the following points in the order stated:

(1) 46°16.00′ N. lat., 124°13.05′ W. long.;
(2) 46°16.00′ N. lat., 124°13.04′ W. long.;
(3) 46°07.00′ N. lat., 124°07.01′ W. long.;
(4) 45°55.95′ N. lat., 124°02.23′ W. long.;
(5) 45°54.53′ N. lat., 124°02.57′ W. long.;
(6) 45°50.65′ N. lat., 124°01.62′ W. long.;
(7) 45°48.20′ N. lat., 124°02.16′ W. long.;
(8) 45°46.00′ N. lat., 124°01.86′ W. long.;
(9) 45°43.46′ N. lat., 124°01.28′ W. long.;
(10) 45°40.48′ N. lat., 124°01.03′ W. long.;
(11) 45°39.04′ N. lat., 124°01.68′ W. long.;
(12) 45°35.48′ N. lat., 124°01.90′ W. long.;
(13) 45°29.81′ N. lat., 124°02.45′ W. long.;
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(15) 45°27.22′ N. lat., 124°02.66′ W. long.;
(16) 45°24.20′ N. lat., 124°02.94′ W. long.;
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(65) 42°40.50′ N. lat., 124°29.67′ W. long.;
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(93) 40°34.00′ N. lat., 124°27.39′ W. long.;
(94) 40°30.00′ N. lat., 124°31.32′ W. long.;
(95) 40°28.89′ N. lat., 124°32.43′ W. long.;
(96) 40°24.77′ N. lat., 124°29.51′ W. long.;
(97) 40°22.47′ N. lat., 124°24.12′ W. long.;
(98) 40°19.73′ N. lat., 124°23.59′ W. long.;
(99) 40°18.64′ N. lat., 124°21.89′ W. long.;
(100) 40°17.67′ N. lat., 124°23.07′ W. long.;
(101) 40°15.58′ N. lat., 124°23.61′ W. long.;
(102) 40°13.42′ N. lat., 124°22.94′ W. long.; and
(103) 40°10.00′ N. lat., 124°16.65′ W. long.;

(g) The 100–fm (183–m) depth contour used between the U.S. border with Canada and 40°10′ N. lat. is defined by straight lines connecting all of the following points in the order stated:

(1) 48°15.00′ N. lat., 125°41.00′ W. long.;
(2) 48°14.00′ N. lat., 125°36.00′ W. long.;
(3) 48°09.50′ N. lat., 125°40.50′ W. long.;
(4) 48°08.00′ N. lat., 125°38.00′ W. long.;
(5) 48°05.00′ N. lat., 125°37.25′ W. long.;
(6) 48°02.60′ N. lat., 125°34.70′ W. long.;
(7) 47°59.00′ N. lat., 125°34.00′ W. long.;
(8) 47°57.26′ N. lat., 125°29.82′ W. long.;
(9) 47°59.87′ N. lat., 125°25.81′ W. long.;
(10) 48°01.80′ N. lat., 125°24.53′ W. long.;
(11) 48°02.08′ N. lat., 125°22.98′ W. long.;
(12) 48°02.97′ N. lat., 125°22.89′ W. long.;
(13) 48°04.47′ N. lat., 125°21.75′ W. long.;
(14) 48°06.11′ N. lat., 125°19.33′ W. long.;
(15) 48°07.95′ N. lat., 125°18.55′ W. long.;
(16) 48°09.00′ N. lat., 125°18.00′ W. long.;
(17) 48°11.31′ N. lat., 125°17.55′ W. long.;
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(19) 48°16.67′ N. lat., 125°14.34′ W. long.;
(20) 48°18.73′ N. lat., 125°14.41′ W. long.;
(21) 48°19.67′ N. lat., 125°13.70′ W. long.;
(22) 48°19.70′ N. lat., 125°11.13′ W. long.;
(23) 48°22.95′ N. lat., 125°10.79′ W. long.;
(24) 48°21.61′ N. lat., 125°02.54′ W. long.;
(25) 48°23.00′ N. lat., 124°49.34′ W. long.;
(26) 48°17.00′ N. lat., 124°56.50′ W. long.;
(27) 48°06.00′ N. lat., 125°00.00′ W. long.;
(28) 48°04.62′ N. lat., 125°01.73′ W. long.;
(29) 48°04.84′ N. lat., 125°04.03′ W. long.;
(30) 48°06.41′ N. lat., 125°06.51′ W. long.;
(31) 48°06.00′ N. lat., 125°08.00′ W. long.;
(32) 48°07.08′ N. lat., 125°09.34′ W. long.;
(33) 48°07.28′ N. lat., 125°11.14′ W. long.;

(34) 48°03.45′ N. lat., 125°16.66′ W. long.;
(35) 47°59.50′ N. lat., 125°18.88′ W. long.;
(36) 47°58.68′ N. lat., 125°16.19′ W. long.;
(37) 47°56.62′ N. lat., 125°13.50′ W. long.;
(38) 47°53.71′ N. lat., 125°11.96′ W. long.;
(39) 47°51.70′ N. lat., 125°09.38′ W. long.;
(40) 47°49.95′ N. lat., 125°06.07′ W. long.;
(41) 47°49.00′ N. lat., 125°03.00′ W. long.;
(42) 47°46.95′ N. lat., 125°04.00′ W. long.;
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(55) 47°27.38′ N. lat., 124°49.34′ W. long.;
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(82) 46°18.40′ N. lat., 124°37.70′ W. long.;
(83) 46°18.03′ N. lat., 124°35.46′ W. long.;
(84) 46°17.00′ N. lat., 124°22.50′ W. long.;
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(86) 46°13.52′ N. lat., 124°25.49′ W. long.;
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(92) 45°51.92′ N. lat., 124°38.50′ W. long.;
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(96) 45°41.75′ N. lat., 124°28.12′ W. long.;
(97) 45°36.95′ N. lat., 124°24.47′ W. long.;
(98) 45°31.84′ N. lat., 124°22.04′ W. long.;
(99) 45°27.10′ N. lat., 124°21.74′ W. long.;
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(124) 43°03.45′ N. lat., 124°44.36′ W. long.;
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(129) 42°44.00′ N. lat., 124°42.38′ W. long.;
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(134) 42°30.08′ N. lat., 124°42.67′ W. long.;
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(141) 42°00.00′ N. lat., 124°35.27′ W. long.;

(142) 41°47.04′ N. lat., 124°27.64′ W. long.;

(143) 41°32.92′ N. lat., 124°28.79′ W. long.;

(144) 41°24.17′ N. lat., 124°28.46′ W. long.;

(145) 41°10.12′ N. lat., 124°20.50′ W. long.;

(146) 40°51.41′ N. lat., 124°24.38′ W. long.;

(147) 40°43.71′ N. lat., 124°29.89′ W. long.;

(148) 40°40.14′ N. lat., 124°30.90′ W. long.;

(149) 40°37.35′ N. lat., 124°29.05′ W. long.;

(150) 40°34.76′ N. lat., 124°29.82′ W. long.;

(151) 40°36.78′ N. lat., 124°37.06′ W. long.;

(152) 40°32.44′ N. lat., 124°39.58′ W. long.;

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(158) 40°21.72′ N. lat., 124°24.94′ W. long.;

(159) 40°21.87′ N. lat., 124°27.96′ W. long.;

(160) 40°21.40′ N. lat., 124°28.74′ W. long.;

(161) 40°19.68′ N. lat., 124°28.49′ W. long.;

(162) 40°17.73′ N. lat., 124°25.43′ W. long.;

(163) 40°18.37′ N. lat., 124°23.35′ W. long.;

(164) 40°15.75′ N. lat., 124°26.05′ W. long.;

(165) 40°16.75′ N. lat., 124°33.71′ W. long.;

(166) 40°16.29′ N. lat., 124°34.36′ W. long.; and

(167) 40°10.00′ N. lat., 124°21.12′ W. long.;

[FR Doc. E7–420 Filed 1–12–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 061227341–6341–01; I.D. 120406A]

RIN 0648–AU99

Fisheries in the Western Pacific; Hawaii Shallow-set Longline Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would permanently remove the 7–day delay in effectiveness when closing the Hawaii-based shallow-set longline fishery as a result of reaching interaction limits for sea turtles. This action would allow immediate closure of the fishery, and would enhance protection of sea turtles.

DATES: Comments on the proposed rule must be received by January 31, 2007.

ADDRESSES: You may submit comments, identified by ''AU99'' by any of the following methods:

- E-mail: *AU99Swordfish@noaa.gov*. Include ''AU99'' in the subject line of the message.
- Federal e-Rulemaking Portal: *www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: William L. Robinson, Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd. 1110, Honolulu, HI 96814.

In accordance with the Endangered Species Act, a Biological Opinion, dated February 23, 2004, was prepared for the longline fishery, which operates under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). Copies of the Biological Opinion are available from William L. Robinson (see **ADDRESSES**).

Copies of the regulatory amendment may be obtained from Kitty M. Simonds, Western Pacific Fishery Management Council (WPFMC), 1164 Bishop St. 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Bob Harman, NMFS PIR, 808–944–2271.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the World Wide Web at the Office of the **Federal Register**: *www.gpoaccess.gov/fr/index.html*.

Background

The Hawaii-based pelagic longline fishery for swordfish, tunas, and related species is managed under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FMP). The Pelagics FMP was developed by the WPFMC under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the Pelagics FMP appear at 50 CFR part 665 and subpart H of 50 CFR part 600.

The regulations at § 665.33(b)(1) establish maximum annual limits on the numbers of interactions that occur between longline fishing operations and sea turtles. These limits apply to physical interactions experienced by vessels registered under Hawaii longline limited-access permits while engaged in shallow-set longline fishing. There are calendar-year annual limits on physical interactions for two species of sea turtles, one for leatherback sea turtles set at 16, and one for loggerhead sea turtles set at 17.

NMFS is required by the 2004 Biological Opinion to maintain 100–percent observer coverage in the Hawaii shallow-set longline fishery. Interactions with turtles are monitored using data from scientific observers placed by NMFS aboard all vessels engaged in shallow-set longline fishing.

The current regulations at § 665.33(b)(2) prescribe that as soon as the physical interaction limit for either of the two turtle species has been determined to have been reached in a given year, the shallow-set component of the Hawaii-based longline fishery must be closed by NMFS for the remainder of the calendar year, after giving permit holders at least seven days advance notice. Once that component of the fishery is closed, no vessel registered under a Hawaii longline limited-access permit may engage in shallow-set longline fishing north of the Equator.

The 7–day delay was intended to give NMFS adequate time to notify permit holders and vessel operators of the fishery closure. Based on the best information available on fishing activity levels and anticipated turtle interaction rates at the time when the regulations were first implemented, the 7–day delay in effectiveness offered by the advance notice provision was thought to provide adequate protection to sea turtles, while also providing adequate notice of the fishery closure to vessels at sea. At the time when the current regulations were implemented, NMFS observers placed aboard longline vessels were not issued

satellite telephones, and other communication methods were considered ineffective for notifying vessels at sea of a closure. More effective means of providing notification to active fishermen now exist; NMFS observers carry satellite telephones that enable effective communications between NMFS and each shallow-set vessel at sea.

Fishing activity levels and rates of turtle interactions in early 2006 were higher than expected, resulting in the fishery quickly reaching the limit on turtle interactions. To respond to the greater fishing activity and turtle interaction rates, and to prevent additional adverse impacts to turtles, fishery closure was facilitated by issuance of an emergency rule that suspended the 7–day delay in effectiveness for closing the fishery. The emergency rule that suspended the delay in effectiveness in closing the fishery was effective on March 20, 2006 (71 FR 14416, March 22, 2006). When the 2006 fishery was closed, NMFS notified the operator of each Hawaii-based shallow-set longline vessel, directly via the satellite telephone carried by the NMFS observer placed on the vessel. This allowed for immediate closure of the fishery. The limit on turtle interactions was not exceeded, maximizing protection to the turtles. To implement the closure, NMFS published a notice that closed the fishery, effective from March 20, 2006, through December 31, 2006 (71 FR 14824, March 24, 2006). NMFS subsequently published a notice extending until March 19, 2007, the emergency rule that suspends the advance notice provision (71 FR 54759, September 19, 2006).

At its 135th meeting on October 18, 2006, the WPFMC voted to recommend to NMFS that the regulations governing the notification to close the fishery be amended to permanently remove the 7–day delay in effectiveness. The amended regulations would close the shallow-set fishery immediately upon reaching either limit on turtle interactions. The WPFMC developed a regulatory amendment, which may be obtained from Kitty M. Simonds (see **ADDRESSES**). Copies of the regulatory amendment, environmental assessment, regulatory impact review, and initial regulatory flexibility analysis (IRFA) may be obtained from William L. Robinson (see **ADDRESSES**).

Classification

NMFS has determined that the proposed rule is consistent with the Pelagics FMP and has preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if promulgated, would have on small entities. A description of the proposed action, why it is being considered, and the objectives of and legal basis for the rule are described at the beginning of this section in the preamble and in the SUMMARY section of the preamble. There are no recordkeeping or reporting requirements associated with this proposed rule.

This proposed rule considered four alternative management measures including the proposed Alternative 2, which modifies existing regulations to close the shallow-set fishery immediately upon reaching a turtle interaction limit. Alternative 1, the no-action alternative, would continue to include a 7–day delay in effectiveness when closing the fishery. Alternative 3 would modify existing regulations to close the fishery immediately upon reaching the turtle interaction limit, plus change the fishing year with regards to monitoring the limit on sea turtle interactions. Alternative 4 would modify existing regulations to close the fishery immediately upon reaching the turtle interaction limit, plus utilize short-term time/area closures to decrease the number of turtle interactions and lengthen the fishing season.

Based on recent levels of participation in the shallow-set longline fishery, it is estimated that approximately 35 shallow-set longline vessels may be affected by this rulemaking. All are considered to be small entities as defined by the Small Business Administration (SBA) as follows: any fish-harvesting business is a small business if it is independently owned and operated and not dominant in its field of operation and has annual receipts not in excess of $4 million.

Because all vessels are considered to be small entities, there are no disproportionate economic impacts between small and large vessels resulting from this proposed rule. Furthermore, there are no disproportionate impacts among the affected population of small entities based on vessel size, fishing gear, or geographical considerations, e.g., home port.

Based upon an estimated net revenue of $3,099 per set, and assuming that one set per day is the norm, the range of potential reduction in net revenues to individual swordfish vessels resulting from the implementation of the proposed Alternative 2 would be from $0 to $21,693 per closure, associated with a potential loss of 0–7 fishing days per vessel, respectively.

The relative impact of a closure on annual returns from the swordfish fishery would depend on how quickly the fishery is closed in any one year. For example, if the fishery was closed after 63 days, there would be an estimated 10 percent reduction in potential annual net revenues. If the fishery was closed after 133 days, there would be an estimated 5.0 percent reduction. After 273 days, an estimated 2.5 percent reduction would result, and so on. These projections assume that all shallow-set certificates were being utilized.

The loss in revenues could be mitigated by providing vessels with an early warning of projected closures, thus allowing the affected vessels to better plan for fishing operations. Better planning would avoid unnecessary trip preparation and allow the opportunity to change gear for fishing in alternative longline fisheries, such as the Hawaii-based deep-set (tuna) longline fishery. Alternative 1 (no action) would prevent direct economic losses to affected vessels. However, this alternative would not provide adequate protection to sea turtles. Alternatives 3 and 4 could partially mitigate the economic impacts to small entities associated with the proposed alternative by lengthening the fishing season, which would distribute landings to avoid flooding the market and allowing for price stability. The small entities also would be better able to plan their fishing operations, especially if they participate in another fishery when not targeting swordfish, and mitigate adverse economic impacts, such as unreasonably low prices, which can arise from the market becoming flooded as the fishery is closed and all vessels return to port. Because the high turtle interaction rates experienced in the 2006 fishing year may have been an anomaly, and in future years the fishery may not reach either turtle interaction limit, the time/area closures as proposed in Alternative 4, and the shifting of the shallow-set fishing season as proposed in Alternative 3 are not preferred at this time.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands,

Reporting and recordkeeping requirements.

Dated: January 10, 2007.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

l. The authority citation for part 665 continues to read as follows:

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

2. In § 665.22, revise paragraphs (ss) and (tt) to read as follows:

§ 665.22 Prohibitions.

* * * * *

(ss) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit after the shallow-set component of the longline fishery has been closed pursuant to § 665.33(b), in violation of § 665.33(i).

(tt) Fail to immediately retrieve longline fishing gear upon receipt of actual notice that the shallow-set component of the longline fishery has been closed pursuant to § 665.33(b), in violation of § 665.33(i).

* * * * *

3. In § 665.33, remove paragraphs (b)(2)(iii) and (iv), and revise paragraphs (b)(2)(i) and (ii) to read as follows:

* * * * *

§ 665.33 Western Pacific longline fishing restrictions

* * * * *

(b) * * *

(2) * * *

(i) As soon as practicable, the Regional Administrator will file for publication at the Office of the Federal Register a notification of the sea turtle interaction limit having been reached. The notification will include an advisement that the shallow-set component of the longline fishery shall be closed, and that shallow-set longline fishing north of the Equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date, until the end of the calendar year in which the sea turtle interaction limit was reached. Coincidental with the filing of the notification, the Regional Administrator will also provide actual notice that the shallow-set component of the longline fishery shall be closed, and that shallow-set longline fishing north of the Equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date, to all holders of Hawaii longline limited access permits via telephone, satellite telephone, radio, electronic mail, facsimile transmission, or post.

(ii) Beginning on the fishery closure date indicated by the Regional Administrator in the notification provided to vessel operators and permit holders and published in the **Federal Register** under paragraph (b)(3)(i) of this section, until the end of the calendar year in which the sea turtle interaction limit was reached, the Hawaii-based shallow-set component of the longline fishery shall be closed.

* * * * *

[FR Doc. E7–459 Filed 1–12–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 72, No. 9
Tuesday, January 16, 2007

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 COMMERCE

Foreign–Trade Zones Board

Order No. 1497

Approval for Expansion of Authority for Subzone 116C, The Premcor Refining Group Inc., (Oil Refinery), Port Arthur, Texas

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

Whereas, the Foreign–Trade Zone of Southeast Texas, Inc., grantee of FTZ 116, has requested authority on behalf of The Premcor Refining Group Inc. (Premcor), to expand the scope of manufacturing activity conducted under zone procedures within Subzone 116C at the Premcor refinery in Port Arthur, Texas (FTZ Docket 7–2006, filed 2/21/2006);

Whereas, notice inviting public comment has been given in the **Federal Register** (71 FR 10641–10642, 3/2/06);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby orders:

The application to expand the scope of manufacturing authority under zone procedures within Subzone 116C, is approved, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR § 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.
2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non–privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.10, #2709.00.20, #2710.11.25, #2710.11.45, #2710.19.05, #2710.19.10, #2710.19.45, #2710.91.00, #2710.99.05, #2710.99.10, #2710.99.16, #2710.99.21 and #2710.99.45 which are used in the production of:
   - -petrochemical feedstocks (examiners report, Appendix ''C'');
   - -products for export;
   - -and, products eligible for entry under HTSUS # 9808.00.30 and # 9808.00.40 (U.S. Government purchases).

Signed at Washington, DC, this 4th day of January 2007.

David M. Spooner,

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

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–460 Filed 1–12–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on January 30, 2007, 9:30 a.m., in the Herbert C. Hoover Building, Room 6087B, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Remarks from Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business: Election of Chairman(s).

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 Sections 10(a)(1) and 10(a)(3).

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov.*

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 21, 2006 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 Section 10(d)), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 Sections 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Dated: January 10, 2007.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 07–121 Filed 1–12–07; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–583–833
A–580–839

Certain Polyester Staple Fiber From Taiwan and the Republic of Korea: Notice of Extension of Time Limit for the 2005–2006 Administrative Reviews

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

EFFECTIVE DATE: January 16, 2007.

FOR FURTHER INFORMATION CONTACT: Devta Ohri or Andrew McAllister, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–3853 or (202) 482–1174, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On July 3, 2006, the Department published a notice of initiation of administrative reviews of the antidumping duty orders on certain polyester staple fiber (''PSF'') from Taiwan and the Republic of Korea (''Korea''), covering the period May 1, 2005, through April 30, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 37892 (July 3, 2006). The preliminary results for these reviews are currently due no later than January 31, 2007.

Extension of Time Limits for Preliminary Results

The Department requires additional time to review and analyze respondents' sales and cost information and to issue supplemental questionnaires. Thus, it is not practicable to complete these reviews within the previously established time limit (*i.e.*, by January 31, 2007). Therefore, the Department is extending the time limit for completion of these preliminary results by 120 days to not later than May 31, 2007, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: January 9, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–456 Filed 1–12–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Proceedings: Calculation of the Weighted–Average Dumping Margins in Antidumping Investigations; Change in Effective Date of Final Modification

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

ACTION: Change in Effective Date of Final Modification

SUMMARY: On December 27, 2006, the Department of Commerce (''the Department'') published a modification concerning the calculation of the weighted–average dumping margin in antidumping investigations (71 FR 77722). The Department is delaying the effective date of the modification until January 23, 2007.

DATE: The effective date of the final modification, published at 71 FR 77722 on December 27, 2006, will be January 23, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Barnett (202) 482–2866, Michael Rill (202) 482–3058, or William Kovatch (202) 482–5052.

SUPPLEMENTARY INFORMATION: On December 27, 2006, the Department of Commerce published a modification concerning the calculation of the weighted–average dumping margin in antidumping duty investigations (71 FR 77722). After further consultations with Congress and in order to afford adequate time for review, the Department is delaying the effective date of the final modification until January 23, 2007. The methodology set forth in the **Federal Register** notice published at 71 FR 77722 on December 27, 2006, will be used in implementing the findings of the WTO panel in US- Zeroing (EC) pursuant to section 129 of the URAA concerning the specific antidumping investigations challenged by the EC in that dispute. The Department also will apply the final modification in all current and future antidumping investigations as of the effective date.

Dated: January 8, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–457 Filed 1–12–07; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Travel and Tourism Advisory Board: Meeting of the U.S. Travel and Tourism Advisory Board

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The U.S. Travel and Tourism Advisory Board (Board) will hold a meeting to discuss topics related to the travel and tourism industry. The Board was established on October 1, 2003, and reconstituted October 1, 2005, to advise the Secretary of Commerce on matters relating to the travel and tourism industry.

DATES: January 30, 2007. *Time:* 3 p.m. to 5 p.m. (EDT).

ADDRESSES: 1401 Constitution Avenue, Department of Commerce, Washington, DC. This program will be physically accessible to people with disabilities. Seating is limited and will be on a first-come, first-served basis. Requests for sign language interpretation, other auxiliary aids, or pre-registration, should be submitted no later than January 22, 2007, to Jessica Arnold, U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–4501, *Jessica.Arnold@mail.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Arnold, U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone: 202–482–4501, e-mail: *Jessica.Arnold@mail.doc.gov.*

Dated: January 11, 2007.

Jessica Arnold,

Executive Secretary, U.S. Travel and Tourism Advisory Board.

[FR Doc. 07–136 Filed 1–11–07; 2:27 pm]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program Advisory Committee

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST) will meet Tuesday, January 30, 2007 from 9 a.m. to 3:30 p.m. The Advanced Technology Program Advisory Committee is composed of ten members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advanced Technology Program (ATP), its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an ATP Update, presentations on ''Public-Private Partnerships'', ''The Network-Centric Innovation Imperative: How Manufacturers Work with Their Suppliers to Develop New Products'' and ''Benchmarking Regional Innovation Capacity: A Regional Innovation Index.'' A discussion scheduled to begin at 1 p.m. and to end at 3:30 p.m. on January 30, 2007, on ATP budget issues will be closed. Agenda may change to accommodate Committee business.

DATES: The meeting will convene Tuesday, January 30, at 9 a.m. and will adjourn at 3:30 p.m. on Tuesday, January 30, 2007.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Employees' Lounge, Gaithersburg, Maryland 20899. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Donna Paul no later than Friday, January 26, and she will provide you with instructions for admittance. Ms. Paul's e-mail address is *donna.paul@nist.gov* and her phone number is 301/975–2162.

FOR FURTHER INFORMATION CONTACT: Donna Paul, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–4700, telephone number (301) 975–2162.

SUPPLEMENTARY INFORMATION: The agenda will include presentations on Geographic Information System Approach for Identifying Emerging Technology Regions, U.S. Manufacturing Competitiveness in the Global Economy and Collaborations in ATP Projects. A discussion scheduled to begin at 1 p.m. and to end at 3:30 p.m. on January 30, 2007, on ATP budget issues will be closed. Agenda may change to accommodate Committee business. The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 9, 2007, that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions.

Dated: January 10, 2007.

James E. Hill,

Acting Deputy Director.

[FR Doc. E7–468 Filed 1–12–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Monterey Bay National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Monterey Bay National Marine Sanctuary (MBNMS or sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (council): At-Large (two seats), Agriculture, Business/Industry, Commercial Fishing, Recreational Fishing, Recreation, Research, and Conservation. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's Charter.

DATES: Applications are due by February 23, 2007.

ADDRESSES: Application kits may be obtained from Paul Chetirkin at the Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, California 93940. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Paul Chetirkin at (831) 647–4210, or *Paul.Chetirkin@noaa.gov.*

SUPPLEMENTARY INFORMATION: The MBNMS Advisory Council was established in March 1994 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Advisory Council has played a vital role in decisions affecting the Sanctuary along the central California coast.

The Advisory Council's twenty voting members represent a variety of local user groups, as well as the general public, plus seven local, State and Federal governmental jurisdictions. In addition, the respective managers or superintendents for the four California National Marine Sanctuaries (Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary and the Monterey Bay National Marine Sanctuary) and the Elkhorn Slough National Estuarine Research Reserve sit as non-voting members.

Four working groups support the Advisory Council: The Research Activity Panel (''RAP'') chaired by the Research Representative, the Sanctuary Education Panel (''SEP'') chaired by the Education Representative, the Conservation Working Group (''CWG'') chaired by the Conservation Representative, and the Business and Tourism Activity Panel (''BTAP'') chaired by the Business/Industry Representative, each dealing with matters concerning research, education, conservation and human use. The working groups are composed of experts from the appropriate fields of interest and meet monthly, or bi-monthly, serving as invaluable advisors to the Advisory Council and the Sanctuary Superintendent.

The Advisory Council represents the coordination link between the Sanctuary and the State and Federal management agencies, user groups,

researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the central California coastal and marine ecosystems.

The Advisory Council functions in an advisory capacity to the Sanctuary Superintendent and is instrumental in helping develop policies, program goals, and identify education, outreach, research, long-term monitoring, resource protection, and revenue enhancement priorities. The Advisory Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Sanctuary program within the context of California's marine programs and policies.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: January 5, 2007.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 07–114 Filed 1–12–07; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.010807E]

Endangered Species; File No. 1595

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Michael Hastings, University of Maine, 5717 Corbett Hall, University of Maine, Orono, ME 04469, has applied in due form for a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before February 15, 2007.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1595.

FOR FURTHER INFORMATION CONTACT: Brandy Hutnak or Malcolm Mohead, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested 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 222–226).

Michael Hastings seeks permission to conduct research on shortnose sturgeon in the Penobscot River System, Maine, over a period of five years. The purpose of the research is to assess the distribution, movements, and abundance of shortnose sturgeon in the river system. Up to 300 shortnose sturgeon would be captured annually by gill and trammel nets; anesthetized; measured; weighed; sexed; photographed; fin clipped; scanned for tags; Carlin tagged; PIT tagged; allowed to recover; and released. A subset of 30 pre-spawned fish would have external transmitters attached, in addition to a subset of 30 post-spawned, non-spawning, or immature fish that would be surgically implanted with transmitters. Unintentional mortality is requested for up to 12 shortnose sturgeon and 4 Atlantic salmon (*Salmo salar*) annually.

Dated: January 8, 2007.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–365 Filed 1–12–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[ID. 010807D]

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Notice of Availability of Observer Coverage Plan and Notice of Sablefish At-Sea Processing Prohibition Exemption

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

ACTION: Notice of availability of an updated Observer Coverage Plan for the Pacific Coast Groundfish Fishery and an exemption to the at-sea processing prohibition for sablefish.

SUMMARY: NMFS announces availability of the updated Observer Coverage Plan for the Pacific Coast Groundfish Fishery pursuant to the Pacific Coast Groundfish Fishery Management Plan (FMP). NMFS also announces the receipt of applications for, and the issuance of, an exemption to the prohibition of at-sea processing for sablefish caught during the primary sablefish fishery, a prohibition implemented as part of Amendment 14 to the FMP.

FOR FURTHER INFORMATION CONTACT: For more information on the Observer Coverage Plan, contact Jonathan Cusick (Northwest Fisheries Science Center, NMFS), phone: 360–332–2793 and e-mail: *jonathan.cusick@noaa.gov*. For more information on vessel exemptions to the prohibition of at-sea processing for sablefish, contact Kevin Ford (Northwest Region, NMFS), phone: 206–526–6115; fax: 206–526–6736 and e-mail: *kevin.ford@noaa.gov*.

Electronic Access

This **Federal Register** document is also accessible via the internet at the website of the Office of the **Federal Register**: *http://www.gpoaccess.gov/fr/index.html*. The updated Observer Coverage Plan is posted online at: *http://www.nwfsc.noaa.gov/research/divisions/fram/observer/index.cfm*.

SUPPLEMENTARY INFORMATION: The FMP at Section 6.4.1.1 states: ''The Regional Administrator will implement an

observer program through a Council-approved Federal regulatory framework. Details of how observer coverage will be distributed across the West Coast groundfish fleet will be described in an observer coverage plan that is appropriate to the purpose of the particular observer program goals. An observer coverage plan designed for a scientific data collection program will likely be different from an observer coverage plan designed for a sector- or vessel-specific total catch monitoring program. NMFS will publish an announcement of the authorization of the observer program and description of the observer coverage plan in the **Federal Register**.'' In July 2006, NMFS updated its Observer Coverage Plan to reflect changes in the goals and methodologies of the West Coast Groundfish Observer Program (WCGOP). The new plan may be obtained from the individuals listed under the **FOR FURTHER INFORMATION CONTACT** section, or from the website listed under the Electronic Access section.

Amendment 14 to the Pacific Coast Groundfish FMP was first implemented via a final rule published in the **Federal Register** on March 7, 2002 (67 FR 10490). On March 2, 2006, NMFS issued a final rule to implement further provisions of Amendment 14 (71 FR 10614). To ensure that shoreside processing plants would continue to have access to sablefish landed during the primary sablefish fishery, Amendment 14 had included a provision that prohibits vessels from processing their sablefish at sea. To acknowledge the previous investment that some vessels owners may have made in on-board freezing and processing equipment, Amendment 14 implementing regulations allowed a one-time opportunity for vessels to apply for an exemption from the prohibition on at-sea processing. During the summer of 2006, NMFS completed the application and review process for an exemption from the prohibition, as provided for in Federal regulations at 50 CFR 660.334 (e). One vessel, F/V OSSIAN, qualified for the exemption. The sablefish at-sea processing exemption is associated with the F/V OSSIAN itself, not with the vessel owner's limited entry permit, and may not be transferred to any other vessel, vessel owner, or permit owner for any reason.

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

Dated: January 9, 2007.

James P. Burgess,

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

[FR Doc. E7–461 Filed 1–12–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010507B]

Endangered Species; File No. 1486

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

ACTION: Notice; receipt of application for modification of permit.

SUMMARY: Notice is hereby given that Harold M. Brundage, Environmental Research and Consulting Inc., PMB #781, 873 East Baltimore Pike, Kennett Square, Pennsylvania 19348, has requested a modification to scientific research Permit No. 1486.

DATES: Written, telefaxed, or e-mail comments must be received on or before February 15, 2007.

ADDRESSES: The modification request 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

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1486.

FOR FURTHER INFORMATION CONTACT: Brandy Hutnak or Malcolm Mohead, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 1486, issued on December 22, 2004 (69 FR 77998) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1486 authorizes the permit holder to capture, measure, weigh, Floy T-bar tag, PIT tag, fin clip, and release 1750 juvenile and adult shortnose sturgeon in the Lower Delaware River/Estuary. A subset of 30 juvenile and 30 adult shortnose sturgeon may be internally implanted with an ultrasonic tag, in addition to a subset of 24 (juveniles and adults) that may be visually assessed (externally), anesthetized (MS–222), laparoscopically evaluated (coelomic cavity), have blood collected, and a biopsy of the gonads taken (if the sex is unclear). The permit holder now requests authorization to locate and document occurrences of early life stages (eggs and larvae) of shortnose sturgeon in the Delaware River. Specific goals of this additional research are to: (1) document occurrences of shortnose sturgeon eggs and larvae and their specific habitats in the Delaware River; (2) incorporate occurrence information into the Endangered and Nongame Species Program's Biotics database and Riparian Landscape Project database; and (3) identify critical habitat and, if supported by the data collected, pursue critical area designation for shortnose sturgeon spawning and nursery areas. Up to 1,000 eggs and 1,000 larvae would be taken during three consecutive spawning seasons (March - May) over the remainder of the permit, which expires on January 31, 2010. Shortnose sturgeon eggs and larvae would be collected by the following methods: (1) artificial substrates - these will consist of floor buffing pads that are anchored to the river bottom; (2) passive ichthyoplankton nets - these nets will be 0.5 m in diameter and will be set downstream of probable spawning locations on the river bottom for approximately 1–3 hours; (3) epibenthic sled - this sled will be fitted with an ichthyoplankton net and towed in locations suitable for such gear; and (4) pump sampling - water is pumped from the river, via a suction hose, and filtered through a 0.5 mm plankton net.

Dated: January 5, 2007.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–368 Filed 1–12–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

DEPARTMENT OF ENERGY

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. EPA–HQ–OAR–2006–0957]

NUCLEAR REGULATORY COMMISSION

Multi-Agency Radiation Survey and Assessment of Materials and Equipment Manual

AGENCY: Department of Defense, Department of Energy, Environmental Protection Agency, and the Nuclear Regulatory Commission.

ACTION: Notice of availability with request for public comment.

SUMMARY: The Department of Defense (DoD), Department of Energy (DOE), U.S. Environmental Protection Agency (EPA), and the U.S. Nuclear Regulatory Commission (NRC) are announcing for public comment the availability of a draft document, entitled the ''Multi-Agency Radiation Survey and Assessment of Materials and Equipment Manual'' (MARSAME). MARSAME provides information on planning, conducting, evaluating, and documenting radiological surveys for demonstrating compliance with measurable action levels. MARSAME, when finalized, will be a multi-agency consensus document. The agencies are seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing the document is received. The agencies will review public comments received on the draft MARSAME as well as comments from a concurrent, independent, scientific peer review. Suggested changes will be incorporated, where appropriate, in response to those comments.

DATES: The comment period closes on April 16, 2007. Comments received after that date will be considered if it is practical to do so, but no assurance can be given for consideration of late comments.

ADDRESSES: Submit your comments by one of the methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *http://www.marsame.org*: Follow the on-line instructions for submitting comments.
- *Mail*: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460 or Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Hand Delivery*: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements must be made for deliveries of boxed information.

Copies of all comments received by one agency will be periodically copied and sent to the others. Copies of the draft MARSAME and all comments received may be examined or copied for a fee electronically in *http://www.regulations.gov*, or in hard copy at the HQ EPA Docket Public Reading Room, U.S. Environmental Protection Agency, Room 3334, Docket ID No. EPA–HQ–OAR–2006–0957, 1301 Constitution Ave., NW., Washington, DC 20460, and the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland 20852–2747. The HQ EPA Docket 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 EPA HQ Docket Public Reading Room is (202) 566–1744. DOE, EPA, and NRC each have a publication number for MARSAME. They are: for DOE, DOE/EH–707; for EPA, EPA 402–R–06–002; for NRC, NUREG–1575, Sup. 1. A free single copy of the draft MARSAME may be requested by writing to: the Distribution and Mail Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or by fax to (301) 415–2289. The document is also available through the Internet at: *http://www.epa.gov/radiation/marssim*.

Instructions for Using the EPA Docket: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0957. 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. 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 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. 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.

Instructions for Using the MARSAME comment Web site: Alternatively, you may submit a comment via the *http://www.marsame.org* comment system without going through www.regulations.gov. Users of the MARSAME comment Web site will be asked for their name and e-mail address, and then will receive a username and password at the e-mail address that was submitted. User's names and e-mail address will not appear in any public document or database.

FOR FURTHER INFORMATION CONTACT: Any of the following points of contact for each agency for technical information (See **ADDRESSES** section above for directions on obtaining a copy of the draft MARSAME.): DoD: Steven Doremus, Phone: (757) 887–7745, U.S. Navy, NAVSEADET RASO, NWS, PO Drawer 260, Yorktown, VA 23691–0260; DOE: W. Alexander Williams, Phone: (301) 903–8149, U.S. Department of Energy (EM–23), 1000 Independence Avenue, SW., Washington, DC 20585; EPA: Kathryn Snead; Phone: (202) 343–9228, U.S. Environmental Protection Agency, Mail Stop 6608J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–1000; NRC: Robert A. Meck, Phone: (301) 415–6205, U.S. Nuclear Regulatory Commission, Mail Stop T9–C39, Washington, DC 20555–0001. Questions concerning the multi-agency document development

project should be addressed to CAPT Colleen Petullo, U.S. Environmental Protection Agency/U.S. Public Health Service, OSWER/ERT, PO Box 93478, Las Vegas, NV 89193–3478, (702) 784–8004.

SUPPLEMENTARY INFORMATION: MARSAME provides information on planning, conducting, evaluating, and documenting environmental radiological surveys for demonstrating compliance with measurable action levels applied to materials and equipment. MARSAME, when finalized, will be a multi-agency consensus document and a supplement to the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM).

MARSAME was developed collaboratively over the past five years by the technical staffs of the four Federal agencies having authority for control of radioactive materials: DoD, DOE, EPA, and NRC (60 FR 12555; March 7, 1995). For a time, staff from the Department of Homeland Security participated in the development of MARSAME. Contractors to the DOE, EPA, and NRC, and members of the public have been present during the open meetings of the MARSAME work group. MARSAME's objective is to describe standardized and consistent approaches for surveys, which provide a high degree of assurance that established action levels can be measured and an appropriate disposition of materials or equipment can be technically defended. The techniques, methodologies, and philosophies that form the bases of this manual were developed to be consistent with current Federal limits, guidelines, and procedures.

Although Federal agency personnel are involved in the preparation of this document, the manual does not represent the official position of any participating agency at this time. An earlier draft of the document has been reviewed within the Federal agencies. Comments were received and comments from the review that reflected a technical error or flaw in logic or information flow were addressed. The other comments from the Federal agencies will be addressed along with the public comments. The public review is a necessary step in the development of a final multi-agency consensus document. The document will also receive formal technical peer review. The draft has not been approved by the participating agencies for use in part or in whole and should not be used, cited, or quoted except for the purposes of providing comments as requested.

Reviewers are requested to focus on technical accuracy, and understandability. Reviewers are also requested to address five questions while reviewing MARSAME:

(1) Does MARSAME provide a practical and implementable approach to performing radiation measurements of materials and equipment? Are there any major drawbacks to the proposed methods?

(2) Is MARSAME technically accurate?

(3) Does MARSAME provide benefits that are not available using current methods? What is the value of MARSAME in comparison with other currently available alternatives?

(4) What are the costs associated with MARSAME in comparison with other currently available alternatives?

(5) Is the information in MARSAME understandable and presented in a logical sequence? How can the presentation of material be modified to improve the understandability of the manual?

Comments may be submitted as proposed modified text, or as a discussion. Comments should be accompanied by supporting bases, rationale, or data. To ensure efficient and complete comment resolution, commenters are requested to reference the page number and the line number of MARSAME to which the comment applies. Enter only the beginning page and line number, even if your comment applies to a number of pages or lines to follow.

Comments corresponding to an entire chapter, an entire section, or an entire table should be referenced to the line number for the title of the chapter (always line number 1), section, or table. Comments on footnotes should be referenced to the line in the main text where the footnote is indicated. Comments on figures should be referenced to the page on which the figure appears. Figures do not have line numbers. The figure number should be included in the text of the comment. Comments on the entire manual should be referenced to the title page.

Title: Draft Multi-Agency Radiation' Survey and Assessment of Materials and Equipment Manual.

For the Department of Defense, dated this 19th day of December, 2006.

Alex Beehler,

Assistant Deputy Under Secretary of Defense (Environment, Safety and Occupational Health).

For the U.S. Department of Energy, dated this 1st day of January 2007.

Andrew C. Lawrence,

Director, Office of Nuclear Safety and Environment, Office of Health, Safety and Security.

For the U.S. Environmental Protection Agency, dated this 19th day of December 2006.

Elizabeth Cotsworth,

Director, Office of Radiation and Indoor Air.

For the U.S. Nuclear Regulatory Commission, dated this 28th day of December 2006.

James T. Wiggins,

Acting Director, Office of Nuclear Regulatory Research.

[FR Doc. 07–118 Filed 1–12–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Emerald Coast Technology Group, LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Emerald Coast Technology Group, LLC, a revocable, non-assignable, exclusive license to practice in the United States, the Government-owned invention described in U.S. Patent No. 6,893,540: HIGH TEMPERATURE PELTIER EFFECT WATER DISTILLER issued May 17, 2005, Navy Case No. 82,363.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with Naval Surface Warfare Center Panama City, 110 Vernon Avenue, Code CP0L, Panama City, FL 32407–7001.

FOR FURTHER INFORMATION CONTACT: Mr. James Shepherd, Patent Counsel, Naval Surface Warfare Center Panama City, 110 Vernon Avenue, Panama City, FL 32407–7001, telephone *james.t.shepherd@navy.mil.*

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: December 19, 2006.

M. A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 07–115 Filed 1–12–07; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

Notice of Availability of the Supplement to the Draft Environmental Impact Statement for the Gilberton Coal-to-Clean Fuels and Power Project

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE) announces the availability for public comment of a Supplement to the Draft Environmental Impact Statement for the Gilberton Coal-to-Clean Fuels and Power Project (DOE/EIS–0357D–S1), prepared in response to comments on the original Draft Environmental Impact Statement (EIS) issued in December 2005. This Supplement corrects information regarding carbon dioxide (CO_2) emissions from the proposed Gilberton plant, provides information on the feasibility of carbon sequestration for the CO_2 emissions from the Gilberton plant, and presents additional information regarding CO_2-related cumulative impacts.

It should be noted that the Supplement contains only those sections affected by comments related to CO_2 emissions and sequestration, and DOE is inviting comments only on those sections. Comments on the original Draft EIS need not be resubmitted.

DATES: DOE invites the public to comment on the Supplement to the Draft EIS during the public comment period, which ends February 27, 2007. DOE will consider all comments postmarked or received during the public comment period in preparing the Final EIS, and will consider late comments to the extent practicable. DOE will consider and respond to all comments submitted on the original Draft EIS in preparing the Final EIS.

ADDRESSES: Requests for information about this Supplement to the Draft EIS or to receive a copy of the Supplement or the Draft EIS should be directed to: Janice L. Bell, NEPA Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, M/S 58–247A, P.O. Box 10940, Pittsburgh, PA 15236. Additional information about the Supplement or the Draft EIS may also be requested by telephone at: (412) 386–4512, or toll-free at: 1–866–576–8240.

The Supplement to the Draft EIS will be available at *http://www.eh.doe.gov/nepa*. The original Draft EIS is available at the same Internet address. Copies of the Supplement to the Draft EIS are also available for review at the locations listed in the **SUPPLEMENTARY INFORMATION** section of this Notice. Written comments on the Supplement to the Draft EIS can be mailed to Janice L. Bell, NEPA Document Manager, at the address noted above. Written comments may also be submitted by fax to: (412) 386–4806, or submitted electronically to: *jbell@netl.doe.gov*. In addition, oral comments on the Supplement to the Draft EIS can be provided by calling the toll-free telephone number: 1–866–576–8240.

FOR FURTHER INFORMATION CONTACT: For general information regarding the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–4600, or leave a message at: (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

The Department prepared this Supplement to the Draft EIS in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) regulations that implement the procedural provisions of NEPA (40 CFR parts 1500–1508), and the DOE procedures implementing NEPA (10 CFR part 1021).

In the original Draft EIS, issued in December 2005, DOE's proposed action (and preferred alternative) is to provide cost-shared funding to design, construct, and operate a new plant to demonstrate coproduction of 41 MW of electricity, steam, and over 5,000 barrels-per-day of ultra-clean liquid hydrocarbon products (primarily diesel fuel and naphtha). The demonstration plant would use a gasifier to convert coal waste to synthesis gas, which would be conveyed to Fischer-Tropsch (F–T) liquefaction facilities for production of liquid fuels and to a combined-cycle power plant. The demonstration facilities, to be constructed in Gilberton, Schuylkill County, Pennsylvania, would process up to 4,700 tons per day of coal waste (anthracite culm). The potential environmental impacts of this action are evaluated in the Draft EIS. The Draft EIS also analyzed the No Action Alternative, under which DOE would not provide cost-shared funding to demonstrate the commercial-scale integration of coal gasification and F–T synthesis technology to produce electricity, steam and liquid fuels. Under the No-Action Alternative, it is reasonably foreseeable that no new activity would occur.

Among the public comments received on the Draft EIS were those from the Natural Resources Defense Council (NRDC) regarding how the Draft EIS addressed CO_2 emissions. The NRDC comments expressed concern about the potential impacts on global warming and questioned the accuracy of the annual rate of CO_2 emissions reported in the Draft EIS. The comments also requested DOE to enhance the analysis of potential CO_2-related cumulative impacts, further explore the feasibility of CO_2 sequestration, and provide a public comment opportunity on the revised sections of the EIS. DOE also received similar comments on CO_2 emissions and carbon sequestration from other organizations and individuals: the Coalition of Concerned Coal Region Citizens; the Mid-Atlantic Environmental Law Center; the Citizens for Pennsylvania's Future; Mike Ewall; Edward and Helen Sluzis; and James Kotcon.

In considering the comments received on the Draft EIS, DOE determined that the annual rate of CO_2 emissions reported in the Draft EIS included only the quantity of CO_2 that would be emitted directly. The reported quantity did not include a larger quantity of CO_2 in a concentrated stream exiting the gas cleanup system. While it was previously anticipated that the concentrated CO_2 stream would be sold as a byproduct, the industrial participant has informed DOE that the commercial sale of the CO_2 would not occur in the foreseeable future. Therefore, all of the CO_2 would be emitted to the atmosphere. DOE has prepared the Supplement to clarify the total emissions rate accordingly. DOE has also enhanced the discussion of cumulative impacts and the feasibility of carbon sequestration.

Availability of the Supplement to the Draft EIS

Copies of this Supplement to the Draft EIS have been distributed to Members of Congress, Federal, State, and local officials, and agencies, organizations and individuals who may be interested or affected. To obtain copies of the Supplement and the original Draft EIS, see **ADDRESSES** above. The Supplement and the Draft EIS are also available in the public reading rooms of the following public libraries: Frackville Free Public Library, 56 N. Lehigh

Avenue, Frackville, PA 17931; Mahanoy City Public Library, 17–19 West Mahanoy Avenue, Mahanoy City, PA 17948; and the Pottsville Free Library, 215 West Market Street, Pottsville, PA 17901.

It should be noted that the Supplement contains only those sections affected by comments related to CO_2 emissions and sequestration, and DOE is inviting comments only on those sections. Comments on the original Draft EIS need not be resubmitted.

Issued in Washington, DC, on January 9, 2007.

Mark J. Matarrese,

Director, Office of Environment, Security, Safety and Health, Office of Fossil Energy.

[FR Doc. E7–409 Filed 1–12–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR06–18–002]

Acadian Gas Pipeline System; Notice of Compliance Filing

January 8, 2007.

Take notice that on December 20, 2006, Acadian Gas Pipeline System filed a revised Statement of Operating Conditions in compliance with the Commission's letter order issued on December 6, 2006, in Docket Nos. PR06–18–000 and PR06–18–001.

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

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

This filing is accessible 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.

Protest Date: 5 p.m. Eastern Time on January 23, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–438 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–232–000]

Aragonne Wind, LLC; Notice of Issuance of Order

January 8, 2007.

Aragonne Wind, LLC (Aragonne) 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 and capacity at market-based rates. Aragonne also requested waivers of various Commission regulations. In particular, Aragonne requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Aragonne.

On December 27, 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 Aragonne 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 26, 2007.

Absent a request to be heard in opposition by the deadline above, Aragonne 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 Aragonne, 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 Aragonne'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. E7–432 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–254–000]

Casselman Windpower, LLC; Notice of Issuance of Order

January 8, 2007.

Casselman Windpower, LLC (Casselman) 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 at market-based rates. Casselman also requested waivers of various Commission regulations. In particular, Casselman requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Casselman.

On December 29, 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 Casselman should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, 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 30, 2007.

Absent a request to be heard in opposition by the deadline above, Casselman 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 Casselman, 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 Casselman'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. E7–433 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR06–19–002]

Cypress Gas Pipeline, LLC; Notice of Compliance Filing

January 8, 2007.

Take notice that on December 20, 2006, Cypress Gas Pipeline, LLC filed a revised Statement of Operating Conditions in compliance with the Commission's letter order issued on December 6, 2006, in Docket Nos. PR06–19–000 and PR06–19–001.

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

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

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

Protest Date: 5 p.m. Eastern Time on January 23, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–439 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–312–000]

Dogwood Energy, LLC; Notice of Issuance of Order

January 8, 2007.

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

On January 5, 2007, 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 Dogwood 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 February 5, 2007.

Absent a request to be heard in opposition by the deadline above, Dogwood 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 Dogwood, 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 Dogwood'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. E7–436 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–277–000]

Invenergy Cannon Falls, LLC; Notice of Issuance of Order

January 8, 2007.

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

On January 5, 2007, 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 Invenergy 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 February 5, 2007.

Absent a request to be heard in opposition by the deadline above, Invenergy 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 Invenergy, 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 Invenergy'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. E7–435 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–18–027]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

January 8, 2007.

Take notice that on January 5, 2007, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Original Sheet No. 6K, to be effective on December 1, 2006.

Iroquois states that the filing is being made in compliance with the Commission's order issued on December 18, 2006 in the above-referenced proceeding.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies.

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. E7–430 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–030]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Compliance Filing

January 8, 2007.

Take notice that on January 4, 2007 Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, the following tariff sheet, to be effective January 5, 2007:

Eighth Revised Sheet No. 4H; Sixth Revised Sheet No. 4I.

KMIGT states that the above-referenced tariff sheets reflect an amendment to a previously approved

negotiated rate contract. The tariff sheets are being filed pursuant to Section 36 of KMIGT's FERC Gas Tariff Fourth Revised Volume No. 1–B, and the procedures prescribed by the Commission in its December 31, 1996 ''Order Accepting Tariff Filing Subject to Conditions'' in Docket No. RP97–81 (77 FERC ¶ 61,350) and the Commission's Letter Orders dated March 28, 1997 and November 30, 2000 in Docket Nos. RP97–81–001 and RP01–70–000, respectively.

KMIGT states that a copy of this filing has been served upon all parties to this proceeding, KMIGT's customers and affected state commissions.

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

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E7–441 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–378–001]

Minnesota Energy Resources Corporation; Notice of Compliance Filing

January 8, 2007.

Take notice that on January 3, 2007, Minnesota Energy Resources Corporation (MERC) tendered for filing initial transportation rates approved by Minnesota Public Utilities Commission for the services most comparable to the services provided by MERC to its customer, Aquila, to be used to serve Aquila's 11 residential customers in Iowa.

MERC states that the filing is being made in compliance with the Commission's order issued on November 30, 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 on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

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

This filing is accessible 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.

Protest Date: 5 p.m. Eastern Time on January 29, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–442 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–264–000 ER07–264–001]

MMC Mid-Sun, LLC; Notice of Issuance of Order

January 8, 2007.

MMC Mid-Sun, LLC (Mid-Sun) 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 at market-based rates. Mid-Sun also requested waivers of various Commission regulations. In particular, Mid-Sun requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Mid-Sun.

On December 28, 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 Mid-Sun 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 29, 2007.

Absent a request to be heard in opposition by the deadline above, Mid-Sun is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, 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 Mid-Sun, 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 Mid-Sun'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. E7–434 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–503–007]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

January 8, 2007.

Take notice that on January 4, 2007, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with an effective date of February 5, 2007:

Substitute First Revised Sheet No. 343A; Original Sheet No. 343B; Original Sheet No. 343C.

Natural states that the filing is being made in compliance with the Commission's order issued on September 21, 2006 in the above-referenced proceeding.

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

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E7–440 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–56–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

January 8, 2006.

Take notice that on December 29, 2006, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP07–56–000, an application pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, for permission and approval to abandon by sale to Copano Field Services/Agua Dulce, L.P. (Copano) an existing supply lateral and receipt meter stations currently owned and operated by Transco in Duval and Jim Wells Counties, Texas (Driscoll Lateral), under Transco's blanket certificate issued in Docket No. CP82–426–000, all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Transco proposes to abandon by sale to Copano the Driscoll Lateral, which consists of 10.86 miles of 6-inch pipeline in Duval County, Texas; 22.35 miles of 8-inch pipeline located in Jim Wells County, Texas, which interconnects with Transco's mainline at milepost 89.60 in Jim Wells County, Texas; and several receipt point meter stations with electronic flow measurement and communication equipment attached to the Driscoll Lateral.

Transco states that there are currently two shippers that deliver gas into Transco's pipeline system at receipt points located on the Driscoll Lateral and that both shippers have consented in writing to the abandonment.

Any questions concerning this application may be directed to Stephen A. Hatridge, Senior Counsel, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251; telephone 713–215–2312 or e-mail *stephen.a.hatridge@williams.com.*

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. 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 intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed

for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Magalie R. Salas,

Secretary.

[FR Doc. E7–431 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–4–000]

BP West Coast Products LLC, Chevron Products Company, and ExxonMobil Oil Corporation Complainants, v. SFPP, L.P., Kinder Morgan GP, Inc., and Kinder Morgan Inc., Respondent; Notice of Complaint

January 9, 2007.

Take notice that on January 5, 2007, BP West Coast Products LLC (BPWCP) and ExxonMobil Oil Corporation (ExxonMobil) (together, Complainants) hereby submit both jointly and severally, a Fifth Original Complaint against SFPP, L.P. (SFPP), Kinder Morgan GP, Inc. (KMGP Inc) and Kinder Morgan Inc. (KIM) and First Amended Fourth Complaint, challenging the justness and reasonableness of rates on SFPP's West Line, Sepulveda Line, North Line, Oregon Line and East Line, and (conditionally only), the Watson Vapor Recovery Facilities rate. Chevron Products Company joins in this complaint as a complainant, tendering its Fifth Original Complaint, supplementing all prior Chevron and Texaco Refining & Marketing Inc. complaints. On January 8, 2007, the Complainants and Chevron Products Company filed a revised Table of Contents and Table of Authorities with corrected page references, and a transmittal letter to the Secretary that was inadvertently omitted from the January 5, 2007 filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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

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

Comment Date: 5 p.m. Eastern Time on February 5, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–448 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–30–000]

Notice of Complaint; Newark Bay Cogeneration Partnership, L.P. Complainant v. PJM Interconnection, L.L.C., Public Service Electric and Gas Company, Respondent.

January 9, 2007.

Take notice that on January 8, 2007, Newark Bay Cogeneration Partnership, L.P. (Newark Bay) filed a formal complaint, pursuant to sections 205 and 306 of the Federal Power Act and Rule 206 of the Commission's Rules of Practice and Procedure, against PJM Interconnection, L.L.C. (PJM) and Public Service Electric and Gas Company (PSE&G) relating to the outage of the 230KV transmission line connecting Newark Bay to PSE&G's Essex Switching Station and alleging that PJM and PSE&G failed to comply with applicable tariff provisions in scheduling and conducting the outage.

Newark Bay certifies that copies of the complaint were served simultaneously with its filing on the contacts for PJM and PSE&G as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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

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

Comment Date: 5 p.m. Eastern Time on January 29, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–447 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–28–000]

Xcel Energy Services Inc., Complainant v. Southwest Power Pool, Inc., Respondent; Notice of Complaint

January 9, 2007.

Take notice that on January 4, 2007, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e and Rule 206 of the Rules and Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Xcel

Energy Services Inc., (Complainant), on behalf of itself and Southwestern Public Service Company (SPS) filed a formal complaint against Southwest Power Pool, Inc. (Respondent) requesting the Commission to interpret the Respondent's Open Access Transmission Tariff and relevant business practices and find that the Respondent does not have the authority to unilaterally register assets to SPS without SPS's consent. The Complainant also requests an Order from the Commission directing the Respondent to remove the assets from the list of generation facilities for which SPS is registered in the Respondents EIS Market, until such time as SPS agrees to register these facilities itself.

The Complainant requests fast track processing of its complaint due to the Respondents EIS Market schedule which commences operations on February 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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

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

Comment Date: 5 p.m. Eastern Time on January 16, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–446 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 9, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–45–000.
Applicants: Morgan Stanley.
Description: Morgan Stanley submits an application for Blanket Authorization to Acquire Utility and/or Holding Company, Securities.
Filed Date: 12/29/2006.
Accession Number: 20070104–0519.
Comment Date: 5 p.m. Eastern Time on Friday, January 19, 2007.

Docket Numbers: EC07–46–000.
Applicants: Teton Power Holdings, LLC; Umatilla Power Holdings, LLC; Epsilon Power Holdings, LLC; Atlantic Power Holdings, LLC; Delta Person Limited Partnership; Onondaga, Cogeneration Limited Partnership; Vineland Energy LLC.
Description: Teton Power Holdings, LLC et al. submits an application for the indirect disposition of jurisdictional facilities, change in upstream ownership of Atlantic Path 15, *et al.*
Filed Date: 12/29/2006.
Accession Number: 20070104–0515.
Comment Date: 5 p.m. Eastern Time on Friday, January 19, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–28–000.
Applicants: Lea Power Partners, LLC.
Description: Lea Power Partners LLC submits an exempt Wholesale Generator Notice of Self Certification.
Filed Date: 01/03/2007.
Accession Number: 20070102–5034.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 24, 2007.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER01–1558–004; ER07–212–002.
Applicants: NEO California Power LLC; Wayzata California Power Holdings, LLC.
Description: Wayzata California Power Holdings, LLC submits its proposed FERC Electric Rate Schedule 1, to be effective 12/15/06.
Filed Date: 01/03/2007.
Accession Number: 20070105–0164.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 24, 2007.

Docket Numbers: ER01–2568–003; ER98–4652–003; ER02–1175–002; ER01–2569–003.
Applicants: Boralex Ashland, Inc.; Boralex Stratton Energy LP; Boralex, Ft. Fairfield LP; Boralex Livermore Falls LP.
Description: Boralex Stratton Energy LP et al. submits this notice of change in status regarding a change in their indirect upstream ownership pursuant to Section 35.27(c) of FERC's Rules.
Filed Date: 01/03/2007.
Accession Number: 20070105–0169.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 24, 2007.

Docket Numbers: ER04–708–002.
Applicants: Horsehead Corporation.
Description: Horsehead Corp submits a notice of Change in Status.
Filed Date: 01/03/2007.
Accession Number: 20070103–5127.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 24, 2007.

Docket Numbers: ER06–993–004.
Applicants: Orion Power MidWest, L.P.
Description: Orion Power MidWest, LP submits proposed revisions to its tariff sheets to correct the rate schedule designation and to fix a typographical error.
Filed Date: 01/03/2007.
Accession Number: 20070105–0161.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 24, 2007.

Docket Numbers: ER06–1437–002.
Applicants: E.On U.S., LLC; Kentucky Utilities Company.
Description: E.ON U.S. LLC, on behalf of Louisville Gas and Electric Company et al., submits an amendment of a Firm Point-to-Point transmission service agreement with Indiana Municipal Power Agency.
Filed Date: 01/04/2007.
Accession Number: 20070105–0200.
Comment Date: 5 p.m. Eastern Time on Thursday, January 25, 2007

Docket Numbers: ER07–109–003.
Applicants: BTEC Southaven LLC.
Description: BTEC Southaven, LLC submits its Third Substitute Original Sheet 2 to its FERC Electric Tariff.
Filed Date: 01/05/2007.
Accession Number: 20070108–0377.
Comment Date: 5 p.m. Eastern Time on Friday, January 26, 2007.

Docket Numbers: ER07–300–002.
Applicants: Connecticut Central Energy, LLC.

Description: Connecticut Central Energy, LLC submits a petition for acceptance of FERC Electric Rate Schedule 1 waivers and blanket authority.

Filed Date: 01/04/2007.

Accession Number: 20070105–0060.

Comment Date: 5 p.m. Eastern Time on Thursday, January 25, 2007.

Docket Numbers: ER07–400–000.

Applicants: IPA Marketing, Inc.

Description: IPA Marketing, Inc submits a Notice of Succession to notify, FERC of the adoption of Rate Schedule FERC 1 as a result of a corporate name change.

Filed Date: 01/03/2007.

Accession Number: 20070104–0042.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 24, 2007.

Docket Numbers: ER07–401–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Co submits a Firm Transmission Service Agreement with the City of Pella, Iowa dated 12/28/06.

Filed Date: 01/03/2007.

Accession Number: 20070105–0168.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 24, 2007.

Docket Numbers: ER07–402–000.

Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Company submits an amendment its Addendum to SEPA Supply Contract, Rate Schedule No. 300, with the City of Owensboro, Kentucky.

Filed Date: 01/03/2007.

Accession Number: 20070105–0167.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 24, 2007.

Docket Numbers: ER07–403–000.

Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Company submits an amendment its Addendum to SEPA Supply Contract, Rate Schedule No. 308, with the City of Benham, Kentucky.

Filed Date: 01/03/2007.

Accession Number: 20070105–0165.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 24, 2007.

Docket Numbers: ER07–404–000.

Applicants: Florida Power & Light Company.

Description: Florida Power and Light Company submits an unexecuted Standard Large Generator Interconnection Agreement with Lee County, Florida designated as Service Agreement 253.

Filed Date: 01/03/2007.

Accession Number: 20070105–0170.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 24, 2007.

Docket Numbers: ER07–405–000.

Applicants: Central Maine Power Company.

Description: Central Maine Power Co submits an Executed Small Generator Interconnection Agreement with Fox Islands Electric Cooperative, Inc.

Filed Date: 01/03/2007.

Accession Number: 20070105–0206.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 24, 2007.

Docket Numbers: ER07–406–000.

Applicants: Entergy Operating Companies; Entergy Services, Inc.

Description: Entergy Operating Companies submits an unexecuted Network Operating Agreement with Cleco Power, LLC.

Filed Date: 01/03/2007.

Accession Number: 20070105–0160.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 24, 2007.

Docket Numbers: ER07–407–000.

Applicants: High Prairie Wind Farm II, LLC.

Description: High Prairie Wind Farm II, LLC submits an order accepting market-based rate tariff for filing (FERC Electric Tariff 1) and granting waivers and blanket approvals.

Filed Date: 01/03/2007.

Accession Number: 20070105–0159.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 24, 2007.

Docket Numbers: ER07–408–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits revisions to Attachment AD of its OATT to extend its Tariff Administration Agreement with Southwestern Power Administration.

Filed Date: 01/03/2007.

Accession Number: 20070105–0157.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 24, 2007.

Docket Numbers: ER07–409–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits revised rate sheets for the Letter Agreements between the Transmission & Distribution Business Unit of SCE and the Power Production Department of the Generation Business Unit.

Filed Date: 01/04/2007.

Accession Number: 20070105–0058.

Comment Date: 5 p.m. Eastern Time on Thursday, January 25, 2007.

Docket Numbers: ER07–410–000.

Applicants: Oklahoma Gas and Electric Company.

Description: Oklahoma Gas and Electric Company submits a Notice of Cancellation of its Rate Schedule FERC 147 Agreement for, Scheduling Exchange Service with Oklahoma Municipal Power Authority.

Filed Date: 01/04/2007.

Accession Number: 20070105–0199.

Comment Date: 5 p.m. Eastern Time on Thursday, January 25, 2007.

Docket Numbers: ER07–411–000.

Applicants: Oklahoma Gas and Electric Company.

Description: Oklahoma Gas and Electric Company submits revisions to the Agreement for Scheduling Exchange Service with Oklahoma Municipal Power Authority designated as Rate Schedule FERC 147.

Filed Date: 01/04/2007.

Accession Number: 20070105–0198.

Comment Date: 5 p.m. Eastern Time on Thursday, January 25, 2007.

Docket Numbers: ER07–412–000.

Applicants: ECP Energy I, LLC.

Description: ECP Energy I, LLC submits an application for Order, accepting Initial Tariff, Waiving Regulations and Granting Blanket Approvals.

Filed Date: 01/05/2007.

Accession Number: 20070108–0252.

Comment Date: 5 p.m. Eastern Time on Friday, January 26, 2007.

Docket Numbers: ER07–413–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Co submits its Second Revised Sheet 6 to, FERC Electric Tariff, Original Volume 6, to be effective, 1/2/07.

Filed Date: 01/05/2007.

Accession Number: 20070108–0253.

Comment Date: 5 p.m. Eastern Time on Friday, January 26, 2007.

Docket Numbers: ER07–415–000.

Applicants: DTE Pontiac North, LLC.

Description: DTE Pontiac North, LLC submits an application for order authorizing Market-Based Rates, Certain Waivers and, Blanket Authorizations.

Filed Date: 01/05/2007.

Accession Number: 20070108–0254.

Comment Date: 5 p.m. Eastern Time on Friday, January 26, 2007.

Docket Numbers: ER07–416–000.

Applicants: Geneva Roth Holding, LLC.

Description: Geneva Roth Holding, LLC submits a petition for acceptance of FERC Electric Tariff, Original Volume 1 waivers and, blanket authority.

Filed Date: 01/05/2007.

Accession Number: 20070108–0376.

Comment Date: 5 p.m. Eastern Time on Friday, January 26, 2007.

Take notice that the Commission received the following electric securities filings.

Docket Numbers: ES07–10–001.

Applicants: Kansas City Power & Light Company,

Description: Kansas City Power and Light Co submits an amendment to its

Authorization Under Section 204(A) to Issue Short Term Debt and Request for Shortened Notice Period and Expedited Action.

Filed Date: 01/08/2007.

Accession Number: 20070108–5036.

Comment Date: 5 p.m. Eastern Time on Monday, January 22, 2007.

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. E7–450 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF06–25–000; Docket No. PF06–26–000]

Jordan Cove Energy Project, L.P.; Pacific Connector Gas Pipeline, L.P.; Notice of Informational Meetings for the Proposed Jordan Cove LNG and Pacific Connector Gas Pipeline Projects

January 8, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) is issuing this notice to announce the time, dates, and locations of a series of public informational meetings to discuss the environmental review process for the liquefied natural gas (LNG) import terminal proposed by Jordan Cove Energy Project, L.P. in Coos County, Oregon, and the associated 223-mile-long 36-inch-diameter sendout pipeline proposed by Pacific Connector Gas Pipeline, L.P. extending from the LNG terminal, across Coos, Douglas, Jackson, and Klamath Counties, to an interconnection with Pacific Gas and Electric Company facilities near Malin, Oregon. Also participating in the meetings will be staff from agencies that are cooperating with the FERC in the production of an environmental impact statement for the projects, including the U.S. Department of Agriculture Forest Service and the U.S. Department of the Interior Bureau of Land Management.

The meetings will all begin promptly at 6:30 p.m., (PST) (doors will open at about 6 p.m. for sign-in), on the dates below at the following locations:

Tuesday, January 23, 2007

Umpqua Community College, Campus Center Dining Room/Timber Room, 1140 Umpqua College Rd., Roseburg, OR 97470. 541–440–4600.

Wednesday, January 24, 2007

North Bend Community Center, 2222 Broadway St., North Bend, OR 97459. 541–756–8500.

Thursday, January 25, 2007

Red Lion Inn, 200 N. Riverside Ave., Medford, OR 97501. 541–779–5811.

These events are posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. For additional information, please contact the Commission's Office of External Affairs at (202) 502–8004.

Magalie R. Salas,

Secretary.

[FR Doc. E7–437 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory

[Docket No. CP07–10–000]

Dominion Transmission, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed TL–263 Expansion Project and Request for Comments on Environmental Issues

January 9, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) is preparing an environmental assessment (EA) that will describe the impacts of constructing and operating the proposed natural gas pipeline TL–263 Expansion Project (Project) sponsored by Dominion Transmission Inc. (DTI).[1]

The proposed Project would include the construction, replacement, installation, modification and operation of natural gas pipeline facilities in Boone and Wyoming Counties, West Virginia to increase the capacity, improve the efficiency and maintain the integrity of DTI's existing natural gas delivery system. Specifically, DTI is seeking authority to undertake the following activities:

- Construct approximately 6.43 miles of 12-inch-diameter natural gas pipeline and associated facilities (TL–570);
- Replace six 12-inch-diameter pipeline sections along the existing TL–263 natural gas pipeline (a total of approximately 601 feet of pipeline);
- Install overpressure protection; and
- Modify the existing Loup Creek Compressor Station.

A map indicating the general locations of the proposed Project facilities is provided in Appendix 1.[2]

Construction of the new 12-inch-diameter natural gas pipeline which would be known as TL–570 would be

[1] DTI's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's website at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice.

adjacent to the existing TL–263 pipeline and would require a 60- to 75-foot-wide construction right-of-way (ROW), affecting approximately 64.68 acres of land. Following construction, approximately 26.53 acres of land would be required for use as permanent ROW and associated aboveground facilities.

The replacement of the six 12-inch-diameter pipeline sections along the existing TL–263 natural gas pipeline would require a 75-foot-wide construction ROW, affecting approximately 5.17 acres of land. No additional lands would be required for maintenance of these replaced pipeline sections.

Other construction work areas, access roads and additional temporary work spaces would require the use of approximately 47.29 acres of land during construction and approximately 5.96 acres of land during operation.

Construction of the proposed Project would temporarily require the use of approximately 123.99 acres of land. Operation of the proposed Project would permanently require the use of approximately 32.49 acres of land.

If you are a landowner receiving this notice, you may be contacted by a DTI representative about the acquisition of an easement to support this project. DTI would seek to negotiate a mutually acceptable agreement for any easement; however, if the project is approved by the Commission, this approval conveys with it the right of eminent domain. If easement negotiations between you and DTI fail, it would have the authority to initiate condemnation proceedings.

A fact sheet prepared by the Commission entitled ''An Interstate Natural Gas Facility on my Land? What do I need to know?'' should have been attached to the project notice provided to landowners by DTI. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet is also available online at *http://www.ferc.gov*.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to consider the environmental impacts of a proposed project whenever it considers the issuance of a Certificate of Public Convenience and Necessity as has been requested by DTI. NEPA also requires the Commission to undertake a process to identify and address concerns the public may have about proposed projects. This process is commonly referred to as ''scoping''. The main goal of the ''scoping'' process is to identify public concerns and then address them in the EA. By this Notice of Intent, the Commission requests public comments on environmental issues that should be addressed in the EA.

The Commission's staff will prepare an EA that will describe the potential environmental impacts resulting from construction and operation of the proposed Project under the following general headings:

- Geology and Soils
- Water Resources and Wetlands
- Vegetation, Wildlife and Fisheries
- Threatened and Endangered or Special Status Species
- Land Use
- Cultural Resources
- Air Quality and Noise
- Reliability and Safety

The Commission's staff will also evaluate possible alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts to the identified environmental resources.

Upon completion of the staff's environmental assessment and depending on the issues identified and/or comments received during the ''scoping'' process, the EA may be published and mailed to federal, state and local government agencies; elected officials; environmental and public interest groups; affected landowners; other interested parties; local libraries and newspapers; and the Commission's official service list for this proceeding. A 30-day comment period would be allotted for review of the EA if it is published. Staff would consider all comments submitted concerning the EA before making their recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section of this notice.

Public Participation

You can make a difference by providing us with your comments or concerns about the proposed project. By becoming a commentor, your comments and concerns will be addressed in the EA and considered by the Commission. The more specific your comments, the more useful they will be. Generally, comments are submitted regarding the potential environmental effects, reasonable alternatives and measures to avoid or lessen environmental impact.

This notice and request for environmental comments is being sent to affected landowners; federal, state and local government representatives and agencies; environmental and public interest groups; other interested parties in this proceeding; and local libraries and newspapers. We encourage government representatives to notify their constituents of this notice and to encourage their comments concerning this proposed project.

To ensure that your comments are properly recorded, please mail them to our office on or before February 8, 2007. When filing comments please:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments to the attention of Gas Branch 2, DG2E; and Reference Docket No. CP07–10–000 on the original and both copies

Please note that the Commission strongly encourages the electronic filing (''eFiling'') of comments, interventions or protests to this proceeding. Instructions on how to ''eFile'' comments can be found on the Commission's Web site at *http://www.ferc.gov* under the ''Documents and Filings'' link.

Becoming an Intervenor

In addition to participating in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) [3]. Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice has been sent to all known individuals, organizations, and

[3] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

government entities interested in and/or potentially affected by the proposed Project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you would like to remain on the environmental mailing list for this proposed project, please return the Mailing List Retention Form found in Appendix 2. If you do not comment on this project or return this form, you will be taken off of the staff's environmental mailing list.

Additional Information

Additional information about the proposed 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*).

To access information via the FERC Web site click on the ''eLibrary'' link then 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. The ''eLibrary'' link provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. For assistance with ''eLibrary'', please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to these documents. To learn more about eSubscription and to sign-up for this service please go to *http://www.ferc.gov/esubscribenow.htm*.

Public meetings and/or site visits along with other Project related information will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx*.

Magalie R. Salas,

Secretary.

[FR Doc. E7–445 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–54–000; Docket No. CP06–55–000]

Broadwater Energy LLC; Broadwater Pipeline LLC; Notice of Interagency Meeting on the Proposed Broadwater LNG Project Draft Environmental Impact Statement

January 9, 2007.

On January 16, 2007, in response to a request from Connecticut State Senator Leonard A. Fasano, Chairman, Connecticut LNG Task Force, the staff of the Office of Energy Projects (OEP) will conduct a meeting with Connecticut state agencies and officials regarding the proposal to construct and operate a liquefied natural gas (LNG) import terminal and natural gas pipeline (referred to as the Broadwater LNG Project). The meeting location and time are as follows: Town Hall, Mayor's Conference Room, 250 East Main Street, East Haven, Connecticut 06512, 203–468–3204, 2 p.m. (EST).

For additional information, contact the Commission's Office of External Affairs at 866–208–FERC (3372).

Magalie R. Salas,

Secretary.

[FR Doc. E7–444 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 12606–000, 2545–091]

Post Falls Hydroelectric Project, Spokane River Developments Project, Avista Corporation Spokane, WA; Notice of Intent To Hold a Public Meeting To Discuss the Draft Environmental Impact Statement for the Spokane River Developments and Post Falls Hydroelectric Projects

January 9, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR)(18 CFR Part 380 [FERC Order No. 486, 52 FR 47897]) the Office of Energy Projects staff (staff) reviewed the applications for New Major Licenses for the Spokane River Developments and Post Falls Project Hydroelectric Projects. Staff prepared a draft environmental impact statement (DEIS) for the projects which are located on the Spokane River, Washington.

The DEIS contains staff's analysis of the potential environmental effects of the projects and concludes that licensing the projects, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the DEIS have been sent to Federal, State, and local agencies; public interest groups; and individuals on the Commission's mailing list.

A copy of the DEIS is available for review at the Commission's Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number (P–2545) or (P–12606), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–2376, or for TTY, contact (202) 502–8659.

Comments should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must be filed by March 6, 2007, and should reference Project Nos. 2545–091 and 12606–000. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link.

In addition to or in lieu of sending written comments, the public is invited to attend one or both meetings that will be held in Spokane, Washington to receive comments on the draft EIS. Both meetings are open to anyone who would like to provide comments. The meeting format will be the same for either meeting. The meetings will be recorded by a court reporter, and all statements (verbal and written) will become part of the Commission's public record for the project. The time and location of the meetings are as follows:

Date: February 8, 2007.

Times: Morning Meeting 9 a.m.—12 noon (PST); Evening Meeting 6 p.m.—9 p.m.

Place: Doubletree Spokane City Center Hotel, Ballrooms A/B.

Address: 322 North Spokane Falls Court, Spokane, Washington.

Telephone: 509–744–2313.

For Further Information Contact: John Blair at (202) 502–6092 or at *john.blair@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E7–443 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD07–7–000]

Conference on Competition in Wholesale Power Markets; Notice of Conference

January 9, 2007.

Take notice that on February 27, 2007, the first in a series of conferences will be held at the Federal Energy Regulatory Commission (Commission) to examine the state of competition in wholesale power markets. The first conference will be held from 9 a.m. to 4 pm (EST) at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in the Commission Meeting Room. All interested persons are invited to attend. A further notice with a detailed agenda will be issued in advance of the conference.

A free webcast of this event will be available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to www.ferc.gov's Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about this conference, please contact: Moon Paul, Esq., Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6136, *Moon.Paul@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E7–449 Filed 1–12–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8268–4]

Proposed Administrative Cost Recovery Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended, 42 U.S.C. 9622(g), PCB Treatment Inc. Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the PCB Treatment Inc. Superfund Site located at 2100 Wyandotte Street, Kansas City, Missouri, and 45 Ewing Street, Wyandotte County, Kansas with the following settling party: Cargill, Inc. The settlement requires Cargill, Inc. to pay to the Hazardous Substance Superfund $47,844.97. The settlement includes a covenant not to sue Cargill, Inc. pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA Region VII office located at 901 N. 5th Street, Kansas City, Kansas.

DATES: Comments must be submitted on or before February 15, 2007.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Region VII office, 901 N. 5th Street, Kansas City, Kansas, Monday through Friday, between the hours of 7 a.m. through 5 p.m. A copy of the proposed settlement may be obtained from the Regional Hearing Clerk, 901 N. 5th Street, Kansas City, Kansas, (913) 551–7567. Comments should reference the PCB Treatment, Inc. Superfund Site, EPA Docket No. CERCLA–07–2007–0008 and should be addressed to Audrey Asher, Senior Assistant Regional Counsel, 901 N. 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Audrey Asher at (913) 551–7255.

Dated: December 21, 2006.

John B. Askew,

Regional Administrator, U.S. Environmental Protection Agency, Region VII.

[FR Doc. E7–358 Filed 1–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8268–8]

Notice of Proposed Agreement for Recovery of Past Response Costs Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as Amended, 42 U.S.C. 9622(h)(1), Tru-Fit Battery Superfund Site, Carroll, IA, Docket No. CERCLA–07–2004–0300

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given that a proposed agreement regarding the Tru-Fit Battery Superfund Site located in Carroll, Iowa, will be signed by the Environmental Protection Agency following completion of the public comment period.

DATES: Comments must be submitted on or before February 15, 2007.

ADDRESSES: Comments should be addressed to J. Scott Pemberton, Senior Assistant Regional Counsel, Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, and should refer to: In the Matter of Tru-Fit Battery Superfund Site, Carroll, Iowa, Docket No. CERCLA–07–2004–0300.

The proposed agreement may be examined or obtained in person or by mail from Kathy Robinson, Regional Hearing Clerk, at the office of the Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, (913) 551–7567.

SUPPLEMENTARY INFORMATION: This proposed Agreement concerns the Tru-Fit Battery Superfund Site, located in Carroll, Iowa, and is made and entered

into by the EPA and T.J.'s Enterprises, Inc. (''the Settling Party'').

In response to the release or threatened release of hazardous substances including lead at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. 9604. In April 1998, response actions were initiated by EPA to address the release of lead to surface and subsurface soils at the Site. Excavation of lead-contaminated soils began in December 1998, resulting in the excavation, on-Site treatment and off-Site disposal of approximately 2,650 tons of lead-contaminated material. The soils were excavated to below 1000 parts per million, a level suitable only for limited uses of the property. EPA's response action has been completed and all costs incurred.

Pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), the Settling Party is responsible for response costs incurred at or in connection with the Site. The Regional Administrator of EPA, Region VII, or his designee, has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed $500,000, excluding interest.

This Agreement requires the Settling Party to pay to the EPA Hazardous Substance Superfund the principal sum of $45,000 in reimbursement of Past Response Costs, and will resolve the Settling Party's alleged civil liability for these costs. The proposed Agreement also includes a covenant not to sue the Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

Dated: December 21, 2006.

John B. Askew,

Regional Administrator, Environmental Protection Agency, Region VII.

[FR Doc. E7–412 Filed 1–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8268–7]

Proposed Reissuance of General NPDES Permit (GP) for Alaskan Small Suction Dredging (Permit Number AKG–37–5000)

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Notice of proposed reissuance of a general permit.

SUMMARY: On June 4, 2007, a general permit regulating the activities of small suction dredge mining for gold placer mining operations in the State of Alaska expires. EPA proposes to reissue this general permit with minor changes. EPA is proposing to make this permit effective as the previous general permit expires.

DATES: Interested persons may submit comments on the proposed reissuance of the general permit to EPA, Region 10 at the address below. Comments must be received by March 2, 2007.

ADDRESSES: Comments on the proposed General Permit should be sent to Director, Office of Water and Watersheds; USEPA Region 10; 1200 Sixth Avenue, OWW–130; Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Copies of the Fact Sheet and draft General Permit are available upon request. The Fact Sheet and draft General Permit may be found on the Region 10 Web site at *http://www.epa.gov/r10earth/waterpermits.htm* (click on draft permits, then Alaska).

Requests for copies may be made to Audrey Washington at (206) 553–0523 or to Cindi Godsey at (907) 271–6561 or electronically mailed to: *washington.audrey@epa.gov* or *godsey.cindi@epa.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this reissuance of this general permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: January 5, 2007.

Michael F. Gearheard,

Director, Office of Water & Watersheds, Region 10, U.S. Environmental Protection Agency.

[FR Doc. E7–410 Filed 1–12–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: ''Improving Quality of Care in Long Term Care.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by February 15, 2007.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room #5036, Rockville, MD 20850.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

Improving Quality of Care in Long Term Care

The proposed project will design, implement, and evaluate an intervention program to prevent injurious falls in assisted living facilities. The project involves four major activities: (1) Adapting a multifaceted, evidence-based falls prevention program to a protocol tailored to the assisted living environment; (2) implementing the pilot protocol and collecting clinical and process data pre- and post-intervention; (3) evaluating the results of the intervention; and (4) widely disseminating the protocol (revised as needed based on the evaluation), training materials, and research findings.

The project design is a multi-component falls intervention program

that will include medication review, resident assessment, environmental modification, and exercise. Its goal will be to reduce risk factors for falls, as well as fall and fracture rates, among residents of assisted living facilities. The project will adapt existing evidence-based falls prevention interventions to the assisted living setting, and collect data to track the progress and impact of the intervention program. Data collection for the falls intervention project will be approved by the University of North Carolina—Chapel Hill and Research Triangle Institute (RTI) International Institutional Review Boards. It will be conducted in accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy rule and with the Protection of Human Research Subjects regulations, 45 CFR part 46. In addition, the identifiable data collected in this study about provider organizations and individuals will only be used for the above-stated purposes and will be kept confidential.

Methods of Collection

The evaluation will use several methods to examine the efficacy of the intervention, including record review, in-person surveys, and in-depth interviews. Data for this process evaluation of the implementation of the intervention will be collected at 6 and 12 months at the facility-level (e.g., fall and fracture rates, intervention adoption) and the resident-level (e.g., risk factors for falls, adherence to intervention regimens).

The quantitative data will be collected using a series of questionnaires to collect information about the facility, its staff, and the participating residents. The information about residents' cognitive, medical, and functional status, and risk for falls will be collected using resident medication records and charts, performance based physical assessments, and standard measures of activities of daily living and cognition.

The in-depth interviews of residents and staff will use both open-ended questions and items with categorical response options to facilitate analysis. Items will include the degree to which the facility has changed its practice; the degree to which residents accept and adhere to the intervention; facilitators for and obstacles to implementation; report of staff and resident satisfaction; reactions and experiences related to the use of volunteers; and lessons learned. These data will be gathered through 60-minute interviews with facility staff including administrators and clinical personnel, and 30 to 40 minute interviews with residents. The research staff will interview up to four staff at each intervention site and up to four residents at each site.

Estimated Annual Respondent Burden

The table below indicates the estimated time and cost burden to the respondents for obtaining all of the data needed to meet the study's objectives. There will be no cost burden to the respondent other than the cost burden associated with their time to provide the required data. There will be no additional costs for capital equipment, software, computer services, etc.

Time required to analyze the data and prepare it for reporting and publication is not included in these estimates.

TABLE 1.—ESTIMATED RESPONDENT BURDEN

Type of respondent	Number of respondents	Number of responses per respondent (baseline, 6 months and 12 months)	Estimated time per respondent	Estimated total burden (hours)	Average hourly rate	Estimated cost burden to the respondent
Direct Caregiver Staff	20	30	0.10 hours (6 minutes).	60	$9.00	$540
Facility Staff	260	1	.067 hours (4 minutes).	17.3	9.00	155.70
Facility Administrator	4	3	0.25 hours (15 minutes).	3	25	75
Facility Residents	200	3	0.583 hours (35 minutes).	350	0	0
Total				430		770.70

Estimated Annual Costs to the Federal Government

The total estimated one-time cost of this intervention implementation and related data collection to the federal government is $199,600. This funding will be used to support the cost of implementing the intervention, salary and fringe benefits for the research team to conduct the survey interview and in-depth interviews, costs for members of the research team to travel to each site, and the incentives paid to facilities for participation in the intervention. The project proposes to work with assisted living facilities with which the research team already has established relationships and familiarity and will attempt to minimize burden to the assisted living facility staff by being flexible to schedules and requirements of care practices within the facilities.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and ocsts) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All

comments will become a matter of public record.

Dated: January 4, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–108 Filed 1–12–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: ''Evaluation of the Implementation and Impact of Pay-for-Quality Programs.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on October 24, 2006 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by February 15, 2007.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room #5036, Rockville, MD 20850. Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Evaluation of the Implementation and Impact of Pay-for-Quality (P4Q) Programs''

The P4Q Evaluation is a multi-method research project designed to evaluate the implementation and impact of P4Q programs on physicians across three programs operating in *health care* safety net settings. The P4Q programs participating in the evaluation are offering their healthcare providers financial incentives to achieve predefined quality targets. Data collected as part of this evaluation will have direct operational relevance to payers and providers regarding the value and challenges of P4Q programs in safety net settings. The P4Q evaluation is designed to assess whether P4Q programs in such settings improve quality on the measures that are the focus of the programs and also whether the programs lead to unintended consequences. The P4Q evaluation will also seek to identify design and implementation practices that are likely to increase as well as decrease the risks of negative outcomes resulting from the implementation of P4Q programs in safety net settings.

Data collection under the P4Q evaluation will be approved by the Boston University's Medical Campus Institutional Review Board. It will be conducted in accordance with the Health Insurance Protection and Portability Act (HIPAA) Privacy Rule and with the Protection of Human Subjects regulations, 45 CFR part 46. In addition, the identifiable data collected in this study about provider organizations and individuals will only be used for the above-stated purposes and will be protected in accordance with the AHRQ confidentiality statute, section 934(c) of the Public Health Service Act (42 U.S.C. 299c–3(c)).

Methods of Collection

The evaluation will use several methods to examine P4Q programs in safety net settings, including a survey and key informant interviews. Survey data will be obtained from physicians participating in P4Q programs using a confidential mailed questionnaire. The key informant interviews will consist of 35-minute semi-structured interviews with physician organization executives, practice leaders, physicians, and other senior managers in each study setting regarding program design, implementation, and impact. The research project investigators will interview up to six informants at each site.

Estimated Annual Respondent Burden

The table below indicates the total time burden required to obtain all the data required to meet the study's objectives. It does not include time required to analyze the data and prepare it for reporting and publication.

Type of respondent	Number of respondents	Number of responses per respondent	Estimated time per respondent	Estimated total burden (hours)	Estimated annual respondent cost burden
Physicians	216	1	0.25 hours (15 minutes).	54	$5,322.12 to cover costs of responding to survey.
Practice executives and other senior managers.	24	1	0.58 hours (35 minutes).	14	$841.35 to cover costs of participating in in-person interviews.
Total				68	$6,163.47.

Estimated Costs to the Federal Government

The total cost to the government for this activity is estimated to be $193,941. This funding will be used to support survey administration costs, salary and fringe benefits for the research team relating to the design and administration of the survey and informant interviews, and costs for two members of the research team to travel to each site for the informant interviews. The project will attempt to minimize burden to physician survey respondents by distributing surveys at medical staff meetings.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of

information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. all comments will become a matter of public record.

Dated: January 4, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–109 Filed 1–12–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Family Violence Prevention and Services/Grants for Battered Women's Shelters and Related Assistance/ Grants to Indian Tribal Organizations (Including Alaska Native Villages)

Program Office: Administration on Children, Youth, and Families (ACYF), Family and Youth Services Bureau (FYSB).

Program Announcement Number: HHS–2007–ACF–ACYF–FVPS–0124.

Announcement Title: Family Violence Prevention and Services/Grants for Battered Women's Shelters and Related Assistance/ Grants to Indian Tribal Organizations (including Alaska Native Villages).

CFDA Number: 93.671.

Due Date for Applications: February 15, 2007.

Executive Summary: This announcement governs the proposed award of formula grants under the Family Violence Prevention and Services Act (FVPSA) to Indian Tribes (including Alaska Native Villages) and Tribal organizations. The purpose of these grants is to assist Tribes in establishing, maintaining, and expanding programs and projects to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

This announcement sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants in Fiscal Year (FY) 2007. Grantees are to be mindful that although the expenditure period for grants is a two-year period, an application is required every year to provide continuity in the provision of services. (See Section II. Award Information, Expenditure Periods.)

I. Description

Legislative Authority: Title III of the Child Abuse Amendments of 1984 (Public Law (Pub. L.) 98–457, 42 United States Code (U.S.C.) 10401 *et seq.*) is entitled the ''Family Violence Prevention and Services Act'' (FVPSA). FVPSA was first implemented in FY 1986. The statute was subsequently amended by P.L. 100–294, the ''Child Abuse Prevention, Adoptions, and Family Services Act of 1988;'' further amended in 1992 by P.L. 102–295; and then amended in 1994 by P.L. 103–322, the ''Violent Crime Control and Law Enforcement Act.'' FVPSA was amended again in 1996 by P.L. 104–235, the ''Child Abuse Prevention and Treatment Act'' (CAPTA) of 1996; in 2000 by P.L. 106–386, the ''Victims of Trafficking and Violence Protection Act,'' and amended further by P.L. 108–36, the ''Keeping Children and Families Safe Act of 2003.'' FVPSA was most recently amended by P.L. 109–162, the ''Violence Against Women Reauthorization Act of 2005'' and by P.L. 109–271, which was enacted on August 17, 2006.

FVPSA may be found at 42 U.S.C. 10401 *et. seq.*

Background

The purpose of this legislation is to assist States and Tribes or Tribal organizations in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

During FY 2006, the U.S. Department of Health and Human Services (HHS) made 241 grants to States and Tribes or Tribal organizations. HHS also made 53 family violence prevention grant awards to non-profit State domestic violence coalitions.

In addition, HHS supports the Domestic Violence Resource Center Network (DVRN). DVRN consists of the National Resource Center for Domestic Violence (NRC) and four Special Issue Resource Centers (SIRCs). The four SIRCs are: The Battered Women's Justice Project, the Resource Center on Child Custody and Protection, the Resource Center for the Elimination of Domestic Violence Against Native Women (Sacred Circle), and the Health Resource Center on Domestic Violence. The purpose of NRC and the SIRCs is to provide resource information, training, and technical assistance to Federal, State, and Indian Tribal agencies; local domestic violence prevention programs; and other professionals who provide services to victims of domestic violence.

In February, 1996, HHS funded the National Domestic Violence Hotline (Hotline) to ensure that every woman and man has access to information and emergency assistance wherever and whenever it is needed. The Hotline is a 24-hour, toll-free service that provides crisis assistance, counseling, and local shelter referrals to women across the country. Hotline counselors also are available for non-English speaking persons and for people who are hearing-impaired. The Hotline number is 1–800–799–SAFE (7233); the TTY number for the hearing impaired is 1–800–787–3224.

General Grant Program Requirements For Tribes or Tribal Organizations

Definitions

Tribes and Tribal organizations should use the following definitions in carrying out their programs. The definitions are found in section 320 of FVPSA.

Family Violence: Any act, or threatened act, of violence, including any forceful detention of an individual, which: (a) Results or threatens to result in physical injury; and (b) is committed by a person against another individual (including an elderly person) to whom such person is, or was, related by blood or marriage, or otherwise legally related, or with whom such person is, or was, lawfully residing.

Indian Tribe and Tribal organization: Have the same meanings given such terms in section 450b of Title 25.

Shelter: The provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

Related assistance: The provision of direct assistance to victims of family violence and their dependents for the purpose of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in healing from the effects of the violence. Related assistance includes:

(a) Prevention services such as outreach and prevention services for victims and their children, assistance to children who witness domestic violence, employment training,

parenting, and other educational services for victims and their children, preventive health services within domestic violence programs (including services promoting nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school-age children, family violence public awareness campaigns, and violence prevention counseling services to abusers;

(b) Counseling with respect to family violence, counseling or other supportive services provided by peers individually or in groups, and referral to community social services;

(c) Transportation, technical assistance with respect to obtaining financial assistance under Federal and State programs, and referrals for appropriate health-care services (including alcohol and drug abuse treatment), but shall not include reimbursement for any health-care services;

(d) Legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

(e) Children's counseling and support services, child care services for children who are victims of family violence or the dependents of such victims, and children who witness domestic violence.

The Importance of Coordination of Services

The affect of domestic violence includes physical injury and death of primary or secondary victims, psychological trauma, isolation from family and friends, harm to children witnessing or experiencing violence in homes in which the violence occurs, increased fear, reduced mobility and employability, homelessness, substance abuse, and a host of other health and related mental health consequences.

The physical and cultural obstacles existing in much of Indian country compound the basic dynamics of domestic violence. Barriers such as the isolation of vast rural areas, the concern for safety in isolated settings, and the transportation requirements over long distances, heighten the need for the coordination of the services through an often limited delivery system.

In a project intended to broaden the reach of the Indian Tribal domestic violence communities, the Indian Health Service (IHS) and FVPSA-funded programs have collaborated to oversee the development of domestic violence community projects. These projects are designed to develop improved health care responses to domestic violence and to facilitate collaboration between the local health care system and local Indian Tribal domestic violence advocacy programs (including Alaskan Village programs). In this effort, IHS also is collaborating with representatives of Mending the Sacred Hoop, Cangleska, Inc., and the Family Violence Prevention Fund to provide training, technical assistance, and oversight to the pilot projects.

To help bring about a more effective response to the problem of domestic violence, HHS urges Tribes and Tribal organizations receiving funds under this grant announcement to coordinate activities under this grant with other new and existing resources for the prevention of domestic violence.

Annual Tribal Grantee Conference

FVPSA administrators should plan to attend the annual Tribal Grantee Conference. A subsequent Program Instruction and/or Information Memorandum will advise the Tribal FVPSA Administrators of the date, time, and location of the grantee conference.

Client Confidentiality

FVPSA programs must establish or implement policies and protocols for maintaining the safety and confidentiality of the victims of domestic violence, sexual assault, and stalking. It is essential that the confidentiality of adult victims and their children receiving FVPSA services be protected. Consequently, when providing statistical data on program activities, individual identifiers of client records will not be used (section 303(a)(2)(E)).

II. Funds Available

For FY 2007, HHS will make available for grants to designated State agencies 70 percent of the amount appropriated under section 310(a)(1) of the FVPSA, which is not reserved under section 310(a)(2). In this separate announcement, HHS will allocate 10 percent of the foregoing appropriation to Tribes and Tribal organizations for the establishment and operation of shelters, safe houses, and the provision of related services. HHS also plans to make 10 percent of the foregoing appropriation available to State domestic violence coalitions to continue their work within the domestic violence community by providing technical assistance and training and advocacy services, among other activities, to local domestic violence programs to encourage appropriate responses to domestic violence within the States.

Five percent of the amount appropriated under section 310(a)(1) of the FVPSA, which is not reserved under section 310(a)(2), will be available in FY 2007 to continue the support for the NRC and the four SIRCs. Additional funds appropriated under FVPSA will be used to support other activities, including training and technical assistance, collaborative projects with advocacy organizations and service providers, data collection efforts, public education activities, research and other demonstration projects, as well as the ongoing operation of the Hotline.

Native American Tribal Allocations

Native American Tribes and Tribal organizations are eligible for funding under this program if they meet the definition of ''Indian Tribe'' or ''Tribal organization'' at 25 U.S.C. 450b, and if they are able to demonstrate their capacity to carry out family violence prevention and services programs.

Any Tribe that believes it meets the eligibility criteria should provide supportive documentation in its application and a request for inclusion on the list of eligible Tribes. (See Section IV. Application Requirements for Tribes or Tribal Organizations.)

In computing Tribal allocations, ACF will use the latest available population figures from the Census Bureau. If Census Bureau data are unavailable, ACF will use figures from the Bureau of Indian Affairs' (BIA's) Indian Population and Labor Force Report.

Because section 304 of FVPSA specifies a minimum base amount for State allocations, ACF has set a base amount for Tribal allocations. Since FY 1986, it has been, in practice, that the establishment of a base amount has facilitated ACF's efforts to make a fair and equitable distribution of limited grant funds.

Due to the expanded interest in the prevention of domestic violence and in the provision of services to victims of family violence and their dependents, an increasing number of Tribal applications have been received over the past several years. In order to ensure the continuance of an equitable distribution of family violence prevention and services funding in response to the increased number of Tribes that apply, the funding formula for the allocation of family violence funds has been adjusted.

Tribes that meet the application requirements and whose reservation and surrounding Tribal Trust Lands' population is:

- Less than or equal to 1,500 will receive a minimum base amount of $1,500;

• Between 1,501 and 3,000 will receive a minimum base amount of $3,000;

• Between 3,001 and 4,000 will receive a minimum base amount of $4,000; and,

• Between 4,001 and 5,000 will receive a minimum base amount of $5,000.

The minimum base amounts are computed in relation to the Tribe's population and the progression of an additional $1,000 per 1,000 persons if the population range continues until the Tribe's population reaches 50,000.

Tribes with a population of 50,000 to l00,000 will receive a minimum of $50,000, and Tribes with a population of 100,001 to 150,000 will receive a minimum of $100,000.

Once the base amounts have been distributed to the Tribes that have applied for FVPSA funding, the ratio of the Tribe's population to the total population of all the applicant Tribes is then considered in allocating the remainder of the funds. ACF has accounted for the variance in actual population and scope of the FVPSA programs with the distribution of a proportional amount plus a base amount to the Tribes. Under the previous allocation plan, ACF did not have a method by which to consider the variance in Tribal census counts. As in previous years, Tribes are encouraged to apply as consortia for the FVPSA funding.

Expenditure Periods

FVPSA funds may be used for expenditures on and after October 1 of each fiscal year for which they are granted, and will be available for expenditure through September 30 of the following fiscal year, i.e., FY 2007 funds may be used for expenditures from October 1, 2006 through September 30, 2008. Funds are available for obligation through September 30, 2008 and must be liquidated by September 30, 2009.

Re-allotted funds, if any, are available for expenditure until the end of the fiscal year following the fiscal year that the funds became available for re-allotment. FY 2007 grant funds that are made available to Tribes and Tribal organizations through reallotment must be expended by the grantee no later than September 30, 2008.

III. Eligibility

Tribes and Tribal organizations are eligible for funding under this program if they meet the definition of ''Indian Tribe'' or ''Tribal organization'' set forth in section 450B of Title 25 and if they are able to demonstrate their capacity to carry out a family violence prevention and services program.

Any Tribe or Tribal organization that believes it meets the eligibility criteria and should be included in the list of eligible Tribes should provide supportive documentation and a request for inclusion in its application. (See Application Content Requirements below.)

As in previous years, Tribes may apply singularly or as a consortium. In addition, a non-profit private organization, approved by a Tribe for the operation of a family violence shelter or program on a reservation is eligible for funding.

Additional Information on Eligibility

D–U–N–S Requirement

All applicants must have a D&B Data Universal Numbering System (D–U–N–S) number. On June 27, 2003, the Office of Management and Budget (OMB) published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a D–U–N–S number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The D–U–N–S number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal, *Grants.gov.* A D–U–N–S number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs, submitted on or after October 1, 2003. Please ensure that the applicant has a D–U–N–S number. To acquire a D–U–N–S number at no cost, call the dedicated toll-free D–U–N–S number request line at 1–866–705–5711 or request a number online at *http://www.dnb.com.*

IV. Application Requirements for Tribes and Tribal Organizations

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average six hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection information. The project description is approved under the Office of Management and Budget (OMB) control number 0970–0280, which expires October 31, 2008.

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.

Form and Content of Application Submission

The application from the Tribe or Tribal organization must be signed by the Chief Executive Officer or Tribal Chairperson of the applicant organization.

Each application must contain the following information or documentation:

1. The name of the organization or agency and the Chief Program Official designated as responsible for administering funds under FVPSA and coordinating related programs, and the name, telephone number, and fax number, if available, of a contact person in the designated organization or agency.

2. A copy of a current resolution stating that the designated organization or agency has the authority to submit an application on behalf of the individuals in the Tribe(s) and to administer programs and activities funded under this program (section 303(b)(2)).

3. A description of the procedures designed to involve knowledgeable individuals and interested organizations in providing services under FVPSA (section 303(b)(2)). For example, knowledgeable individuals and interested organizations may include: Tribal officials or social services staff involved in child abuse or family violence prevention, Tribal law enforcement officials, representatives of State coalitions against domestic violence, and operators of family violence shelters and service programs.

4. A description of the applicant's operation of, and/or capacity to carry out, a family violence prevention and services program. This might be demonstrated in ways such as the following:

(a) The current operation of a shelter, safe house, or family violence prevention program;

(b) The establishment of joint or collaborative service agreements with a local public agency or a private non-profit agency for the operation of family violence prevention activities or services; or

(c) The operation of social services programs as evidenced by receipt of ''638'' contracts with BIA; Title II Indian Child Welfare grants from BIA; Child Welfare Services grants under Title IV–B of the Social Security Act; or Family Preservation and Family Support grants under title IV–B of the Social Security Act.

5. A description of the services to be provided, how the applicant

organization plans to use the grant funds to provide the direct services, to whom the services will be provided, and the expected results of the services.

6. Documentation of the procedures that assure the confidentiality of records pertaining to any individual who has been provided family violence prevention or treatment services by any program assisted under FVPSA (section 303(b)(2)).

7. The Employee Identification Number (EIN) of the applicant organization submitting the application.

Assurances

Each application must contain the following assurances:

(a) That not less than 70 percent of the funds shall be used for immediate shelter and related assistance for victims of family violence and their dependents and not less than 25 percent of the funds distributed shall be used to provide related assistance (section 303(g)).

(b) That any grants made to an entity other than a State or Tribe will meet the matching requirements in section 303(f), i.e., not less than 20 percent of the total funds provided for a project under Chapter 110 of Title 42 of the U.S. Code with respect to an existing program, and with respect to an entity intending to operate a new program under this title, not less than 35 percent. The local share will be cash or in-kind; and the local share will not include any Federal funds provided under any authority other than this chapter (section 303(f)).

(c) That grant funds made available under FVPSA will not be used as direct payment to any victim or dependent of a victim of family violence (section 303(d)).

(d) That no income eligibility standard will be imposed on individuals receiving assistance or services supported with funds appropriated to carry out FVPSA (section 303(e)).

(e) That the address or location of any shelter or facility assisted under FVPSA will not be made public, except with the written authorization of the person or persons responsible for the operations of such shelter (section 303(a)(2)(E)).

(f) That a law or procedure has been implemented for the eviction of an abusing spouse from a shared household (section 303(a)(2)(F)).

(g) That all grants, programs or other activities funded by the State in whole or in part with funds made available under FVPSA will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(h) That the applicant will comply with the applicable Departmental recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR Part 92.

Certifications

All applications must submit or comply with the required certifications found in the Appendices as follows:

Anti-Lobbying Certification and Disclosure Form (See Appendix A): Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by OMB under control number 0348–0046). Applicants should sign and return the certification with their application.

Certification Regarding Environmental Tobacco Smoke (See Appendix B): Applicants must also understand they will be held accountable for the smoking prohibition included within P.L. 103–227, Title XII Environmental Tobacco Smoke (also known as the Pro-Children Act of 1994). A copy of the **Federal Register** notice, which implements the smoking prohibition is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Certification Regarding Drug-Free Workplace Requirements (See Appendix C): The signature on the application by the chief program official attests to the applicant's intent to comply with the Drug-Free Workplace requirements and compliance with the Debarment Certification. The Drug-Free Workplace certification does not have to be returned with the application.

These certifications also may be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

Notification Under Executive Order 12372

The review and comment provisions of the Executive Order (E.O.) and Part 100 do not apply. Federally recognized Tribes are exempt from all provisions and requirements of E.O. 12372.

Applications should be sent to: Family Violence Prevention and Services Program, Family and Youth Services Bureau, Administration on Children, Youth, and Families, Administration for Children and Families, Attention: William D. Riley, 1250 Maryland Avenue, SW., Room 8402, Washington, DC 20024.

V. Approval/Disapproval of a Tribal or Tribal Organization Application

The Secretary of HHS will approve any application that meets the requirements of FVPSA and this announcement. The Secretary will not disapprove an application except after reasonable notice of the Secretary's intention to disapprove has been provided to the applicant and after a six-month period providing an opportunity for the applicant to correct any deficiencies.

The notice of intention to disapprove will be provided to the applicant within 45 days of the date of the application.

VI. Reporting Requirements

Performance Reports

A performance report must be filed with HHS describing the activities carried out, and including an assessment of the effectiveness of those activities in achieving the purposes of the grant. A section of this performance report must be completed by each grantee or sub-grantee that performed the direct services contemplated in the application certifying performance of such services. Consortia grantees should compile performance reports into a comprehensive report for submission.

The Performance Report should include the following data elements:

Funding—The total amount of the FVPSA grant funds awarded; the percentage of funding used for shelters, and the percentage of funding used for related assistance and services.

Shelters—The number of shelters and shelter programs (safe homes/motels, etc.) assisted by FVPSA program funding. Data elements should include:

- The number of shelters
- The number of women sheltered
- The number of young children sheltered (birth-12 years of age)
- The number of teenagers and young adults sheltered (13–17 years of age)
- The number of men sheltered
- The average length of stay
- The number of women, children, teens, and others who were turned away because shelter was unavailable
- The number of women, children, teens, and others who were referred to other shelters due to lack of space

Types of individuals served—Record information by numbers and percentages of the total population served. Individuals and special populations served should include:

- The elderly
- Individuals with physical challenges

Related assistance and services—List the types of related assistance and services provided to victims and their

family members by indicating the number of women, children, and men who have received services. Services and assistance may include, but are not limited to, the following:

- Individual counseling
- Services to children
- Crisis intervention hotline
- Information and referral
- Batterers' support services
- Legal advocacy services
- Transportation
- Services to teenagers
- Emergency child care
- Training and technical assistance
- Housing advocacy

Volunteers—List the total number of volunteers and hours worked.

Service referrals—List the number of women, children, and men referred for the following services:

- Physical abuse
- Alcohol abuse
- Drug abuse
- Batterer intervention services
- Child abuse
- Witnessed abuse
- Emergency medical intervention
- Law enforcement intervention

The performance report should include narratives of success stories about services provided and the positive impact on the lives of children and families. Examples may include the following:

- An explanation of the activities carried out, including an assessment of the major activities supported by the family violence funds; what particular priorities within the Tribe or Tribal organization were addressed; and what special emphases were placed on these activities; A description of the specific services and facilities that the applicant program funded, contracted with, or otherwise used in the implementation of its program, *e.g.*, shelters, safe houses, related assistance, programs for batterers;
- An assessment of the effectiveness of the direct service activities contemplated in the application;
- A description of how the needs of under-served populations, including those persons geographically isolated, were addressed; and
- A description and assessment of the prevention activities supported during the program year, *e.g.*, community education events, and public awareness efforts.

Performance reports for Tribes and Tribal organizations are due at the end of every calendar year (December 29). Performance reports should be sent to: Family Violence Prevention and Services Program, Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Attn: William Riley, 1250 Maryland Avenue, SW., Room 8402, Washington, DC 20024.

Financial Status Reports

Grantees must submit annual Financial Status Reports. The first SF–269A is due December 29, 2007. It covers expenditures from date of award through September 30, 2007. The interim SF–269A is due December 29, 2008. The final SF–269A is due December 29, 2009. SF–269A can be found at: *http://www.whitehouse.gov/omb/grants/grantsforms.html.*

Completed reports may be mailed to: Rachel Hickson, Division of Mandatory Grants, Office of Grants Management, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Grantees have the option of submitting their reports online through the Online Data Collection (OLDC) system at the following address: *https://extranet.acf.hhs.gov/ssi/.* The Division of Mandatory Grants can assist grantees with access to OLDC.

Failure to submit reports on time may be a basis for withholding grant funds, suspension, or termination of the grant. In addition, all funds reported after the obligation period will be recouped.

VII. Administrative and National Policy Requirements

Tribes and Tribal Organizations will comply with the applicable Departmental recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR part 92.

Direct Federal grants, sub-award funds, or contracts under this ACF program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. Regulations pertaining to Equal Treatment for Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at the HHS Web site at *http://www.hhs.gov/fbci/regs.html.*

Faith-based and community organizations may reference the ''Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government'' at *http://www.whitehouse.gov/government/fbci/guidance/index.html.*

VIII. Other Information

For Further Information Contact: Shena Williams at (202) 205–9532 or e-mail at *swilliams1@acf.hhs.gov;* William D. Riley at (202) 401–5529 or e-mail at *wriley@acf.hhs.gov;* or Millicent Crawford at (202) 205–7746 or e-mail at *mcrawford@acf.hhs.gov.*

Dated: January 4, 2007.

Joan E. Ohl,

Commissioner, Administration on Children, Youth, and Families.

Appendices: Required Certifications

A. Certification Regarding Lobbying
B. Certification Regarding Environmental Tobacco Smoke
C. Drug-Free Workplace Requirements

Appendix A—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Appendix B—Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Appendix C—Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (*e.g.*, volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within 10 calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Family Violence Prevention and Services/Grants for Battered Women's Shelters/Grants to States

Program Office: Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB).

Program Announcement Number: HHS–2007–ACF–ACYF–FVPS–0123.

Announcement Title: Family Violence Prevention and Services/Grants for Battered Women's Shelters/Grants to States.

CFDA Number: 93.671.

Due Date for Applications: February 15, 2007.

Executive Summary: This announcement governs the proposed award of mandatory grants under the Family Violence Prevention and Services Act (FVPSA) to States (including Territories and Insular Areas). The purpose of these grants is to assist States in establishing, maintaining, and expanding programs and projects to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

This announcement sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants in Fiscal Year (FY) 2007.

I. Description

Legislative Authority: Title III of the Child Abuse Amendments of 1984 (Public Law (Pub. L.) 98–457, 42 United States Code (U.S.C.) 10401 *et seq.*) is entitled the ''Family Violence Prevention and Services Act'' (FVPSA). FVPSA was first implemented in FY 1986. The statute was subsequently amended by Pub. L. 100–294, the ''Child Abuse Prevention, Adoptions, and Family Services Act of 1988;'' further amended in 1992 by Pub. L. 102–295; and then amended in 1994 by Pub. L. 103–322, the ''Violent Crime Control and Law Enforcement Act.'' FVPSA was amended again in 1996 by Pub. L. 104–235, the ''Child Abuse Prevention and Treatment Act (CAPTA) of 1996;'' in 2000 by Pub. L. 106–386, the ''Victims of Trafficking and Violence Protection Act,'' and amended further by Pub. L. 108–36, the ''Keeping Children and Families Safe Act of 2003.'' FVPSA was most recently amended by Pub. L. 109–162, the ''Violence Against Women Reauthorization Act of 2005'' and by Pub. L. 109–271, which was enacted on August 17, 2006.'' FVPSA may be found at 42 U.S.C. 10401 *et seq.*

Background

The purpose of this legislation is to assist States and Indian Tribes, Tribal organizations, and non-profit private organizations approved by an Indian Tribe in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

During FY 2006, 241 grants were made to States and Indian Tribes, Tribal organizations, and non-profit private organizations approved by Indian Tribes. The U.S. Department of Health and Human Services (HHS) also made 53 family violence prevention grant U.S. awards to non-profit State domestic violence coalitions.

In addition, HHS supports the National Resource Center for Domestic Violence (NRC) and four Special Issue Resource Centers (SIRCs). The four SIRCs are the Battered Women's Justice Project, the Resource Center on Child Custody and Protection, Sacred Circle Resource Center for the Elimination of Domestic Violence Against Native Women, and the Health Resource Center on Domestic Violence. The purpose of NRC and SIRCs is to provide resource information, training, and technical assistance to Federal, State, and Native American agencies, local domestic violence prevention programs, and other professionals who provide services to victims of domestic violence. In February 1996, HHS funded the National Domestic Violence Hotline (Hotline) to ensure that every woman and man has access to information and emergency assistance wherever and whenever it is needed. The Hotline is a 24-hour, toll-free service that provides crisis assistance, counseling, and local shelter referrals to women across the country. Hotline counselors also are available for non-English speaking persons and for people who are hearing-impaired. The Hotline number is 1–800–799–SAFE (7233); the TTY number for the hearing-impaired is 1–800–787–3224.

General Grant Program Requirements Applicable to States

Definitions

States should use the following definitions in carrying out their programs. The definitions are found in section 320 of FVPSA.

Family Violence: Any act or threatened act of violence, including any forceful detention of an individual, which: (a) Results or threatens to result in physical injury; and (b) is committed by a person against another individual (including an elderly person) to whom such person is or was related by blood or marriage or otherwise legally related or with whom such person is or was lawfully residing.

Shelter: The provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

Related assistance: The provision of direct assistance to victims of family violence and their dependents for the purpose of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in

healing from the effects of the violence. Related assistance includes:

(a) Prevention services such as outreach and prevention services for victims and their children, assistance for children who witness domestic violence, employment training, parenting and other educational services for victims and their children, preventive health services within domestic violence programs (including services promoting nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school-age children, family violence public awareness campaigns, and violence prevention counseling services to abusers;

(b) Counseling with respect to family violence, counseling or other supportive services provided by peers individually or in groups, and referral to community social services;

(c) Transportation and technical assistance with respect to obtaining financial assistance under Federal and State programs, and referrals for appropriate health-care services (including alcohol and drug abuse treatment), but shall not include reimbursement for any health-care services;

(d) Legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

(e) Children's counseling and support services, and child care services for children who are victims of family violence or the dependents of such victims, and children who witness domestic violence.

Annual State Administrators Grantee Conference

The annual grantee conference for the State FVPSA Administrators is a training and technical assistance activity. A subsequent Program Instruction and/or Information Memorandum will advise the State FVPSA Administrators of the date, time and location of their grantee conference.

Client Confidentiality

FVPSA programs must establish or implement policies and protocols for maintaining the safety and confidentiality of the adult victims and their children of domestic violence, sexual assault, and stalking. It is essential that the confidentiality of individuals receiving FVPSA services be protected. Consequently, when providing statistical data on program activities and program services, individual identifiers of client records will not be used (section 303(a)(2)(E)).

The confidentiality provisions described at 42 U.S.C., section 13701, apply to programs funded under the Violence Against Women Act, as amended, including certain awards made under the Family Violence Prevention and Services Act. These confidentiality requirements were strengthened and clarified with the passage of the Violence Against Women Reauthorization Act of 2005, Pub. L. 109–162, as recently amended by Pub. L. 109–271. The revised confidentiality provisions impose conditions regarding the disclosure of personally identifying information, confidentiality, information sharing, and compulsory release of information.

Stop Family Violence Postal Stamp

The U.S. Postal Service was directed by the ''Stamp Out Domestic Violence Act of 2001'' (the Act), Pub. L. 107–62, to make available a ''semipostal'' stamp to provide funding for domestic violence programs. Funds raised in connection with sales of the stamp, less reasonable costs, have been transferred to HHS in accordance with the Act for support of services to children and youth affected by domestic violence.

As of FY 2006, $2.3 million has been transferred and made available in support of grants for ''Demonstration Programs for The Enhanced Services to Children and Youth Who Have Been Exposed to Domestic Violence.'' Sixty-five (65) applications were received and reviewed and nine (9) successful applicants are in the second year of their projects. The project sites are in Castle Rock, CO; Harrisburg, PA; Oklahoma City, OK; Eugene, OR; Oakland, CA; Albany, NY; Lansing, MI; Richmond, VA; and Washington, DC. ACF anticipates information on the progress and activities of the successful applicants and their programs in FY 2007.

The Importance of Coordination of Services

The impacts of domestic violence include physical injury and death of primary or secondary victims, psychological trauma, isolation from family and friends, harm to children witnessing or experiencing violence in homes in which the violence occurs, increased fear, reduced mobility and employability, homelessness, substance abuse, and a host of other health and related mental health consequences.

Coordination and collaboration among the police, prosecutors, the courts, victim services providers, child welfare and family preservation services, and medical and mental health service providers is needed to provide more responsive and effective services to victims of domestic violence and their families. It is essential that all interested parties are involved in the design and improvement of intervention and prevention activities.

To help bring about a more effective response to the problem of domestic violence, HHS urges the designated State agencies receiving funds under this grant announcement to coordinate activities funded under this grant with other new and existing resources for the prevention of domestic violence and related issues.

National Data Collection and Outcomes Measurement (DOW)

The need to accurately communicate reliable and appropriate data that capture the impact of domestic violence prevention and intervention efforts, and to provide shelters, States and State domestic violence coalitions with tools for self-assessment, continues as the Documenting Our Work (DOW) Initiative. In collaboration with partners at the State FVPSA programs, State domestic violence coalitions, and experts on both data collection and domestic violence prevention issues, the effort to develop informative, succinct and non-burdensome reporting formats continues. During FY 2006 and in concert with State FVPSA administrators, State domestic violence coalitions, and local service providers, four (4) States have volunteered as pilot sites to assess proposed program reporting procedures and test the reliability of the outcome measures for FVPSA programs. Any recommended changes for information and reporting formats will be accompanied by specifically designated workshops or adjunctive discussions to regularly occurring meetings.

II. Funds Available

For FY 2007, HHS will make available for grants to designated State agencies 70 percent of the amount appropriated under section 310(a)(1) of FVPSA, which is not reserved under section 310(a)(2). In separate announcements, HHS will allocate 10 percent of the foregoing appropriation to Tribes and Tribal organizations for the establishment and operation of shelters, safe houses, and the provision of related services; and 10 percent to the State Domestic Violence Coalitions to continue their work within the domestic violence community by providing technical assistance and training, and advocacy services among other activities with local domestic violence programs and to encourage appropriate responses to domestic violence within the States.

Five percent of the amount appropriated under section 310(a)(1) of FVSPA, which is not reserved under section 310(a)(2), will be available in FY 2007 to continue the support for the NRC and the four SIRCs. Additional funds appropriated under FVPSA will be used to support other activities, including training and technical assistance, collaborative projects with advocacy organizations and service providers, data collection efforts, public education activities, research and other demonstration projects, as well as the ongoing operation of the Hotline.

State Allocation

FVPSA grants to the States, the District of Columbia, and the Commonwealth of Puerto Rico are based on a population formula. Each State grant shall be $600,000 with the remaining funds allotted to each State on the same ratio as the population of the State has to the population of all States (section 304(a)(2)). State populations are determined on the basis of the most recent census data available to the Secretary of HHS and, the Secretary shall use for such purpose, if available, the annual current interim census data produced by the Secretary of Commerce pursuant to section 181 of Title 13.

For the purpose of computing allotments, the statute provides that Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands will each receive grants of not less than one-eighth of one percent of the amounts appropriated (section 304(a)(1)).

Expenditure Period

FVPSA funds may be used for expenditures on and after October 1 of each fiscal year for which they are granted, and will be available for expenditure through September 30 of the following fiscal year, i.e., FY 2007 funds may be used for expenditures from October 1, 2006, through September 30, 2008. Funds are available for obligation through September 30, 2008, and must be liquidated by September 30, 2009.

Re-allotted funds, if any, are available for expenditure until the end of the fiscal year following the fiscal year that the funds became available for re-allotment. FY 2007 grant funds that are made available to the States through re-allotment, under section 304(d)(2), must be expended by the State no later than September 30, 2008.

III. Eligibility

''States'' as defined in section 320 of FVPSA are eligible to apply for funds. The term ''State'' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. In the past, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa have applied for funds as a part of their consolidated grant under the Social Services Block grant. These jurisdictions need not submit an application under this program announcement if they choose to have their allotment included as part of a consolidated grant application.

Additional Information on Eligibility

D–U–N–S Requirement

All applicants must have a D&B Data Universal Numbering System (D–U–N–S) number. On June 27, 2003, the Office of Management and Budget (OMB) published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a D–U–N–S number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The D–U–N–S number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal, *Grants.gov*. A D–U–N–S number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs, submitted on or after October 1, 2003.

Please ensure that the applicant's organization has a D–U–N–S number. To acquire a D–U–N–S number at no cost call the dedicated toll-free D–U–N–S number request line at 1–866–705–5711 or request a number online at *http://www.dnb.com*.

IV. Application Requirements

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average six hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under the Office of Management and Budget (OMB) control number 0970–0280, which expires October 31, 2008. 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.

Form and Content of Application Submission

The State's application must be submitted by the Chief Executive of the State and signed by the Chief Executive Officer or the Chief Program Official designated as responsible for the administration of FVPSA.

Each application must contain the following information or documentation:

(1) The name of the State agency, the name of the Chief Program Official designated as responsible for the administration of funds under FVPSA and coordination of related programs within the State, and the name of a contact person if different from the Chief Program Official (section 303(a)(2)(D)).

(2) A plan describing in detail how the needs of underserved populations will be met. ''Underserved populations'' include populations underserved because of geographic location (such as rural isolation), underserved racial and ethnic populations, populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age), and any other population determined to be underserved by the State planning process in consultation with the Attorney General (section 303(a)(2)(C)).

(a) Identify the underserved populations that are being targeted for outreach and services.

(b) In meeting the needs of the underserved population, describe the domestic violence training that will be provided to the individuals who will do the outreach and intervention to these populations. Describe the specific service environment, e.g., new shelters; services for the battered, elderly, women of color, etc.

(c) Describe the public information component of the State's outreach program; the elements of the program that are used to explain domestic violence, the most effective and safe ways to seek help; tools to identify available resources, etc.

(3) Provide a complete description of the process and procedures used to involve State domestic violence coalitions, knowledgeable individuals, and interested organizations, and assure whether a grantee is in compliance with section 303(a)(2) as required by sections 303 (a)(2)(C) and 311(a)(5).

(4) Provide a complete description of the process and procedures to be implemented that allow for the participation of the State domestic violence coalition in planning and monitoring the distribution of grant funds and determining whether a

grantee is in compliance with section 303(a)(2) as required by sections 303(a)(2)(C) and 311(a)(5).

(5) Provide a copy of the procedures developed and implemented that assure the confidentiality of records pertaining to any individual who has been provided family violence prevention or treatment services by any program assisted under FVPSA (section 303(a)(2)(E)).

(6) Include a description of how the State plans to use the grant funds; a description of the target population; the number of shelters to be funded; the services the State will provide; and the expected results from the use of the grant funds (section 303(a)(2)).

(7) Provide a copy of the law or procedures that the State has implemented for the eviction of an abusive spouse from a shared household (section 303 (a)(2)(F)).

Assurances

Each application must provide the following assurances:

(1) That grant funds under FVPSA will be distributed to local public agencies and non-profit private organizations (including religious and charitable organizations and voluntary associations) for programs and projects within the State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents in order to prevent future violent incidents (section 303(a)(2)(A)).

(2) That not less than 70 percent of the funds distributed shall be used for immediate shelter and related assistance, as defined in section 320(5)(A), to the victims of family violence and their dependents and not less than 25 percent of the funds distributed shall be used to provide related assistance (section 303(g)).

(3) That not more than five percent of the funds will be used for State administrative costs (section 303(a)(2)(B)(i)).

(4) That in distributing the funds, the States will give special emphasis to the support of community-based projects of demonstrated effectiveness carried out by non-profit, private organizations, particularly for those projects where the primary purpose is to operate shelters for victims of family violence and their dependents and those which provide counseling, advocacy, and self-help services to victims and their children (section 303(a)(2)(B)(ii)).

(5) That grants funded by the States will meet the matching requirements in section 303(f), i.e., not less than 20 percent of the total funds provided for a project under Chapter 110 of Title 42 of the U.S.C. with respect to an existing program, and with respect to an entity intending to operate a new program under this Title, not less than 35 percent. The local share will be cash or in-kind; and the local share will not include any Federal funds provided under any authority other than this chapter (section 303(f)).

(6) That grant funds made available under this program by the State will not be used as direct payment to any victim or dependent of a victim of family violence (section 303(d)).

(7) That no income eligibility standard will be imposed on individuals receiving assistance or services supported with funds appropriated to carry out FVPSA (section 303(e)).

(8) That the address or location of any shelter-facility assisted under FVPSA will not be made public, except with the written authorization of the person or persons responsible for the operation of such shelter (section 303(a)(2)(E)).

(9) That all grants, programs or other activities funded by the State in whole or in part with funds made available under FVPSA will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(10) That funds made available under the FVPSA will be used to supplement and not supplant other Federal, State and local public funds expended to provide services and activities that promote the purposes of the FVPSA (section 303(a)(4).

Certifications

All applications must submit or comply with the required certifications found in the Appendices as follows:

Anti-Lobbying Certification and Disclosure Form (See Appendix A): Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by OMB under control number 0348–0046). Applicants should sign and return the certification with their application.

Certification Regarding Environmental Tobacco Smoke (See Appendix B): Applicants must also understand they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Title XII Environmental Tobacco Smoke (also known as the Pro Children Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Certification Regarding Drug-Free Workplace Requirements (See Appendix C): The signature on the application by the chief program official attests to the applicant's intent to comply with the Drug-Free Workplace requirements and compliance with the Debarment Certification. The Drug-Free Workplace certification does not have to be returned with the application. These certifications also may be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

Notification Under Executive Order 12372

For States, this program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' for State plan consolidation and implication only—45 Code of Federal Regulations (CFR) 100.12. The review and comment provisions of the Executive Order and Part 100 do not apply.

Applications should be sent to: Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Attention: Ms. Sunni Knight, 1250 Maryland Avenue, SW., Room 8240, Washington, DC 20024.

V. Approval/Disapproval of a State Application

The Secretary of HHS will approve any application that meets the requirements of FVPSA and this announcement and will not disapprove any such application except after reasonable notice of the Secretary's intention to disapprove has been provided to the applicant and after a six-month period providing an opportunity for the applicant to correct any deficiencies. The notice of intention to disapprove will be provided to the applicant within 45 days of the date of the application.

VI. Reporting Requirements

Performance Reports

Section 303(a)(4) requires that States file a performance report with HHS describing the activities carried out, and inclusion of an assessment of the effectiveness of those activities in achieving the purposes of the grant. Section 303(a)(5) requires that the State file a report that contains a description of the activities carried out with funds expended for State administrative costs.

A section of this performance report must be completed by each grantee or sub-grantee that performed the direct services contemplated in the State's

application certifying performance of such services. State grantees should compile performance reports into a comprehensive report for submission.

The Performance Report should include the following data elements as well as narrative examples of success stories about the services that were provided. The Performance Report should include the following data elements:

Funding—The total amount of the FVPSA grant funds awarded. The percentage of FVPSA funds as a portion of total funding. The percentage of FVPSA funding used for shelters, and the percentage of funding used for related assistance and services.

Shelters—The total number of shelters and shelter alternatives (safe homes/motels, etc.) assisted by FVPSA program funding. Data elements should include:

- The number of women sheltered.
- The number of shelters in the State.
- The number of safe houses and shelter alternatives in the State.
- The number of non-residential programs assisted by FVPSA in the State.
- The number of young children sheltered (birth-12 years of age).
- The number of teenagers and young adults sheltered (13–18 years of age).
- The number of men sheltered.
- The number of elderly sheltered (greater than 55 years of age).
- The number of elderly individuals provided non-residential services.
- The average length of shelter stay.
- The number of women, children, teens, and others who at were referred to other shelters due to a lack of space.

Types of individuals served—Record information by numbers and percentages of the total population served. Individuals and special populations served should include:

- Elderly; and
- Individuals with physical challenges.

Related assistance and services—List the types of related assistance and services provided to victims and their family members by indicating the number of women, children and men who have received services. Services and assistance may include, but are not limited to, the following:

- Individual counseling;
- Group counseling;
- Crisis intervention hotline;
- Information and referral;
- Batterers' support services;
- Legal advocacy services;
- Transportation;
- Services to teenagers;
- Emergency child care;
- Training and technical assistance; and
- Housing advocacy.

Volunteers—List the total number of volunteers and hours worked.

Service referrals—List the number of women, children and men referred for the following service reasons:

- Physical abuse;
- Alcohol abuse;
- Drug abuse;
- Batterer intervention services;
- Emergency medical intervention; and
- Law enforcement intervention.

Narratives of success stories—Provide narratives of success stories of services provided and the positive impact on the lives of children and families. Examples may include the following:

- An explanation of the activities carried out, including an assessment of the major activities supported by the family violence funds, what particular priorities within the State were addressed and what special emphases were placed on these activities;
- A description of the specific services and facilities that the applicant's agency funded, contracted with, or otherwise used in the implementation of its program (e.g., shelters, safe-houses, related assistance, programs for batterers);
- An assessment of the effectiveness of the direct service activities contemplated in the application;
- A description of how the needs of under-served populations, including populations under-served because of ethnic, racial, cultural, language diversity or geographic isolation were addressed;
- A description and assessment of the prevention activities supported during the program year, e.g., community education events, and public awareness efforts; and
- A discussion of exceptional issues or problems arising, but not addressed, in the application.

Performance Reports for the States are due on an annual basis at the end of the calendar year (December 29). Performance Reports should be sent to: Family Violence Prevention and Services Program, Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Attention: William D. Riley, 1250 Maryland Avenue, SW., Room 8402, Washington, DC 20024.

Please note that section 303(a)(4) of FVPSA requires HHS to suspend funding for an approved application if any State applicant fails to submit an annual Performance Report or if the funds are expended for purposes other than those set forth under this announcement.

Financial Status Reports

Grantees must submit annual Financial Status Reports. The first SF–269A is due December 29, 2007. It covers expenditures from date of award through September 30, 2007. The interim SF–269A is due December 29, 2008. The final SF–269A is due December 29, 2009. SF–269A can be found at *http://www.whitehouse.gov/omb/grants/grants_forms.html.*

Completed reports may be mailed to: Rachel Hickson, Division of Mandatory Grants, Office of Grants Management, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Grantees have the option of submitting their reports online through the Online Data Collection (OLDC) system at the following address: *https://extranet.acf.hhs.gov/ssi.* The Division of Mandatory Grants can assist grantees with access to OLDC.

Failure to submit reports on time may be a basis for withholding grant funds, suspension or termination of the grant. All funds reported as unobligated after the obligation period will be recouped.

VII. Administrative and National Policy Requirements

States will comply with the applicable HHS recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR Part 92.

Direct Federal grants, sub-award funds, or contracts under this ACF program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. Regulations pertaining to Equal Treatment for Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at the HHS Web site at: *http://www.hhs.gov/fbci/regs.html.*

Faith-based and community organizations may reference the ''Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government'' at: *http://www.whitehouse.gov/government/fbci/guidance/index.html.*

VIII. Other Information

For Further Information Contact: William D. Riley at (202) 401–5529 or e-mail at *WRiley@acf.hhs.gov,* or Sunni Knight at (202) 401–5319 or e-mail at *GKnight@acf.hhs.gov.*

Dated: January 4, 2007.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

Appendices—Required Certifications

A. Certification Regarding Lobbying
B. Environmental Tobacco Smoke
C. Drug-Free Workplace Requirements

Appendix A—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Appendix B—Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Appendix C—Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE–WIDE AND STATE AGENCY–WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement;

consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within 10 calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Family Violence Prevention and Services/Grants to State Domestic Violence Coalitions

Program Office: Administration on Children, Youth, and Families (ACYF), Family and Youth Services Bureau (FYSB)

Program Announcement Number: HHS–2007–ACF–ACYF–SDVC–0122

Announcement Title: Family Violence Prevention and Services/Grants to State Domestic Violence Coalitions

CFDA Number: 93.591

Due Date for Applications: February 15, 2007.

Executive Summary: This announcement governs the proposed award of formula grants under the Family Violence Prevention and Services Act (FVPSA) to private, non-profit State Domestic Violence Coalitions (Coalitions). The purpose of these grants is to assist in the conduct of activities to promote domestic violence intervention and prevention and to increase public awareness of domestic violence issues.

This notice for family violence prevention and services grants to Coalitions serves two purposes. The first is to confirm a Federal commitment to reducing domestic violence; and the second purpose is to urge States, localities, cities, and the private sector to become involved in State and local planning towards an integrated service delivery approach.

I. Description

Legislative Authority: Title III of the Child Abuse Amendments of 1984 (Pubic Law (Pub L.) 98–457, 42 United States Code (U.S.C.) 10401 et seq.) is entitled the ''Family Violence Prevention and Services Act'' (FVPSA). FVPSA was first implemented in Fiscal Year (FY) 1986. The statute was subsequently amended by Pub L. 100–294, the ''Child Abuse Prevention, Adoptions, and Family Services Act of 1988;'' further amended in 1992 by Pub L. 102–295; and then amended in 1994 by Pub L. 103–322, the ''Violent Crime Control and Law Enforcement Act.'' FVPSA was amended again in 1996 by Pub L. 104–235, the ''Child Abuse Prevention and Treatment Act (CAPTA) of 1996;'' in 2000 by Pub L. 106–386, the ''Victims of Trafficking and Violence Protection Act,'' and amended further by Pub L. 108–36, the ''Keeping Children and Families Safe Act of 2003.'' FVPSA was most recently amended by Pub L. 109–162, the ''Violence Against Women Reauthorization Act of 2005'' and by Pub L. 109–271, which was enacted on August 17, 2006.''

Background

Section 311 of FVPSA authorizes the U.S. Department of Health and Human Services (HHS) Secretary to award grants to statewide, private, non-profit Coalitions to conduct activities to promote domestic violence intervention and prevention and to increase public awareness of domestic violence issues.

Annual State Domestic Violence Coalition Grantee Conference

Coalitions should plan to send one or more representatives to the annual grantee conference. A subsequent Program Instruction and/or Information Memorandum will advise Coalition administrators of the date, time, and location of their grantee conference.

Client Confidentiality

FVPSA programs must establish or implement policies and protocols for maintaining the safety and confidentiality of the adult victims and their children of domestic violence, sexual assault, and stalking. It is essential that the confidentiality of individuals receiving FVPSA services be protected. Consequently, when providing statistical data on program activities and program services, individual identifiers of client records

will not be used (see Section 303(a)(2)(E)).

The confidentiality provisions described at 42 U.S.C., 13701, apply to programs funded under the Violence Against Women Act, as amended, including certain awards made under the Family Violence Prevention and Services Act. These confidentiality requirements were strengthened and clarified with the passage of the Violence Against Women Reauthorization Act of 2005, Pub L. 109–162, as recently amended by Pub L. 109–271. The revised confidentiality provisions impose conditions regarding the disclosure of personally identifying information, confidentiality, information sharing, and compulsory release of information.''

Stop Family Violence Postal Stamp

The U.S. Postal Service was directed by the ''Stamp Out Domestic Violence Act of 2001'' (the Act), Pub L. 107–62, to make available a ''semipostal'' stamp to provide funding for domestic violence programs. Funds raised in connection with sales of the stamp, less reasonable costs, have been transferred to HHS in accordance with the Act for support of services to children and youth affected by domestic violence.

As of FY 2006, $2.3 million has been transferred and made available in support of grants for ''Demonstration Programs for the Enhanced Services to Children and Youth Who Have Been Exposed to Domestic Violence.'' Sixty-five (65) applications were received and reviewed in FY2005 and nine (9) successful applicants are in the second year of their projects. The project sites are in Castle Rock, CO; Harrisburg, PA; Oklahoma City, OK: Oakland, CA.; Albany, NY; Lansing, MI; Richmond, VA; and Washington, DC. ACF anticipates information on the progress and activities of the successful applicants and their programs in FY 2007.

The Importance of Coordination of Services

The impacts of domestic violence include physical injury and death of primary or secondary victims, psychological trauma, isolation from family and friends, harm to children witnessing or experiencing violence in homes in which the violence occurs, increased fear, reduced mobility and employability, homelessness, substance abuse, and a host of other health and related mental health consequences.

Coordination and collaboration among the police, prosecutors, the courts, victim services providers, child welfare and family preservation services, and medical and mental health service providers is needed to provide more responsive and effective services to victims of domestic violence and their families. It is essential that all interested parties are involved in the design and improvements of intervention and prevention activities.

To help bring about a more effective response to the problem of domestic violence, HHS urges the designated Coalitions receiving funds under this grant announcement to continue to coordinate activities funded under this grant with other new and existing resources for the prevention of family and intimate violence and related issues.

National Data Collection and Outcomes Measurement

The need to accurately communicate reliable and appropriate data that capture the impact of domestic violence prevention and intervention efforts and to provide shelters, States, and Coalitions with tools for self-assessment continues as the Documenting our Work (DOW) Initiative. In collaboration with our partners at the State FVPSA programs, Coalitions, and experts on both data collection and domestic violence prevention issues, the effort to develop informative, succinct, and non-burdensome reporting formats continues. During FY 2006 and in concert with State FVPSA administrators, Coalitions and local service providers, four states have volunteered as pilot sites to assess proposed program reporting procedures and test the reliability of the outcome measures for FVPSA programs. Any recommended changes for information and reporting formats will be accompanied by specifically designated workshops or adjunctive discussions to regularly occurring meetings.

II. Funds Available

In FY 2007, HHS will make 10 percent of the amount appropriated under section 310(a)(1) of the FVPSA, which is not reserved under section 310(a)(2), available for grants to the State-designated, statewide, domestic violence Coalitions. One grant will be available for each of the Coalitions in the 50 States, the Commonwealth of Puerto Rico, and the District of Columbia. The Coalitions of the U.S. Territories (Guam, U.S. Virgin Islands, Northern Mariana Islands, American Samoa, and Trust Territory of the Pacific Islands) are also eligible for grant awards under this announcement.

Expenditure Period

FVPSA funds may be used for expenditures on or after October 1 of each fiscal year for which they are granted and will be available for expenditure through September 30 of the following fiscal year, i.e., FY 2007 funds may be used for expenditures from October 1, 2006, through September 30, 2008. Funds are available for obligation through September 30, 2008, and must be liquidated by September 30, 2009.

III. Eligibility

To be eligible for grants under this program announcement, an organization shall be designated as a statewide, private, non-profit domestic violence coalition meeting the following criteria:

(1) The membership of the Coalition includes representatives from a majority of the programs for victims of domestic violence operating within the State (a Coalition may include representatives of Indian Tribes and Tribal organizations as defined in the Indian Self-Determination and Education Assistance Act);

(2) The Board membership of the Coalition is representative of such programs;

(3) The purpose of the Coalition is to provide services, community education, and technical assistance to domestic violence programs in order to establish and maintain shelter and related services for victims of domestic violence and their children; and

(4) In the application submitted by the Coalition for the grant, the Coalition provides assurances satisfactory to the Secretary that the Coalition:

(a) Has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial entities in the preparation of the application; and

(b) Will actively seek and encourage the participation of such entities in the activities carried out with the grant (Section 311(b)(4)).

Additional Information on Eligibility

D–U–N–S Requirement

All applicants must have a D&B Data Universal Numbering System (D–U–N–S) number. On June 27, 2003, the Office of Management and Budget (OMB) published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a D–U–N–S number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The D–U–N–S number will be required whether an

applicant is submitting a paper application or using the government-wide electronic portal, *Grants.gov*. A D–U–N–S number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs, submitted on or after October 1, 2003.

Please ensure that the applicant's organization has a D–U–N–S number. To acquire a D–U–N–S number at no cost call the dedicated toll-free D–U–N–S number request line at 1–866–705–5711 or request a number on-line at *http://www.dnb.com*.

Survey for Private Non-Profit Grant Applicants

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

IV. Application Requirements For State Domestic Violence Coalition (Coalitions) Applications

This section includes application requirements for family violence prevention and services grants for Coalitions, as follows:

The Paperwork Reduction Act of 1995 (Pub L. 104–13)

Public reporting burden for this collection of information is estimated to average six hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under the Office of Management and Budget (OMB) control number 0970–0280, which expires October 31, 2008. 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.

Form and Content of Application Submission

The Coalition application must be signed by the Executive Director of the Coalition or the official designated as responsible for the administration of the grant. The application must contain the following information:

(We have cited each requirement to the specific section of the law.)

(1) A description of the process and anticipated outcomes of utilizing these Federal funds to work with local domestic violence programs and providers of direct services to encourage appropriate responses to domestic violence within the State, including—Training and technical assistance for local programs and professionals working in the field:

(a) Planning and conducting State needs assessments and planning for comprehensive services;

(b) Serving as an information clearinghouse and resource center for the State; and

(c) Collaborating with other governmental systems that affect battered women (Section 311(a)(1)).

(2) A description of the public education campaign regarding domestic violence to be conducted by the Coalition through the use of public service announcements and informative materials that are designed for print media; billboards; public transit advertising; electronic broadcast media; and other forms of information dissemination that inform the public about domestic violence, including information aimed at underserved racial, ethnic or language-minority populations (Section 311(a)(4)).

(3) The anticipated outcomes and a description of planned grant activities to be conducted in conjunction with judicial and law enforcement agencies concerning appropriate responses to domestic violence cases and an examination of related issues as set forth in Section 311(a)(2) of the FVPSA.

(4) The anticipated outcomes and a description of planned grant activities to be conducted in conjunction with Family Law Judges, Criminal Court Judges, Child Protective Services agencies, Child Welfare agencies, Family Preservation and Support Service agencies, and children's advocates to develop appropriate responses to child custody and visitation issues in domestic violence cases and in cases where domestic violence and child abuse are both present. Appropriate responses identified in section 311(a)(3) of the FVPSA should be included. The anticipated outcomes and a description of other activities in support of the general purpose of furthering domestic violence intervention and prevention (Section 311(a)(3)).

(5) The following documentation will certify the status of the Coalition and must be included in the grant application:

(a) A description of the procedures developed between the State domestic violence agency and the statewide Coalition that allow for implementation of the following cooperative activities:

(i) The participation of the Coalition in the planning and monitoring of the distribution of grants and grant funds provided in the State (Section 311(a)(5)); and

(ii) The participation of the Coalition in compliance activities regarding the State's family violence prevention and services program grantees (Sections 303(a)(2)(C) and (a)(3)).

(b) Unless already on file at HHS, a copy of a currently valid 501(c)(3) certification letter from the IRS stating private, non-profit status; or a copy of the applicant's listing in the IRS' most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code; or

(c) A copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled;

(d) A current list of the organizations operating programs for victims of domestic violence programs in the State and the applicant Coalition's current membership list by organization;

(e) A list of the applicant Coalition's current Board of Directors, with each individual's organizational affiliation and the Chairperson identified;

(f) A copy of the resume of any Coalition or contractual staff to be supported by funds from this grant and/or a statement of requirements for staff or consultants to be hired under this grant; and

(g) A budget narrative that clearly describes the planned expenditure of funds under this grant.

(6) Required Documentation and Assurances (included in the application as an appendix):

(a) The applicant Coalition must provide documentation in the form of support letters, memoranda of agreement, or jointly signed statements, that the Coalition:

(i) Has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial organizations in the preparation of the grant application (Section 311(b)(4)(A)); and

(ii) Will actively seek and encourage the participation of such organizations in grant funded activities (Section 311(b)(4)(B)).

(b) The applicant Coalition must provide a signed statement that the Coalition will not use grant funds, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive Order or similar legal document by any Federal, State or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress, or any State, or local legislative body, or State proposals by

initiative petition, except where representatives of the Coalition are testifying, or making other appropriate communications, or when formally requested to do so by a legislative body, a committee, or a member of such organization (Section 311(d)(1)); or in connection with legislation or appropriations directly affecting the activities of the Coalition or any member of the Coalition (Section 311(d)(2)).

(c) The applicant Coalition must provide a signed statement that the Coalition will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (Section 307).

(d) The applicant will comply with Departmental requirements for the administration of grants under 45 CFR Part 74—Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Non-profit Organizations and Commercial Organizations.

Certifications

All applicants must submit or comply with the required certifications found in the Appendices, as follows:

Certification Regarding Lobbying (See Appendix A): Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by OMB under control number 0348–0046). Applicants should sign and return the certification with their application.

Certification Regarding Environmental Tobacco Smoke (See Appendix B): Applicants must also understand they will be held accountable for the smoking prohibition included within Pub.L. 103–227, Title XII Environmental Tobacco Smoke (also known as the Pro-Children Act of 1994). A copy of the **Federal Register** notice that implements the smoking prohibition is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Certification Regarding Drug-Free Workplace Requirements (See Appendix C): The signature on the application by the program official attests to the applicants' intent to comply with the Drug-Free Workplace requirements and compliance with the Debarment Certification. The Drug-Free Workplace certification does not have to be returned with the application.

These certifications also may be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Notification Under Executive Order 12372

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs'' for State plan consolidation and simplification only—45 CFR 100.12. The review and comment provisions of the Executive Order and Part 100 do not apply.

Applications should be sent to: Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, *Attention:* William D. Riley, 1250 Maryland Avenue, SW., Room 8402, Washington, DC 20024.

V. Reporting Requirements

Performance Reports

The Coalition grantee must submit an annual report of activities describing the coordination, training and technical assistance, needs assessment, and comprehensive planning activities carried out. Additionally, the Coalition must report on the public information and education services provided; the activities conducted in conjunction with judicial and law enforcement agencies; the actions conducted in conjunction with other agencies such as the State child welfare agency; and any other activities undertaken under this grant award. The annual report also must provide an assessment of the effectiveness of the grant-supported activities.

The annual report is due 90 days after the end of the fiscal year in which the grant is awarded, i.e., December 29. Annual reports should be sent to: Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, *Attention:* William D. Riley, 1250 Maryland Avenue, SW., Room 8402, Washington, DC 20024.

Please note that HHS may suspend funding for an approved application if any applicant fails to submit an annual performance report or if the funds are expended for purposes other than those set forth under this announcement.

Financial Status Reports

Grantees must submit annual Financial Status Reports. The first SF–269A is due December 29, 2007. It covers expenditures from date of award through September 30, 2007. The interim SF–269A is due December 29, 2008. The final SF–269A is due December 29, 2009. SF–269A can be found at the following URL: *http://www.whitehouse.gov/omb/grants/grants_forms.html.*

Completed reports should be sent to: Rachel Hickson, Division of Mandatory Grants, Office of Grants Management, Office of Administration, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Grantees have the option to submit their reports online through the Online Data Collection (OLDC) system at the following address: *https://extranet.acf.hhs.gov/ssi.* The Division of Mandatory Grants can assist grantees with access to OLDC. Failure to submit reports on time may be a basis for withholding grant funds, suspension or termination of the grant. In addition, all funds reported after the obligation period will be recouped.

VI. Administrative and National Policy Requirements

Grantees are subject to the requirements in 45 CFR Part 74.

Direct Federal grants, sub-award funds, or contracts under this ACF program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. Regulations pertaining to Equal Treatment for Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at the HHS Web site at *http://www.hhs.gov/fbci/regs.html.*

Faith-based and community organizations may reference the ''Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government'' at *http://www.whitehouse.gov/government/fbci/guidance/index.html.*

VII. Other Information

For Further Information Contact: William D. Riley at (202) 401–5529 or e-mail at *WRiley@acf.hhs.gov.*

Dated: January 4, 2007.

Joan E. Ohl,

Commissioner, Administration on Children, Youth, and Families.

Appendices: Required Certifications

A. Certification Regarding Lobbying
B. Environmental Tobacco Smoke
C. Drug-Free Workplace Requirements

Appendix A—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

Appendix B—Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Appendix C—Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within 10 calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted —

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code) .

_____

_____

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[FR Doc. E7–374 Filed 1–12–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0005]

Prescription Drug User Fee Act; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA, we) is publishing proposed recommendations for the reauthorization of the Prescription Drug User Fee program for the process of human drug application review for fiscal years (FY) 2008 to 2012. These proposed recommendations were developed after discussions with regulated industry and consultation with appropriate scientific and academic experts, healthcare professionals, and representatives of patient and consumer advocacy groups. Section 505 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, enacted June 12, 2002, directs FDA to publish these proposed recommendations in the **Federal Register**; hold a meeting at which the public may present its views on such recommendations; and provide for a period of 30 days for the public to provide written comments on such recommendations.

DATES: The public meeting will be held on February 16, 2007, from 9 a.m. to 5 p.m. Submit written comments by February 23, 2007. Registration to attend the meeting must be received by February 2, 2007.

ADDRESSES: The meeting will be held at the Grand Hyatt Washington at Washington Center, 1000 H St. NW., Washington, DC 20001. Located at the Metro Center metro stop. Follow 11th St. exit to the lobby of the Grand Hyatt. For additional directions, see the hotel Web site at: *http://grandwashington.hyatt.com/hyatt/hotels/*.

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT:

For information regarding this document, contact: Ann Sullivan, Office of Policy and Planning (HFP–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5887, FAX: 301–827–5225, e-mail: *Ann.Sullivan@fda.hhs.gov*.

For information regarding registration, contact: Bernadette Kawaley, Office of Communication, Training and Manufacturers Assistance (HFM–49), Food and Drug Administration, Center for Biologics Evaluation and Research, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–2000, FAX: 301–827–3079.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Prescription Drug User Fee Act (PDUFA I), first enacted in 1992 (Public Law 102–571, October 29, 1992), authorized FDA to collect user fees from regulated industry that were to be dedicated to expediting the review of human drug applications in accordance with certain performance goals identified in letters from the Secretary of Health and Human Services to the Chairman of the Energy and Commerce Committee of the House of Representatives and the Chairman of the Labor and Human Resources Committee of the Senate (138 Cong. Rec. H9099–H9100 (daily ed. September 22, 1992)). In 1997, as PDUFA I expired, Congress passed the Food and Drug Administration Modernization Act (FDAMA, Public Law 105–115). FDAMA included, among other things, an extension of PDUFA (PDUFA II) for an additional 5 years. In 2002, Congress extended PDUFA again for 5 years (PDUFA III) through the Public Health

Security and Bioterrorism Preparedness and Response Act (Public Law 107–188).

Before PDUFA, FDA's review process was more unpredictable, and slower. At the same time, regulators in other countries were able to review products faster. Access to new medicines for U.S. patients lagged behind. For example, a 1989 study by researchers at Tufts University, analyzing differences in the number of new drugs introduced and time to marketing in the United Kingdom compared to the United States for the period 1977 to 1987, found that the United Kingdom led the United States in the number of first introductions of new drugs (114 versus 41) and in the average lead time for mutually available drugs (60.7 months lead time in the United Kingdom versus 28.9 months in the United States) and in the number of exclusively available new drugs (70 versus 54).[1] In addition, a 1992 review of the international literature related to drug lag found that most studies reported the United States, Sweden and Norway to have a long delay in the introduction of new drugs, while the United Kingdom and (West) Germany were generally found to have the shortest delay.[2] Chronic understaffing of drug review and related delays in U.S. patient access to new drugs led to the 1992 enactment of PDUFA. PDUFA provided FDA with added funds that enabled the agency to hire additional reviewers and support staff and upgrade its information technology systems to speed the application review process for new drugs and biological products without compromising FDA's high standards for approval.

Since the beginning of the PDUFA program, there has been a significant improvement in FDA funding for the drug review program, including significant investments in information technology. PDUFA has enabled FDA to virtually double the staff dedicated to the process of reviewing human drug applications since 1992.

Under PDUFA, the industry provides additional funds through user fees that are available to FDA, in addition to appropriated funds, to spend on the human drug review process. Our authority to collect user fees is ''triggered'' only when a base amount of appropriated funds, adjusted for inflation, is spent.

In conjunction with PDUFA, FDA set review performance goals that became more stringent each year. These goals applied to the review of original new human drug and biological product applications, resubmissions of original applications, and supplements to approved applications. During the first few years of PDUFA I, we eliminated backlogs of original applications and supplements that had formed in earlier years when the program had fewer resources. Phased in over the 5 years of PDUFA I, the goals were to review and act on 90 percent of priority new drug applications (NDAs), biologics license applications (BLAs), and efficacy supplements (i.e., submissions for products providing significant therapeutic gains) within 6 months of submission of a complete application; to review and act on 90 percent of nonpriority original NDAs, BLAs, and efficacy supplements within 12 months, and on resubmissions and manufacturing supplements within 6 months. Over the course of PDUFA I, we exceeded all of these performance goals.

Under PDUFA II, some review performance goals continued to shorten. For example, by 2002, the PDUFA II goals called on us to review and act on 90 percent of the following:

- Standard new drug and biological product applications and efficacy supplements within 10 months,
- Chemistry and manufacturing control supplements requiring prior FDA approval within 4 months, and
- Class 1 resubmissions (that respond to relatively minor deficiencies such as labeling changes) within 2 months.

In addition, PDUFA II added a new set of goals intended to improve our interactions with industry sponsors during the early years of drug development, again with the goal of making promising new drug therapies available to patients sooner. For example, these procedural goals called for us to meet with sponsors and provide followup meeting minutes within a certain number of days, and provide responses to questions on industry submitted special study protocols within a certain number of days. For example, PDUFA II goals called for us to respond to 90 percent of industry requests:

- Scheduling Type A meetings within 30-calendar days of FDA receipt of the meeting request,
- Scheduling Type B meetings within 60-calendar days of FDA receipt of the meeting request,
- Scheduling Type C meetings within 75-calendar days of FDA receipt of the meeting request, and
- Completing written assessments of the adequacy of special protocols within 45 days of sponsor requests.

However, the agency experienced a much heavier review workload than was accounted for by PDUFA II fee funding. By the end of PDUFA II, the program was beginning to falter in terms of both performance and financial stability. Although we were able to meet the letter of the performance deadlines in many cases, FDA reviewers were not able to allocate time for earlier and more frequent communication and feedback to sponsors that might have resulted in better-quality applications and a higher rate of first-cycle approvals.

Under the current program, reauthorized in 2002 (PDUFA III), additional money from user fees was authorized to better finance the expanded scope and growing volume of demand for FDA review and consultation, and a mechanism was placed in PDUFA to annually adjust fee revenues for increases in workload associated with the process for the review of human drugs. For the first time, PDUFA III also authorized FDA to spend user fee funds on certain aspects of postmarket risk management. The review performance and procedural goals associated with PDUFA III were similar to those under PDUFA II for FY 2002 performance levels, but the PDUFA III program addressed drug safety issues and established several new initiatives to improve application submissions and agency-sponsor interactions during drug development and application review. The goals under PDUFA III included new provisions, for example, to develop guidance for industry on good risk assessment, risk management, and pharmacovigilance practices; to fund outside expert consultants to help evaluate and improve review management processes; and to centralize accountability and funding for all PDUFA information technology initiatives and activities.

Furthermore, in conjunction with PDUFA's reauthorization in 2002, FDA set the goal of creating a guidance for our review staff and industry on good review management principles and practices (GRMPs) as they apply to the first cycle review of NDAs, BLAs, and efficacy supplements. We also set a goal of evaluating whether providing early review of selected applications and additional feedback and advice to sponsors during drug development for selected products can shorten drug development and review times. Two ''continuous marketing application''

[1] Kaitin, K.I., N. Mattison, F.K. Northington, L. Lasagna, The drug lag: an update of new drug introductions in the United States and in the United Kingdom, 1977 through 1987, *Clinical Pharmacology and Therapeutics*, 1989; 46 (2):121–38.

[2] Andersson, F., The drug lag issue: the debate seen from an international perspective, *International Journal of Health Services*, 1992; 22(1): 53–72.

(CMA) pilot programs were initiated. CMA Pilot 1 provides for the review of a limited number of presubmitted portions of NDAs and BLAs. Under CMA Pilot 2, FDA and applicants can enter into agreements to engage in frequent scientific feedback and interactions during the investigational new drug phase of product development.

When it enacted PDUFA III, Congress enacted special provisions regarding public accountability in the development of recommendations for PDUFA IV. Congress directed FDA, when developing recommendations to the Congress for PDFUA IV, to ''consult with the Committee on Energy and Commerce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, appropriate scientific and academic experts, health care professionals, representatives of patient and consumer advocacy groups, and the regulated industry'' (Section 505. Accountability and Reports).

In preparing our proposed recommendations for PDUFA reauthorization, we have conducted technical discussions with regulated industry and have consulted with stakeholders as required by law. We began our public consultation on PDUFA reauthorization with a public meeting held on November 14, 2005 (*http://www.fda.gov/OHRMS/DOCKETS/98fr/05–20875.htm*).

The meeting included presentations by FDA and a series of panels representing different stakeholder groups, including patient advocates, consumer groups, regulated industry, health professionals and academic researchers. The stakeholders were asked to respond to the following questions: (1) What is your assessment of the overall performance of the PDUFA program thus far and (2) What aspects of PDUFA should be retained, or what should be changed, to further strengthen and improve the program?

There was general agreement among the responding stakeholders that PDUFA should be reauthorized. Most expressed the view that drug review should not only include safety and effectiveness review prior to marketing approval, but also should encompass continued safety monitoring after approval. Many panelists supported increased PDUFA funds for postmarket drug safety surveillance, including developing and monitoring risk management tools. A number of panelists also expressed support for increased resources to fund the review of direct-to-consumer (DTC) advertising. Some panelists expressed concern that over-emphasizing safety might delay patient access to new treatments, and some expressed support for PDUFA funding of ''Critical Path'' projects to help speed new drug development (see *http://www.fda.gov/oc/initiatives/criticalpath/*).

In addition to our initial public meeting in November 2005, we held followup meetings to obtain further input on the PDUFA program and suggestions regarding what features should be proposed or amended with program reauthorization.

On May 22, 2006, we held a meeting with patient advocacy groups. Overall, these groups supported reauthorization of PDUFA as a vehicle for speeding patient access to safe and effective drug therapies. They also suggested that user fees be increased to sufficiently fund postmarket safety activities and that the issues raised in the March 2006 GAO report entitled, ''*Drug Safety: Improvement Needed in FDA's Postmarket Decision-making and Oversight Process*'' (GAO–06–402) *http://www.gao.gov/new.items/d06402.pdf* report on drug safety be addressed. In addition, it was suggested that FDA establish postmarket performance goals, such as milestones for development of a better postmarket safety system.

On May 23, 2006, FDA held a meeting with consumer advocacy groups to get their input on PDUFA reauthorization. Some consumer groups indicated a preference for full funding of human drug review with appropriated funds rather than user fees, but they generally considered fee-funding to be inevitable and PDUFA reauthorization to be necessary. Given this, the consumer advocacy groups who participated in the meeting emphasized that user fees should be used to enable the agency to adequately cover its priorities, but there should be no ties between user fees and performance goals. They also expressed the view that appropriated funding should be increased and there should be increased funding to enhance FDA's capacity for postmarket safety and DTC advertising review. Some consumer advocates further suggested that FDA charge separate fees for DTC advertising review.

On June 23, 2006, we held a meeting with health professional groups to obtain their views and suggestions for reauthorization. The health professional groups supported PDUFA reauthorization to maintain an efficient process and the availability of safe and effective new drugs on the market. They also thought sufficient funding was needed to maintain a competent scientific staff. The health professional groups thought PDUFA fees should be increased to support safety surveillance and risk management, and the current statutory time period for using fee funds for safety-related work should be eliminated or expanded. They also felt that fee-funded support for risk management plans should be expanded to include older drugs as well as those recently approved. They indicated that the issues raised in the March 2006 GAO report on drug safety needed to be addressed. Finally, they suggested that PDUFA funds be increased to support the review of DTC advertising.

Congress also directed FDA to publish in the **Federal Register** the proposed recommendations developed through this process after negotiations with the regulated industry, present the proposed recommendations to the congressional committees specified in the statute, hold a public meeting at which the public can present its views on the proposed recommendations, and provide for a period of 30 days for the public to provide written comment on the proposed recommendations.

We have now concluded discussions with industry and other stakeholders regarding reauthorization of PDUFA. The purpose of this document is to publish the recommendations we intend to propose to Congress and announce the dates for the upcoming public meeting and written comment period. After the public meeting and the close of the 30-day comment period, we plan to undertake a careful review of all public comments on these proposed recommendations.

II. What We Are Proposing to Recommend for PDUFA IV

For PDUFA IV, as described in the following paragraphs, we plan, with a few exceptions, to carry forward the performance goals from PDUFA III and we propose additional goals related to proposed enhancements to the program. Our proposed recommendations fall into three major categories: (1) Proposals to ensure sound financial footing for the human drug review program; (2) proposals to enhance the process for premarket review of human drug applications; and (3) proposals to modernize and transform the postmarket safety system. In addition, we are proposing to recommend a program separate from, but related to, PDUFA pertaining to fees assessed for advisory reviews of DTC television advertisements. The summary table containing the proposals and related fees under PDUFA IV can be found in table 1 of this document. The discussion and additional fee estimates in this section (II) and table 1 of this document,

do not include our proposals and proposed fee revenue figures for review of DTC television advertisements. Those proposals are provided in section III of this document.

TABLE 1.— PDUFA IV FINANCIAL BASELINE AND ENHANCEMENTS (STARTING IN FY 2008)

Financial Baseline	Dollars	FTE
FY 2007 Baseline—Adjusted for Inflation	$305,455,400	1539
Inflation Adjustment for FY 2008	$17,716,600	
Adjustment for Increased Rent and Rent-Related Costs	$11,721,000	
Adjustment for Increased Work per IND & NDA PDUFA III	$20,000,000	87
PDUFA IV Baseline Before Enhancements	**$354,893,000**	**1626**
Enhancements		
Premarket—Expediting Drug Development	$4,600,000	20
Premarket—Improving IT Infrastructure for Drug Review	$4,000,000	
Postmarket—Modernizing and Transforming Safety System	$29,290,000	82
PDUFA IV Total[1] (in FY 2008)	**$392,783,000**	**1728**

[1]Further workload adjustment, to account for work levels in FY 2007, is expected to add about $45,000,000 and 195 FTEs for a final total of about $437,800,000 and 1923 FTEs for FY 2008.

A. Proposed Recommendations to Ensure Sound Financial Footing

Although user fees have provided substantial resources to FDA since the beginning of the program, user fees have not kept up with the increasing costs of the program associated with inflation in pay and benefit costs to the agency, rent and rent-related costs, and workload. Although the current law contains provisions for adjusting fees to reflect the rate of inflation and changes in workload, we found that the statutorily prescribed method for adjusting fees has not adequately accounted for actual growth in costs and workload during PDUFA III. We are proposing changes to the financial provisions of PDUFA to correct for the shortcomings in these adjustment factors and place FDA on a sound financial footing so we can continue with the program and make enhancements to it.

1. Adjustment of Base Fee Revenue Amount for Growth in Cost and Workload

Section 736(b) of the PDUFA provides the basic target fee revenue amounts FDA uses to establish the application, product, and establishment user fees each year. These target fee revenue amounts are then adjusted for inflation and increases in workload, and the resulting number becomes the amount FDA is authorized to collect in fees. The statutory fee revenue amount for FY 2007 was $259,000,000. Adjusted for inflation in accordance with PDUFA, that amount became $305,455,400 for FY 2007. However, the PDUFA IV program will not begin until FY 2008, so it was necessary to further adjust this number to obtain the appropriate target revenues for FY 2008 before any adjustments are made.

FDA's proposed recommendation to Congress resulting from industry discussions is that the base target revenue estimate for FY 2008 should be $392,783,000 and that this estimate should be further adjusted for workload for FY 2007. FDA would calculate the workload adjustment based on submissions through June 30, 2007, and publish the final amount and supporting calculations when fees for FY 2008 are published. The proposed target revenue estimate for FY 2008 includes the following components:

- The base revenue amount authorized in the current statute for FY 2007, adjusted for inflation using provisions of the current statute. This amount is $305,455,400.
- An addition of $17,716,600 to adjust the base amount for inflation for FY 2008. We assume a continuation of the average FDA payroll and benefit cost inflation of 5.8 percent per year (see the Inflation Adjustment discussion in section II.A.2.a of this document).
- An addition of $11,721,000 to ensure that fees cover a proportionate share of the increased costs that FDA will have to pay for rent and rent-related costs and one-time costs of the required move to the White Oak facility in Silver Spring, MD. These costs would be added to the fee total to maintain the needed level of review staffing (and associated direct costs) while also paying for these critical nondiscretionary operating costs.
- An addition of $20,000,000 to adjust the base amount of fee revenues to cover significant increases in FDA's drug review workload that occurred during PDUFA III, but were not captured by the workload adjustment provision of PDUFA III and which we are recommending be revised for PDUFA IV (see the Workload Adjustment discussion in section II.A.2.b of this document). The PDUFA

III workload adjuster captured workload increases associated with increased numbers of submissions, but did not capture workload increases associated with the increased level of effort for each submission. FDA documented that the review effort for each submission increased significantly during PDUFA III. The investigational new drug workload increased markedly because of significantly more meetings per investigational new drug (IND) submitted and because of a sharp increase in the number of special protocol assessments submitted for FDA review.

- An addition of $37,890,000 to fund the proposed enhancements to the PDUFA program, including enhancements to the premarket review program and proposals for modernizing and transforming the postmarket safety system.

The sum of these components yields the proposed target revenue figure of $392,783,000. ($392,883,000 = $305,455,400 + $17,716,600 + $11,721,000 + $20,000,000 + $37,890,000).

2. Proposed Revisions to the Inflation Adjustment and Workload Adjustment Applied to User Fees

(a) *Inflation Adjustment*: The fee revenue amounts for PDUFA III were stated in FY 2003 dollars and the proposed fee revenue amounts for PDUFA IV are stated in FY 2008 dollars. Before fees were assessed each year in PDUFA III, the fee revenue target was increased and compounded based on the higher of either: (1) The CPI/U over the latest 12-month period or (2) the most recent increase in pay for Federal employees in the Washington, D.C. area, compounded since FY 2003. The rate of pay for employees in the Washington D.C. area was higher in all but one year, and the PDUFA III inflation adjustment has resulted in average annual inflation increases of 4.16 percent over each of the last 5 years. However, the actual cost of pay and benefits per full time equivalent (FTE) is increasing faster than this factor. Data from the past 5 years shows that the actual cost of salary and benefits has increased at an average rate of 5.8 percent per year during the past 5 years for FDA. FDA proposes to recommend changing the provision for calculation of the inflation adjustment to add to it a third factor—FDA's actual rate of increase in the costs of pay and benefits per FTE during the most recent 5-year period—and the annual adjustment would be based on the highest of the three factors each year.

(b) *Workload Adjustment*: The workload adjuster currently applied in PDUFA makes adjustments for changes in numbers of applications, but it is flawed in two ways. First, the surrogate for IND workload in the current workload adjuster is the number of new commercial INDs submitted each year. Since each one of these INDs is active for several years, the number of new applications submitted in any 1 year is a poor surrogate for total IND workload. Second, the workload adjuster does not take into account increases in work associated with active INDs, NDAs, and BLAs. During PDUFA, there has been a substantial increase in the numbers of meetings and special protocol assessments per IND submission. However, the current workload adjuster only takes into consideration changes in numbers of submissions—not additional activity required per submission. Since FY 2002, the number of meetings per commercial IND has increased by close to 30 percent, and the number of special protocol assessments is up over 90 percent. This same phenomenon occurs with NDAs as well, but to a somewhat lesser extent.

To remedy these flaws, the following changes are proposed: First, we recommend changing the surrogate for IND workload in the statute from the numbers of new commercial INDs received each year to the total number of active commercial INDs each year. Active INDs are those that have had at least one submission in the previous 12-month period. Second, we recommend using an adjuster applied to the numbers of NDA/BLAs and INDs. The proposed adjuster would adjust the numbers of these applications in proportion to the impact on workload of increased meetings and special protocol adjustments for INDs and for increased meetings, labeling supplements, and annual reports for NDAs and BLAs.

Under the proposed change to the workload adjuster, we also propose to contract with an independent accounting firm to examine the new adjuster and make recommendations, if needed, for further improving this adjuster.

3. Technical Changes to Increase Administrative Efficiency of the User Fee Program

The FDA is proposing to recommend several technical changes to PDUFA to simplify some of FDA's current procedures, to clarify the original intent of several PDUFA definitions, and to remove potential ambiguity. FDA's analysis of the impact of these changes indicates that they would be revenue-neutral and would have a minimal impact on industry fee-payers. These technical proposals include the following:

(a) Simplify the definition of ''human drug application'' to include all new drug applications under section 505(b) of the Federal Food, Drug, and Cosmetic Act;

(b) Amend the definition of ''small business'' for the purpose of fee collection to reinstate language from the original PDUFA statute that specifies that to qualify as a small business, the company may not have an approved product already introduced in or delivered for introduction into interstate commerce;

(c) Include capsules, tablets, and lyophilized products as examples in the definition of final dosage form to provide clarification of what constitutes a finished dosage form;

(d) Revise the waiver provisions to clarify that the person named as the applicant and assessed the user fee is the person who is eligible to request a waiver or reduction of fees;

(e) Change the date for the calculation of the adjustment factor so it can be calculated before the President's budget goes to Congress;

(f) Clarify that for fee purposes, applications withdrawn before filing will be treated as applications that FDA refuses to file, and that they will be assessed a full fee if filed again or filed over protest;

(g) For user fee purposes, reinstate the definition of ''person'' to include affiliates, as enacted under FDAMA

(h) Delay offsets for collections in excess of appropriations in any year to the final year of the PDUFA program and make offsetting reductions only if cumulative fees collected over the first 4 years exceed cumulative appropriations for fees over the same period; and

(i) Revise the definition of ''prescription drug product'' for the purpose of fee collection, to clarify the exclusion of products on discontinued product lists maintained by Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER).

B. Enhancing the Process for Premarket Review

In the premarket review area, several changes were made in PDUFA III as compared to PDUFA II. These are outlined as follows:

- *Continuous marketing application pilot programs*: Two pilot programs were established under PDUFA III to test whether providing early review of selected applications and additional feedback and advice to sponsors during drug development for selected products

can further shorten drug development and review times. Pilot 1 involved a commitment on the part of FDA to review and provide feedback to the sponsor within 6 months of submission of ''reviewable units'' of an application in advance of the submission of the complete application. This pilot program represented an extension of the ''rolling review'' program begun under FDAMA and was limited to applications that had received a Fast Track designation. Pilot 2 involved a commitment on the part of FDA to provide more structured and extensive interaction and feedback to sponsors for up to one Fast Track application per review division during drug development. This pilot represented an extension of the usual interactions between FDA and sponsors during drug development. To evaluate the costs and benefits of these pilots, FDA commissioned an independent assessment. The CMA Pilot 1 Evaluation and Pilot 2 Preliminary Evaluation Studies—Final Report is available on the FDA Web site at *http://www.fda.gov/ope/CMA/CMAFinalReport.pdf*. After review of the findings, FDA and industry representatives have agreed that although the pilots demonstrated value in some areas, the overall added benefits of the programs did not justify their costs to FDA. Therefore, FDA is proposing to recommend that the CMA pilot programs will not be continued in PDUFA IV.

• *First cycle review performance*: In PDUFA III, FDA committed to several new goals that were focused on improving the effectiveness and efficiency of first cycle reviews in an attempt to decrease the number of multi-cycle reviews without compromising FDA's traditional high standards for approval. The first new goal was for FDA to notify the applicant of any substantive deficiencies identified in an application during the initial filing review. The identification of such deficiencies was to be communicated to the applicant within 14 days of the 60-day application filing date, which is commonly known as a ''74 day letter.'' FDA has consistently met or exceeded the goals for communication of these early deficiencies. The second new goal was for FDA to develop and publish a final joint CDER/CBER guidance on GRMPs. FDA published a final GRMP final guidance on March 30, 2005, entitled, ''*Guidance for Review Staff and Industry on Good Review Management Principles and Practices for Prescription Drug User Fee Act Products; Availability,*'' at *http://www.fda.gov/OHRMS/DOCKETS/98fr/05–6404.htm* (70 FR 16507; March 31, 2005). As part of the goals, FDA also committed to develop and implement a training program for all CDER and CBER review staff on the GRMPs. FDA met the goal for training all review staff on the GRMPs and has incorporated training on the guidance as part of new reviewer training. Finally, FDA committed to commission an independent consultant evaluation of the factors associated with the conduct of first cycle reviews. The first study was a retrospective analysis of first cycle reviews for NME and original BLAs submitted in FY2002–2004, and is available on the FDA Web site at *http://www.fda.gov/ope/pdufa/PDUFA1stCycle/pdufa1stcycle.pdf*. The second study was a prospective study of first cycle reviews for NME and original BLA submissions starting in FY05 and continuing through FY07, and is currently in progress. FDA is proposing to recommend the continuation of first cycle review performance initiatives.

• *Independent consultants for biotechnology clinical trial protocols*: This initiative allowed applicants for certain biotechnology products to request that FDA engage an independent expert consultant, selected by FDA, to participate in the agency's review of the protocol for clinical studies that were expected to serve as the primary basis for a claim. FDA has received no requests under this initiative during PDUFA III and, after discussions with industry representatives, FDA is proposing not to include this initiative in the recommended PDUFA IV program.

1. Proposed Recommendations for Enhancement of Premarket Review Process

In the area of premarket review, FDA is proposing to recommend enhancements in two areas: (1) Good review management principles and (2) expediting drug development.

(a) *Expanding Implementation of GRMPs*: In the area of GRMPs, we are proposing to recommend further enhancements associated with notifying applicants at the time of the ''74-day letter'' of the anticipated timeline for review of the application, including the anticipated date for initiation of discussions regarding product labeling and any FDA requests for postmarketing study commitments (PMCs).

Historically, labeling discussions have been initiated at the late stages of a review, often in the last week before approval. Similarly, the agency often communicates requests for postmarketing commitments late in the review cycle. Initiation of discussion of these important elements of the review of an application late in the review cycle is often due to the inability of FDA to complete its review of the application earlier because of an imbalance between workload and available review staff time. Late initiation of these important discussions is not consistent with the best practices that FDA has identified and published in the GRMP guidance.

An understanding on the part of both the reviewers and the applicant of the process and timeline for the review would facilitate an efficient and scientifically sound review. FDA believes that adhering to a timeline that includes earlier initiation of discussion of labeling, coupled with the new physician labeling regulations (see *Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products* at *http://www.fda.gov/OHRMS/DOCKETS/98fr/06–545.pdf*) (71 FR 3922, January 24, 2006), would result in clearer, more readily understandable labeling for new products. Furthermore, FDA believes that initiation of discussions of possible postmarketing commitments earlier in the process would allow for the commitments to be more focused on the data needed to further inform the best use of the products. We also expect that earlier discussion of PMCs would help to ensure that the agreed to studies and study schedules are feasible, thereby improving the timely completion of the studies by the applicant.

The proposed recommendations under the enhancements for GRMP are also intended to encourage applicants to provide FDA with applications that are complete for review at the time of submission. The submission of complete applications would allow FDA to effectively manage and adhere to its review schedule and, ultimately, may result in faster access to these new products without any compromise to FDA's traditional high standards for approval. Consequently, FDA believes these proposed recommendations to be in the best interest of the agency, the applicant, and, ultimately, the public health.

(b) *Expediting drug development*: One of the things that the agency can do to enhance the development of new and beneficial drugs is to provide guidance to industry to clarify current agency thinking on a variety of topics including, among other things, clinical trial design. Our experience and insight, gained through years of review, can help the industry avoid wasting scarce research and development resources on clinical trials that are not likely to produce results because of flawed designs. By clarifying the agency's

expectations regarding the nature of data needed to support certain types of claims, we can allow the industry to focus their efforts on useful trials and decrease less useful experimentation. This would have the benefit of decreasing exposure of subjects to unapproved products, decreasing the amount of time required to bring a beneficial new drug to market, and, possibly, decreasing the total cost of bringing the new drug to market, which should translate to lower drug prices for the consumer.

Guidance development by the agency requires substantial time commitments from those who are already heavily involved in the review effort. The PDUFA IV proposal includes increased user fees that would be used to fund additional staff resources to develop the following guidances to enhance clinical drug development (the FY dates for each guidance represent FDA's proposed commitment to publish a draft guidance on that topic by no later than the end of FY listed):

1. Clinical Hepatotoxicity—FY 2008. This guidance would address how to evaluate a drug for possible hepatotoxicity during drug development and how FDA will review an application to look for signs that a drug may be a significant hepatotoxin.

2. Non-inferiority Trials—FY 2008. This guidance would describe FDA's perspective on the design of noninferiority trials. Topics addressed are expected to include how to select the active control, how to document the effect size of the active control versus placebo, and how to establish the noninferiority margin of interest.

3. Adaptive Trial Designs—FY 2008. This guidance would explain FDA's perspective on the use of adaptive trial designs during drug development. Topics to be addressed include the definition of adaptive trial designs, recommended designs, and how the statistical issues should be addressed in analyzing trials.

4. End of Phase 2(a) Meetings—FY 2008. This guidance would outline the procedures and data needed for an end-of-phase 2a (EOP2a) meeting. The EOP2a meetings are intended to facilitate FDA interactions with a sponsor earlier in the design of the development program to maximize the value of the phase 2 program with the overall goal of making drug development more efficient and effective.

5. Multiple Endpoints in Clinical Trials—FY 2009. This guidance would describe FDA's perspective on the appropriate procedures and analyses for trials with multiple endpoints (e.g., a trial with multiple co-primary endpoints).

6. Enriched Trial Designs—FY 2010. This guidance would focus on approaches to enrich the clinical trial population to better define the efficacy or safety of the drug under development.

7. Imaging Standards for Use as an End Point in Clinical Trials— FY 2011. This guidance would focus on the use of images as important endpoints in controlled clinical trials. Issues would include image acquisition, archiving, and blinded reading.

The commitment, under this part of the proposed PDUFA IV program, would allow us to pursue the development and publication of several guidance documents to facilitate the development of new, life-saving therapies, moving them more efficiently from the laboratory to the bedside.

In addition to funding the development of guidances, under PDUFA IV we are proposing to collect user fees to hire additional staff to free up reviewer time to enable greater participation in scientific research collaborations that will ultimately help clarify regulatory pathways for new technologies and potential new biomarkers for drug safety and effectiveness. For example, FDA intends to participate in workshops with representatives from the scientific community (including industry, academia, and other interested stakeholders) to further the science toward development of guidance documents in the following areas:

1. Predictive toxicology—Emerging science such as toxicogenomics, proteomics, metabolomics, and molecular imaging, is expected to yield more sensitive, specific, and informative tests for drug organ toxicity than the toxicology screening techniques currently in use. FDA reviewers will need to participate extensively in the design of studies intended to qualify these new safety tests for regulatory uses.

2. Biomarker Qualification—Biomarkers are frequently used during drug development to understand the effect of a drug on biologic systems and to predict clinical response. Before biomarkers can be used for regulatory decision making they must be qualified. FDA expertise will be needed on an ongoing basis in the effort to select and test candidate biomarkers for qualification. FDA reviewers will need to participate in the design of the definitive studies intended to qualify the biomarker for a specific regulatory use.

3. Missing Data—In controlled clinical trials it is often impossible to ensure that every data element described in the protocol is collected for every study subject. For example, subjects often discontinue participation in a trial early and do not return for further study visits. The question of how to handle missing data when analyzing the results of a trial is a very complex one, and FDA would expect to work in collaboration with outside stakeholders to further explore the science of this issue and develop appropriate procedures.

Finally, under the proposal for PDUFA IV, user fees would be used to support FDA participation in workshops and other public meetings to explore new approaches to a structured model for benefit/risk assessment. The results of these interactions would be used to assess whether pilot(s) of such new approaches can be conducted during PDUFA IV. These efforts may lead to the development of guidance documents. Under PDUFA IV, FDA proposes to collect an additional $4,600,000 in FY 2008 and, in subsequent years, adjusted for inflation and workload, to support at least 20 FTEs to engage in the collaborations with outside stakeholders described previously.

2. Improving the IT Infrastructure for Human Drug Review

Under PDUFA III, we agreed to certain performance goals associated with better management of information technology (IT) resources and improved consistency of IT practices across the human drug review program. Under PDUFA III, we centralized accountability for PDUFA IT funding under the Chief Information Officer (CIO); established an IT Project Management Office to develop and implement processes policies, based on the Capability Maturity Model Integration process improvement approach to improve software development practices; implemented the electronic Common Technical Document standard for electronic regulatory submissions; established a common secure single point of entry for the receipt and processing of all electronic submissions, commonly called the FDA Electronic Submissions Gateway; and established a common approach to managing desktop hardware and software configurations. We are now in the process of establishing a common approach for secure e-mail that will be implemented throughout the PDUFA program. Following provisions in the PDUFA III commitment letter, we have also met quarterly with industry representatives to discuss progress

towards these IT goals and to address technical implementation issues. These accomplishments have built a strong foundation for further progress toward an IT environment that better serves the human drug review program.

Under PDUFA IV, we recommend collection of an additional $4,000,000 annually, starting in FY 2008 to enable the agency to commit to several IT performance goals that would move FDA and industry towards an all-electronic environment, which would increase the efficiency of the review process. Under these proposed goals, we would commit to develop a 5-year IT plan that would lay out the technical approach for achieving a more integrated, standards-based electronic regulatory submission and review environment. The plan would help FDA, industry, and stakeholders make related IT investments in a more coordinated manner. By the end of PDUFA IV, following implementation of these proposed goals, human drug application sponsors would be able to send in their electronic applications with automated cross-links to previously submitted data and information, so that they only have to submit things once. In addition, FDA reviewers would be able to retrieve all relevant submissions and related data electronically from their work stations and would have efficient tools for searching and analyzing data to support their reviews. These capabilities would enable more efficient and reliable management of regulatory submissions.

By the end of PDUFA IV, if resources are provided as expected, we intend to have the capability to handle two-way transmission of regulatory correspondence with industry, which would accelerate the movement toward an all-electronic submission and review environment.

To determine whether we are moving towards achieving the IT goals described in PDUFA IV, we further propose to track several key performance indicators of the adoption rate of electronic submissions and the technical error rates associated with those submissions, so that we can more closely monitor progress toward the all-electronic environment.

Finally, in the recommended IT performance goals for PDUFA IV, we propose a cost-effective approach that minimizes expenditures on existing legacy systems and redirects those funds toward the development of new common systems that are better coordinated and more flexible.

C. Modernizing and Transforming the Postmarket Drug Safety System

In PDUFA III, for the first time, FDA was authorized to spend user fees revenues to fund improvements in drug safety. This change provided important new resources to help improve postmarket safety but our experience has shown that further improvements can be achieved. The definition of the ''process for the review of human drug applications'' in section 735 of PDUFA describes which products PDUFA funds can be used for in terms of postmarket safety review as well as the length of time after product approval PDUFA funds can be used for such safety review. Specifically, 735(6)(F) states: ''In the case of drugs approved after October 1, 2002, under human drug applications or supplements: collecting, developing, and reviewing safety information on the drugs, including adverse event reports, during a period of time after approval of such applications or supplements, not to exceed three years.''

In addition, the PDUFA III Reauthorization Performance Goals and Procedures document stated that user fees may be used ''for a period of up to two years post-approval for most products and for a period of up to three years for products that require risk management beyond standard labeling * * *.'' The stated purpose of this language was to provide user fees to review an applicant's implementation of risk management plans for this period of time and to allow for evaluation of study reports, product use, and other safety activities. Drug safety activities outside of the specified timeframe were to be funded with appropriated dollars.

As part of the PDUFA IV program, we propose to recommend further enhancing the program by removing the language that limits the spending of user fees outside of the specified timeframe. Current data show that safety issues can arise after a drug has been on the market for 8 or more years. A recent FDA analysis of safety-related label changes made between October 2002 and August 2005, for all drug products with a labeling change, found that the total number of safety-related label changes exceeded 160 changes for drugs 3 years postapproval and remained at or above that high level until 8 years postapproval before starting to decline. All stakeholders agree that the current limitations on use of funds for postmarketing safety-related activities present an opportunity for improving the agency's ability to optimally support adverse event surveillance, detection, evaluation, and management. Enhancing the program by eliminating such limitations would help both FDA and drug sponsors because safety assessments of drug products by both FDA and sponsors are necessary for drugs over time to adequately manage risks, regardless of approval date. Increased resources, including from PDUFA funds, would enable FDA to engage in safety review activities, such as studies of drugs in the same class approved before and after October 1, 2002, to adequately assess significant drug safety issues. The current description of postmarketing safety activities in the definition of the ''process for the review of human drug applications'' could also be revised to better reflect the broad variety of activities that are important to postmarket safety review.

As part of the reauthorization of PDUFA, FDA proposes changing the statute to eliminate the statutory restrictions so that PDUFA fees could be used to assess safety issues postapproval, independent of a product's approval date and would allow the agency to review the drug's safety in whatever time frame risks arise using all available resources. This change would provide much needed support for timely, predictable, consistent, and scientifically sound regulatory decisionmaking and would work towards a fully integrated evaluation of drugs and biologics throughout their life cycle.

In addition, we propose expanding the description of postmarket safety activities to capture a broader range of activities related to postmarket safety review. For example, FDA would use $29,290,000 in new user fee funds to enhance and modernize the current U.S. drug safety system. We would adopt new scientific approaches, improve the utility of existing tools for the detection, evaluation, prevention, and mitigation of adverse events associated with drugs and biological products. In addition, FDA would use these funds to continue to enhance and improve communication and coordination between pre- and postmarket review staff. Potential activities in this area might include integration of certain proposed recommendations made by the Institute of Medicine (IOM) in their September 2006 report entitled, ''*The Future of Drug Safety: Promoting and Protecting the Health of the Public*.''

PDUFA IV funds would also be used to support a number of activities designed to modernize the process of pharmacovigilance. One key initiative would be the implementation of an FDA contract to one or more outside research organization(s) to conduct research on

determining the best way to maximize the public health benefits associated with collecting and reporting serious and nonserious adverse events occurring throughout a product's life cycle. Studies under this contract would answer such central questions as the number and types of safety concerns that are discovered by various types of adverse event collection, the age of the medical products at the time such safety concerns are detected, and the types of actions that are subsequently taken and their ultimate effect on patient safety.

PDUFA IV funds would also support the development of a guidance document to delineate epidemiology best practices. Epidemiologic studies using large automated databases are increasingly being performed to evaluate drug safety. These studies and safety analyses are complex and employ a variety of nonstandardized analytic methods and assumptions. During the course of PDUFA IV, FDA, with input from academia, industry, and others from the general public, would hold a public workshop to identify best practices in this emerging field, ultimately developing a document that addresses epidemiology best practices and provides guidance on how to carry out scientifically sound observational studies using quality data resources.

Another critical part of the transformation of the drug safety program would be maximizing the usefulness of tools used for adverse event detection and risk assessment. To achieve this end, data other than spontaneous adverse event reports, including population-based epidemiological data and other types of observational data resources, would be used and evaluated. Access to these types of data would expand our capability to carry out targeted postmarketing surveillance, look at class effects of drugs, and potentially carry out signal detection using data resources other than reports from FDA's adverse event reporting system (AERS). PDUFA IV funds would be used to obtain access to additional databases and increase program staffing with epidemiologists, safety evaluators, and programmers who can use these new resources.

As mentioned previously, the PDUFA III Reauthorization Performance Goals and Procedures document provided user fees to review implementation of a risk management plans for a limited period of time and to allow for evaluation of study reports, product use, and other safety activities. Risk communication and management have now become a routine part of human drug review, yet many of the risk management and risk communication tools the industry uses remain unproven and unstandardized. To promote more effective and consistent use of these tools to mitigate the risk of drugs and biological products, under PDUFA IV, with input from academia, industry, and others from the general public, we would conduct an annual systematic public discussion and review of the effectiveness of one to two risk management programs and one major risk management tool per year. Reports from these discussions would be posted on the FDA Web site.

FDA would also use PDUFA IV fees to enhance the agency's AERS and surveillance tools, to strengthen its IT infrastructure to support access and analyses of externally linked databases, and to support a safety workflow tracking system. This support for drug and biological product safety-related IT systems is critical to ensure the best collection, evaluation, and management of the vast quantity of safety data received by FDA.

FDA would use PDUFA IV funds to develop and periodically update a 5-year plan describing the range of activities designed to enhance and modernize the drug safety system. FDA would publish and seek public comment on an initial plan for these activities and conduct an annual assessment of progress against the plan to be published on FDA Web site. In addition to progress against the specific modernization activities described previously, the annual report would include an update on FDA efforts to facilitate the interactions between the Office of New Drugs and the Office of Surveillance and Epidemiology related to the process of evaluating and responding to postmarketing drugs safety/adverse event reports. FDA would publish updates to the modernization plan as FDA deems necessary and post on FDA's Web site draft revisions to the plan, soliciting comments from the public on those draft revisions and then carefully considering all public comments before completing and publishing updates to the plan.

Another recent study by the IOM, entitled ''*Preventing Medication Errors: Quality Chasm Series*,'' (July 20, 2006), estimates that, on average, every hospitalized patient is subject to at least one medication error per day. These errors lead to costly morbidity and mortality. The IOM concluded that drug names that look or sound similar, in addition to the layout and presentation of important drug information on the label, labeling, and packaging of drug products increase the risk of medication errors. The IOM report recommended that the FDA, the pharmaceutical industry, and other stakeholders should collaborate in several areas to improve methods for naming and labeling drug products and communicating medication information to providers and consumers and advised the FDA to develop guidance documents for industry related to drug naming, labeling, and packaging.

Using PDUFA IV funds, FDA would implement various measures to reduce medication errors related to look-alike and sound-alike proprietary names as well as factors such as unclear label abbreviations, acronyms, dose designations, and error-prone label and packaging designs. Activities to be funded include guidance development, review performance goals, and initiation of a pilot program to explore a different paradigm for proprietary name review.

Fees would provide the resources FDA needs to publish three guidances to industry: (1) Guidance on the contents of a complete submission package for a proposed proprietary drug/biological product name; (2) guidance on best practices for naming, labeling, and packaging drugs and biologics to reduce medication errors; and (3) guidance on proprietary name evaluation best practices. These guidances, developed after consultation with industry, academia, and others from the general public, would provide a scientifically sound and consistent approach to the selection, evaluation, and review of proprietary names and would also create a framework for best practices for the layout and design of drug labels and packaging to prevent or minimize medication errors.

In addition, under the proposed PDUFA IV program, FDA would commit to a performance goal of 180 days for reviewing proprietary names submitted during the IND and NDA phases. For submissions received as part of an IND, submitted as early as the end of phase 2 of drug development, FDA would increase the percentage of submissions subject to this goal, from 50 percent in year 1 to 90 percent in year 4 of the program. In a similar phased-in fashion, for submissions received as part of an NDA or BLA, FDA would review 50 percent (in year 1) increasing to 90 percent (in year 4) of proprietary name submissions within 90 days of receipt. Commitment to review goals would enhance the timeliness and predictability of proprietary name review.

During PDUFA IV, FDA proposes to develop and implement a pilot program that shifts the responsibility for testing proposed proprietary names from FDA to the pharmaceutical industry. This

program would enable pharmaceutical firms participating in the pilot to evaluate proposed proprietary names and submit the data generated from those evaluations to FDA for review prior to approval. Using this more traditional FDA review role was recommended by the IOM in November 1999 report, entitled ''*To Err Is Human: Building a Safer Health System*, '' as well as the HHS Advisory Committee on Regulatory Reform in November of 2002 Secretary's Advisory Committee on Regulatory Reform, November 21, 2002, *http://regreform.hhs.gov/meetinginfo/november_meetinginfo.htm*. The proposed pilot would allow this approach to be evaluated for its contribution to the efficiency and timeliness of proprietary name review.

III. What We Are Proposing to Recommend for Review of Direct-To-Consumer Advertising

In addition to our proposed recommendations for enhancements to the current human drug review program, we are proposing to recommend a program separate from, but related to, PFUFA assessing fees for advisory reviews of DTC television advertisements. Research has shown there can be benefits associated with DTC prescription drug television advertising, such as informing patients about the availability of new treatment options and encouraging patients to see a physician about an illness for the first time. Notwithstanding these benefits, concerns have arisen about the effects of DTC television advertisements on prescribing practices and prescription drug use. Companies have the option of submitting their proposed advertisements to FDA for advisory review before publicly disseminating them, which gives them with the benefit of FDA input on whether or not the advertisements are accurate, balanced, and adequately supported, enabling them to address any problems before the advertisements are shown to the public, thus improving the quality of the advertisements.

Companies recognize the benefits this advisory review mechanism offers. In fact, PhRMA recently stated in its voluntary guidance principles on DTC advertising that companies should submit all new DTC television advertisements to FDA before broadcasting them *http://www.phrma.org/files/DTCGuidingprinciples.pdf*. However, although FDA's DTC advisory review workload has been steadily increasing, staffing for this activity has remained level. As a result, it is impossible for FDA to review all of the DTC television advertisement advisory submissions it receives in a timely manner. The lack of timely, predictable FDA review times for DTC television advertisements is detrimental to companies' ability to accurately set timeframes for their marketing campaigns and discourages companies from submitting these materials for advisory review.

We propose creating a separate program, not directly included under PDUFA IV, to assess, collect, and use fees for the advisory review of prescription drug television advertisements. These user fees would not be funded by application, product, or establishment fees assessed under PDUFA. Instead, these new fees would be assessed separately and collected only from those companies that intend to seek FDA advisory reviews of DTC television advertisements. The proposed recommendation for fee funding and the estimated number of supported staff are summarized in table 2 of this document.

TABLE 2.—PROPOSED FEES FOR DTC ADVERTISEMENT REVIEW (STARTING IN FY 2008)

Proposed Program	Dollars	FTE
Advisory Review of DTC Television Advertisements	$6,250,000	27
Program Total (in FY 2008)	**$6,250,000**	**27**

This program would provide for increased FDA resources to allow for the timely review of DTC television advertisement advisory submissions. To ensure stable funding for the program in case the number of advisory submissions fluctuates widely from year to year, the program would assess a one-time participation fee. The program would then charge fees each year for each advisory review requested. These new fees would provide sufficient resources for FDA to hire additional staff to review DTC television advisory submissions in a predictable, timely manner. FDA anticipates collecting $6.25 million in annual fees during the first year of the program (and a similar amount to go into the reserve fund) to support 27 additional staff to review DTC television advertising. Advisory review fee amounts would be adjusted annually for inflation and to take into account increases in workload. As part of this program, FDA is proposing to commit to certain performance goals including review of a certain number of original advisory review submissions in 45 days and resubmissions in 30 days. The goals would be phased in over the 5 years of the program to allow for recruitment and training of staff.

IV. What Information Should You Know About the Meeting?

A. When and Where Will the Meeting Occur? What Format Will We Use?

Through this document, we are announcing the convening of a public meeting to hear stakeholder views on the recommendations we propose to provide to Congress on the reauthorization of PDUFA IV.

We will conduct the meeting on February 16, 2007, at the Grand Hyatt Washington at Washington Center (see **ADDRESSES**). In general, the meeting format will include presentations by FDA and a series of panels representing different stakeholder interest groups (such as patient advocates, consumer advocates, industry, health professionals, and academic researchers). We will also give individuals the opportunity to make presentations at the meeting, and for organizations and individuals to submit written comments to the docket after the meeting.

B. How Do You Register for the Meeting or Submit Comments?

If you wish to attend and/or make a presentation at the meeting, please send an electronic mail message to *CBERTrainingSuggestions@fda.hhs.gov* by February 2, 2007. Your e-mail should include the following information: Name, Company, Company Address, Company Phone Number, and E-mail Address. You will receive a confirmation within 2 business days.

We also will accept walk-in registration at the meeting site, but space is limited, and we will close registration when maximum seating capacity (approximately 500) is reached.

We will try to accommodate all persons who wish to make a presentation. The time allotted for presentations may depend on the number of persons who wish to speak

Additionally, regardless of whether you wish to make a presentation or simply attend the meeting, please notify us if you need any special accommodations (such as wheelchair access or a sign language interpreter).

If you would like to submit comments regarding these proposed recommendations, please send your comments to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any written comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

To ensure consideration of your comments, you should send your comments no later than February 23, 2007.

C. Will Meeting Transcripts Be Available?

We will prepare a meeting transcript and make it available on our Web site (*www.fda.gov*) after the meeting. We anticipate that transcripts will be available approximately 30 business days after the meeting. The transcript will also be available for public examination at the Division of Dockets Management (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m. Monday through Friday.

Dated: January 10, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–122 Filed 1–11–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 / 800–877–7016 (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770 / 888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200 / 800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702 / 800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Kroll Laboratory Specialists, Inc. , 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823 (Formerly: Laboratory Specialists, Inc.).

Kroll Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Scientific Testing Laboratories, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272 (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300, Seattle, WA 98122, 206–923–7020/800–898–0180 (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734.

MAXXAM Analytics Inc.*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700 (Formerly: NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

Meriter Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225 (Formerly: General Medical Laboratories).

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, 123 International Way, Springfield, OR 97477, 541–341–8092.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750 (Formerly: Associated Pathologists Laboratories, Inc.).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699/818–989–2521 (Formerly: SmithKline Beecham Clinical Laboratories).

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276.

Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400 (Formerly: St. Lawrence Hospital & Healthcare System).

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

The following laboratory withdrew from the National Laboratory Certification Program on December 15, 2006:

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152 (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

The following laboratory withdrew from the National Laboratory Certification Program on December 31, 2006:

Quest Diagnostics Incorporated, 2282 South Presidents Drive, Suite C, West Valley City, UT 84120, 801–606–6301/800–322–3361 (Formerly: Northwest Toxicology, a LabOne Company; LabOne, Inc., dba Northwest Toxicology; NWT Drug Testing, NorthWest Toxicology, Inc.; Northwest Drug Testing, a division of NWT Inc.).

Elaine Parry,

Acting Director, Office Program Services, SAMHSA.

[FR Doc. E7–394 Filed 1–12–07; 8:45 am]

BILLING CODE 4160–20–P

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and

DEPARTMENT OF HOMELAND SECURITY

Private Sector Office, Office of Policy; Submission for Review; Disaster Recovery Survey for Businesses

AGENCY: Office of the Private Sector, Office of Policy, DHS.

ACTION: Notice; 30-day notice of information collections under review: various contract related forms, Post-Contract Award Information, Regulation on Agency Protests, and Solicitation of Proposal Information for Award of Public Contracts.

SUMMARY: The Department of Homeland Security (DHS) has submitted the following proposed information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995: 1601–NEW. This notice and request for comments is required by the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until February 15, 2007. This process is conduced in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security, Private Sector Office, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Gary Becker, Office of the Private Sector, Department of Homeland Security, Washington, DC 20528; telephone (202) 282–9013 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: DHS previously published this information collection request (ICR) in the **Federal Register** on August 16, 2006, at 71 FR 47237, for a 60-day public comment period. The ICR addressed a written survey developed by the Office of Policy, Private Sector Office for DHS for distribution to business owners and managers impacted by a natural or man-made disaster. The survey contains general questions about losses incurred by reporting businesses as a result of the disaster, as well as progress made during initial recovery. All information will be compiled for analysis by DHS and reported only at the aggregate level. Results of the analysis will be used by DHS to gauge the economic impact of the disaster as well as the effectiveness of recovery efforts. Participation in the survey will be voluntary and also provides an opportunity for the private sector to inform DHS about major issues and concerns with the recovery process following a disaster. The survey is being developed as a generic survey that can be used following any form of disaster; including natural disasters, terrorist events, and pandemic influenza.

DHS received three comments during the 60-day public comment period for this ICR. The purpose of this notice is to allow an additional 30 days for public comments. This notice and request for comment is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DHS invites the general public to comment on the ICR. A copy of the survey can be obtained by contacting Gary Becker of the Private Sector Office (contact information provided in previous section).

DHS is particularly interested in comments which:

(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 submissions of responses.

Analysis

Agency: Department of Homeland Security, Office of Policy, Private Sector Office.

Title: Disaster Recovery Survey for Businesses.

OMB No.: 1601–NEW.

Frequency: On occasion.

Affected Public: Employer and Non-employer Businesses.

Estimated Number of Respondents: 2,000 respondents.

Estimated Time Per Respondent: 18 minutes (15 minutes per written response with 30% chance for 10 minute telephone follow-up).

Total Burden Hours: 600.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

Scott Charbo,

Chief Information Officer.

[FR Doc. E7–387 Filed 1–12–07; 8:45 am]

BILLING CODE 4410–10–P

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laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2006–0081]

Privacy Act; Alien File (A-File) and Central Index System (CIS) Systems of Records

AGENCY: Department of Homeland Security (DHS).

ACTION: System of records notice.

SUMMARY: As part of its ongoing effort to review and update legacy system of records notices, the Department of Homeland Security is publishing a revision to the previously established Privacy Act system of records notice published by the former Immigration and Naturalization Service for hardcopy and digitized A-Files; and the Central Index System. The Department of Homeland Security is also updating the routine uses that were previously published for this system of records.

DATES: Written comments must be submitted on or before February 15, 2007.

ADDRESSES: You may submit comments, identified by Docket Number DHS–2006–0081 by one of the following methods:

- Federal e-Rulemaking portal: *http://www.regulations.gov*. Follow the instructions for submitting comments via docket number DHS 2006–0081.
- Fax: (202–572–8727) (not a toll-free number).
- Mail: Hugo Teufel III, DHS Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted

without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Elizabeth Gaffin, 20 Massachusetts Avenue, NW., Washington, DC 20529, by telephone (202) 272–1400. For privacy issues, please contact: Hugo Teufel III (571–227–3813), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS), implements United States immigration law and policy through the United States Citizenship and Immigration Services' (USCIS) processing and adjudication of applications and petitions submitted for citizenship, asylum, and other immigration benefits. USCIS also supports national security by preventing individuals from fraudulently obtaining immigration benefits and by denying applications from individuals who pose national security or public safety threats. United States Immigration policy and law is also implemented through Immigration and Customs Enforcement's (ICE) law enforcement activities and Customs and Border Protection's (CBP) inspection process and protection of our borders.

The A-File is the record that contains copies of information regarding all transactions involving an individual as he/she passes through the U.S. immigration and inspection process. Previously, legacy Immigration and Naturalization Services (INS) handled all of these transactions. Since the formation of DHS, however, these responsibilities have been divided among USCIS, ICE, and CBP. While USCIS is the custodian of the A-File, all three components create and use A-Files.

DHS, in its ongoing effort to update its legacy systems, is issuing the A-File and CIS system of records notice, DHS–USCIS 001. A notice detailing this system of records was last published in the **Federal Register** on September 7, 2001, as the INS Alien File (A-File) and Central Index System (CIS), JUSTICE/INS–001A (66 FR 46812). Until now, pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107–296, sec. 1512, 116 Stat. 2310 (Nov. 25, 2002) (6 U.S.C. 552), the USCIS has been relying on legacy Privacy Act systems.

Digitization of the A-File

To support current immigration operations, USCIS, ICE and CBP assemble paper-based A-Files that contain official record documents and attachments pertaining to individuals. These hardcopy A-Files are routed to authorized DHS employees who need access to them for immigration benefits processing, law enforcement, and protection of national security. USCIS is embarking on an enterprise-wide ''Transformation Program'' that will transition the agency from a fragmented, paper-based operational environment to a centralized and consolidated electronic environment. The new operational environment will employ the types of online customer accounts used in the private sector. This ''person-centric'' model will link information related to an individual in a single account in order to facilitate customer friendly transactions, track activities, and reduce identity fraud.

USCIS, as custodian of the A-File and part of the Transformation Program, has developed the Integrated Digitization Document Management Program (IDDMP) to provide electronic creation of, and access to, A-Files. The IDDMP manages the scanning of hard copy A-Files, the storage of the digitized A-Files, and electronic access to digitized A-Files.

Scanning is performed at a contractor owned and operated facility called the Records Digitization Facility (RDF). The digitized A-Files produced by the RDF are sent to USCIS' Quality Assurance (QA) system. After QA is performed, they are stored centrally, and images within the A-File are accessed and updated using the Electronic Data Management System (EDMS). For the purpose of this document, the RDF, QA system, and EDMS will be collectively referred to as the IDDMP. Access to the digitized A-Files is provided to DHS and other Federal, state, tribal, local or foreign government agencies responsible for providing benefits, investigating or prosecuting violations of civil or criminal laws, or protecting our national security.

The Privacy Act embodies Fair Information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR 5.21.

The Privacy Act requires that each agency publish in the **Federal Register** a description denoting the type and character of each system of records in order to make agency recordkeeping practices transparent, to notify individuals about the use to which personally identifiable information is put, and to assist the individual to more easily find files within the agency.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this revised system of records to the Office of Management and Budget and to the Congress.

DHS–USCIS–001

SYSTEM NAME:

The Department of Homeland Security (DHS), Alien File (A-File—hardcopy or digitized copy) and Central Index System (CIS)

SYSTEM LOCATION:

The database housing the digitized A-Files is located within USCIS' data center in the Washington, DC metropolitan area. Hard copies are located at Headquarters, Regional, District, and other USCIS file control offices in the United States and foreign countries as detailed on the agency's Web site, *http://www.USCIS.gov*. Authorized USCIS, ICE, and CBP personnel may request and view the paper A-File. Paper A-Files are sent and received by file control offices. USCIS will directly access digitized A-Files using the IDDMP. ICE and CBP access to the digitized A-File via the IDDMP will be provided through the Law Enforcement Service Center (LESC). CIS is available in USCIS offices. Remote access terminals for CIS will also be located in other components of the DHS on a limited basis.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals covered by provisions of the Immigration and Nationality Act of the United States.

B. Individuals who are under investigation (including those who are possible national security threats or threats to the public safety), or who were investigated by the DHS in the past, or who are suspected of violating immigration-related criminal or civil provisions of treaties, statutes, regulations, Executive Orders, and Presidential proclamations administered

by DHS, and witnesses and informants having knowledge of such violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. The hardcopy paper A-File (which, prior to 1940, was called Citizenship File (C-File) contains all the individual's official record material such as: naturalization certificates; various forms and attachments (*e.g.*, photographs); applications and petitions for benefits under the immigration and nationality laws; reports of investigations; statements; reports; correspondence; and memoranda on each individual for whom DHS has created a record under the Immigration and Nationality Act. Subsets of information may be used to determine eligibility for citizenship under Section 320 of the Immigration and Nationality Act.

B. The electronic copy of the A-File provided by IDDMP's digital repository contains scanned images of the paper A-File searchable using identical index fields as CIS.

C. CIS contains personal identification data such as A-File number, date and place of birth, date and port of entry, as well as the location of each official hardcopy paper A-File.

AUTHORITY OF MAINTENANCE FOR THE SYSTEM:

Sections 103 and 290 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1360), and the regulations issued pursuant thereto; and section 451 of the Homeland Security Act of 2002 (Pub. L. 107–296).

PURPOSE(S):

A-File data is collected on individuals covered by provisions of the Immigration and Nationality Act of the United States and individuals who are under investigation, who were investigated by the DHS in the past, who are suspected of violating the immigration-related laws administered by DHS, or are witnesses and informants having knowledge of such violations. The A-File is the record that contains all transactions involving an individual as he/she passes through the U.S. immigration and inspection process, and chronicles interactions with the U.S. Government. Previously, legacy INS performed all of these functions.

Since the formation of DHS, these immigration-related functions have been divided among the following three components: (1) CBP, which performs the border and inspection processes; (2) USCIS, which performs the immigration benefit adjudication process; and (3) ICE, which performs the investigatory, deportation, and immigration court functions. Although USCIS is the custodian of the A-File, all three components create and use A-Files. Once the A-File is digitized, information will be accessed by USCIS, ICE, and CBP so that they may perform their mission requirements. Information contained within the A-File may also be shared with other components within DHS responsible for law enforcement and national security intelligence activities.

The CIS system is used primarily by DHS employees for immigration benefits processing, protection of national security, and to administer and enforce immigration and nationality laws, and related statutes. These uses include: Assisting the Department with processing applications for benefits under applicable immigration laws; detecting violations of these laws; the referral of such violations for prosecution; law enforcement; the inspection process; and protection of our borders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To clerks and judges of courts exercising naturalization jurisdiction for the purpose of filing petitions for naturalization and to enable such courts to determine eligibility for naturalization or grounds for revocation of naturalization.

B. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws including treaties and reciprocal agreements.

C. To appropriate Federal, state, tribal, and local government law enforcement and regulatory agencies, foreign governments, and international organizations, for example: the Department of Defense; the Department of State; the Department of the Treasury; the Central Intelligence Agency; the Selective Service System; the United Nations; and INTERPOL; as well as to other individuals and organizations during the course of an investigation by DHS or the processing of a matter under DHS' jurisdiction, or during a proceeding within the purview of the immigration and nationality laws, when DHS deems that such disclosure is necessary to carry out its functions and statutory mandates to elicit information required by DHS to carry out its functions and statutory mandates.

D. To an appropriate Federal, state, tribal, local, or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence, whether civil or criminal, or charged with investigating, prosecuting, enforcing or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence and the disclosure is appropriate to the proper performance of the official duties of the person receiving the disclosure.

E. To the United States Department of Justice (DOJ) (including United States Attorneys' offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, or to the court or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation: (1) Any employee of DHS in his/her official capacity; (2) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent said employee; or (3) the United States or any agency thereof.

F. To an appropriate Federal, state, local, tribal, territorial, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

G. To the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in the Circular.

H. To an attorney or representative (as defined in 8 CFR 1.1(j)) who is acting on behalf of an individual covered by this system of records in connection with any proceeding before USCIS or the Executive Office for Immigration Review.

I. To a Federal, state, tribal, or local government agency to assist such agencies in collecting the repayment of loans, or fraudulently or erroneously secured benefits, grants, or other debts owed to them or to the United States Government, or to obtain information that may assist USCIS in collecting debts owed to the United States Government; to a foreign government to assist such government in collecting the repayment of loans, or fraudulently or erroneously secured benefits, grants, or other debts owed to it provided that the foreign government in question:

(1) Provides sufficient documentation to establish the validity of the stated purpose of its request; and

(2) Provides similar information to the United States upon request.

J. To student volunteers whose services are accepted pursuant to 5 U.S.C. 3111 or to students enrolled in a college work-study program pursuant to 42 U.S.C. 2751 *et seq.*

K. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of that individual.

L. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

M. To an obligor who has posted a bond with USCIS for the subject. USCIS may provide only such information as either may:

(1) Aid the obligor in locating the subject to insure his or her presence when required by DHS; or

(2) Assist the obligor in evaluating the propriety of the following actions by DHS: either the issuance of an appearance demand or notice of a breach of bond—i.e., notice to the obligor that the subject of the bond has failed to appear which would render the full amount of the bond due and payable.

N. To a coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

O. Consistent with the requirements of the Immigration and Nationality Act, to the Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention (CDC), or to any state or local health authorities, to:

(1) Provide proper medical oversight of DHS-designated civil surgeons who perform medical examinations of both arriving aliens and of those requesting status as a lawful permanent resident; and

(2) To ensure that all health issues potentially affecting public health and safety in the United States are being or have been, adequately addressed.

P. To a Federal, state or local government agency seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law.

Q. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Those provided information under this routine use are subject to the same Privacy Act limitations as are applicable to DHS officers and employees.

R. To the appropriate Federal, state, local, tribal, territorial, or foreign, or international agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where DHS becomes aware of, or in conjunction with other information determines, that a violation or potential violation of civil or criminal law has occurred.

S. To the Social Security Administration (SSA) for the purpose of issuing a Social Security number and card to an alien who has made a request for a Social Security number as part of the immigration process and in accordance with any related agreements in effect between the SSA, DHS and the Department of State entered into pursuant to 20 CFR 422.103(b)(3); 422.103(c); and 422.106(a), or other relevant laws and regulations.

T. To a former employee of DHS, in accordance with applicable regulations, for purposes of: responding to an official inquiry by a Federal, state, or local government entity or professional licensing authority; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

U. To an individual's prospective or current employer to the extent necessary to determine employment eligibility.

V. To Federal and foreign government intelligence or counterterrorism agencies or components where DHS becomes aware of an indication of a threat or potential threat to national or international security, or where such use is to assist in anti-terrorism efforts and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure;

W. To appropriate agencies, entities, and persons when:

(1) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised;

(2) It is determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

(3) The disclosure is made to such agencies, entities, and persons when reasonably necessary to assist in connection with efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper A-File and C-File records are stored in file folders. The digitized A-Files are stored in an electronic repository housed in USCIS' data center. CIS data is also stored in USCIS data center.

RETRIEVABILITY:

The location of paper A-Files can be searched in CIS on the following metadata: A-Number; C-File number; name; and date of birth. Digitized A-Files can be searched and retrieved by metadata, which at a minimum includes: primary A-Number; first name; last name; date of birth; and country of birth. Full-text searches can also be performed on the digitized A-Files.

SAFEGUARDS:

USCIS offices are located in buildings under security guard or authorized contractors for the Federal government, and access to premises is by official identification. Information in this system is also safeguarded in accordance with applicable laws, rules and policies including the DHS Information Technology Security Programs Handbook. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards including restricting access to authorized personnel who require information in the records for the performance of their official authorized duties, using locks, and password

protection identification features. The system will not have classified information.

Outside agencies will not have direct access to the IDDMP. They will follow the current practice for accessing physical A-Files, which is to appear in person at the local USCIS office. They are required per the USCIS Records Operations Handbook, to work with their local USCIS office to view A-File information. After showing proper credentials and demonstrating a need to know the specific information requested in the performance of their official duties, the representative will work directly with USCIS records personnel to view the relevant portions of the A-File.

RETENTION AND DISPOSAL:

The A-File records are retained for 75 years from the date the file is retired to the Federal Records Center or date of last action (whichever is earlier) and then destroyed. C-File records are to be destroyed 100 years from March 31, 1956. Automated master index records are permanent and are scheduled to be transferred to NARA in 2006. When a paper A-File is digitized, the digitized A-File becomes the official record and maintains the same retention schedule as the original paper A-File. Options for disposition of paper A-Files that have been digitized are currently under review.

SYSTEM MANAGER(S) AND ADDRESS:

The Service-wide system manager is the Director, Office of Records Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Second Floor, Washington, DC 20529.

NOTIFICATION PROCEDURE:

To determine whether this system contains records relating to you, provide a written request containing the following information:

1. Identification of the record system;
2. Identification of the category and types of records sought; and
3. The requesting individual's signature and verification of identity pursuant to 28 U.S.C. 1746, which permits statements to be made under penalty of perjury. Alternatively, a notarized statement may be provided.

Address inquiries to the system manager at: Director, Office of Records Services, Department of Homeland Security, 111 Massachusetts Avenue, NW, Second Floor, Washington, DC 20529 or to the Freedom of Information/Privacy Act Office at: Freedom of Information/Privacy Act Office, USCIS, National Records Center, P.O. Box 648010, Lee Summit, MO 64064–8010.

RECORD ACCESS PROCEDURES:

All requests for access must be made in writing and addressed to the Freedom of Information Act/Privacy Act (FOIA/PA) officer at USCIS. Requesters are directed to clearly mark the envelope and letter ''Privacy Act Request.'' Within the text of the request, provide the A-File number and/or the full name, date and place of birth, and either a notarized signature of the individual who is the subject of the record or a statement requesting individual's signature and verification of identity pursuant to 28 U.S.C. 1746, which permits statements to be made under penalty of perjury, and any other information which may assist in identifying and locating the record, and a return address. For convenience, Form G–639, FOIA/PA Request, may be obtained from the nearest DHS office or online at *http://www.uscis.gov* and used to submit a request for access. The procedures for making a request for access to one's records can also be found on the USCIS Web site, located at *http://www.uscis.gov.*

CONTESTING RECORDS PROCEDURES:

Redress procedures are established and operated by the program through which the data was originally collected. In the case of redress requests pertaining to records held by DHS organizations, an individual who is not satisfied with the response can appeal his or her case to the DHS Chief Privacy Officer, who will conduct a review and provide final adjudication on the matter.

RECORD SOURCE CATEGORIES:

Basic information contained in DHS records is supplied by individuals on Department of State and DHS applications and forms. Other information comes from inquiries or complaints from members of the general public and members of Congress; referrals of inquiries or complaints directed to the President or Secretary of Homeland Security; USCIS reports to investigations, sworn statements, correspondence, official reports, memoranda, and written referrals from other entities, including federal, state, and local governments, various courts and regulatory agencies, foreign government agencies and international organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 6 CFR Appendix C to Part 5, pertaining to the Immigration and Naturalization Service (INS) Alien File (A-File) and Central Index System (CIS), JUSTICE/INS–001A (66 FR 46812) system of records notice, the records and information in this system are exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (1), (2), and (3), (e)(4) (G) and (H), (e) (5) and (8), and (g) of the Privacy Act. These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). DHS intends to review these exemptions and, if warranted, issue a new set of exemptions within ninety (90) days of this publication.

Dated: January 5, 2007.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. E7–375 Filed 1–12–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–01]

Notice of Submission of Proposed Information Collection to OMB; Rent Schedule-Low Rent Housing

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.

HUD requires project owners to submit information when requesting adjustments to established rents and utility allowances. HUD uses the information to ensure that rent charges are in accordance with HUD regulatory and administrative policy.

DATES: *Comments Due Date:* February 15, 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 (2502–0012) 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: Rent Schedule-Low Rent Housing.

OMB Approval Number: 2502–0012.

Form Numbers: HUD–92458.

Description of the Need for the Information and Its Proposed Use:

HUD requires project owners to submit information when requesting adjustments to established rents and utility allowances. HUD uses the information to ensure that rent charges are in accordance with HUD regulatory and administrative policy.

Frequency Of Submission: On occasion, Annually.

	Number of Respondents	Annual Responses	x	Hours per Response	=	Burden Hours
Reporting Burden:	15,875	0.357		5.33		30,217

Total Estimated Burden Hours: 30,217.

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: January 9, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–386 Filed 1–12–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

United States Geological Survey

Climate Change Science Program Committee for Synthesis and Assessment Product 3.4: Abrupt Climate Change

AGENCY: U.S. Geological Survey, Interior.

ACTION: Establishment of a Federal Advisory Committee.

SUMMARY: This notice is published in accordance with Section 9(a) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior has established the United States Geological Survey—Climate Change Science Program Committee for Synthesis and Assessment Product 3.4: Abrupt Climate Change. The Climate Change Science Program (CCSP), a consortium of federal agencies performing climate science, has established a synthesis and assessment (S&A) program as a part of its Strategic Plan. There are 21 S&A products to be administered by 13 federal agencies over a 5 year period. The U.S. Geological Survey, a participant in the CCSP, is responsible for 3 S&A products. S&A product 3.4: Abrupt Climate Change is the subject of this federal advisory committee.

The primary function of the committee is to synthesize and assess the state fo knowledge on the topic of abrupt climate change and communicate this information to the U.S. Geological Survey. Committee members will meet and discuss issues relating to the study design, research methodology, data sources and quality, and study findings. The committee will draft a report that will serve as the CCSP definitive document on current knowledge pertaining to the topic of abrupt climate change. Membership will consist of federal and non-federal scientists who are recognized as experts in the climate science community.

FOR FURTHER INFORMATION CONTACT: John P. McGeehin, U.S. Geological Survey, MS926A National Center, Reston, Virginia 20192, (703) 648–5349.

Dated: December 20, 2006.

Dirk Kempthorne,

Secretary of the Interior.

[FR Doc. 07–111 Filed 1–12–07; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–300–1110-PI]

Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The RAC will next meet in Idaho Falls, Idaho on February 22, 2007. The RAC has also reserved the right to continue the meeting February 23, if not all the business of the first day is concluded. The primary focus of the meeting will be on the Recreation Enhancement Act provisions that in Idaho require changes in fee structures on Forest Service and BLM lands to come forward at a meeting of the RAC. RAC members will also receive a briefing on the recently-released Pocatello Draft Resource Management Plan and EIS, a brief discussion on BLM weed programs in the District, and an update on the ongoing Snake River Activity Plan. Other topics will be scheduled as appropriate.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues

associated with public land management in the BLM Idaho Falls District (IFD), which covers eastern Idaho.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: David Howell, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone (208) 524–7559. E-mail: *David_Howell@blm.gov*.

Dated: January 9, 2007.

David Howell,

RAC Coordinator.

[FR Doc. E7–398 Filed 1–12–07; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–520–1430–EU; NMNM 113300]

Notice of Realty Action; Competitive Sale of Public Land; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public land in Eddy County, New Mexico has been examined and found suitable for disposal pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750, 43 U.S.C. 1713). The Bureau of Land Management (BLM) proposes to sell the land competitively at not less than the appraised fair market value (FMV).

New Mexico Principal Meridian

T. 17 S., R. 30 E.,

Sec. 19, lots 4 and 8, and W1/2E1/2SW1/4;

Sec. 30, lots 6, 7, and 8.

The area described contains 152.30 acres, more or less, in Eddy County.

DATES: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, BLM, Carlsbad Field Office, 620 East Greene, Carlsbad, New Mexico 88220. The sale by public auction will begin at 10 a.m., MST on March 19, 2007.

Sealed bids must be received by BLM no later than 4:30 p.m., MST March 16, 2007. Sale Bid Forms will be provided to all prospective bidders prior to the sale. The forms are available at the BLM, Carlsbad Field Office, 620 East Greene, Carlsbad, New Mexico 88220 or by calling (505) 234–5972. The forms should be included in a sealed envelope and the envelope must be marked on the lower left corner with the sale date and the BLM serial number ''NMNM–113300''.

All oral bidders are required to register. Registration will be held at the BLM, Carlsbad Field Office, 620 East Greene, Carlsbad, New Mexico 88220 beginning at 8 a.m. MST on the day of the sale and will end at 10 a.m., MST.

ADDRESSES: Written comments should be addressed to Tony Herrell, Field Manager, BLM, Carlsbad Field Office, 620 East Greene, Carlsbad, New Mexico 88220.

The Sale Bid and Certification of Qualification forms will be available prior to the sale date at the BLM, Carlsbad Field Office (CFO) or by calling (505) 234–5972.

More detailed information regarding the proposed sale and the lands involved may be reviewed during normal business hours (7:45 a.m., to 4:30 p.m., Monday through Friday) at the BLM, CFO. Interested parties may submit comments to the Field Manager, CFO.

The competitive sale will be held at the BLM, CFO.

SUPPLEMENTARY INFORMATION: The land sale is in conformance with the BLM Carlsbad Resource Management Plan and Amendment dated 1997, and the public interest will be served by offering this land for sale. The land is hereby classified for disposal in accordance with Executive Order No. 6910, and with Section 7 of the Taylor Grazing Act, 43 U.S.C. 315F. The proposed land will be put up for sale by competitive auction on March 19, 2007. The auction will be held in accordance with the applicable provisions of Section 203 of the FLPMA (43 U.S.C. 1713), and its implementing regulations, 43 CFR part 2710 and 2711, at not less than the FMV for the parcel. The appraised market value of the subject property is $20,850.00 (twenty thousand eight hundred fifty dollars and no cents).

The purpose of this sale is to dispose a tract of land that will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land. The sale of this land outweighs other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership. No significant resource values will be affected by this transfer.

The locatable, salable, and leasable mineral rights will be reserved by the United States and not conveyed with the surface estate. The disposal would not generate any adverse energy impacts or limit energy production and distribution.

In accordance with 43 CFR 4120.3–6, the grazing permittee has waived his rights to continue grazing the subject lands for a 2-year period and to compensation for his investments in authorized range improvements. Therefore, the patent will not be issued subject to a grazing permit or any authorized range improvements.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws and leasing under the mineral leasing laws. Upon publication of this notice and until completion of the sale, the BLM will no longer accept land use applications affecting the parcel identified for sale. The segregative effect of this notice shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation or 2 years from the date of publication, whichever occurs first.

Sale Procedures: Federal law requires all bidders must be (a) United States citizens and 18 years of age or older; (b) a corporation subject to the laws of any State or of the United States; (c) a State, State instrumentality, or political subdivision authorized to hold property; or (d) an entity legally capable of conveying and holding lands or interests therein under the laws of the State of New Mexico. Certification of qualifications, including citizenship, corporation or partnership, must accompany the bid deposit. Bids must be made by the principal or his duly qualified agent. Certifications of Qualification forms are available at the BLM, Carlsbad Field Office at the above address or by calling (505) 234–5972.

Sealed bids shall be considered only if received at the BLM, Carlsbad Field Office, 620 East Greene, Carlsbad, New Mexico 88220 by no later than 4:30 p.m., MST on March 16, 2007. Each sealed bid shall be enclosed in a sealed envelope, and include a completed sealed bid form, accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior, Bureau of Land Management

for not less than 10 percent or more than 30 percent of the bid amount. Sealed bids of less than the appraised FMV will be rejected. The highest qualified sealed bid received shall be publicly declared and will become the starting point for the oral auction. In the event that two or more sealed bids are received containing valid bids of the same amount, the determination of which is to be considered the highest designated bid will be by supplemental oral bidding. In the event that neither originator of a submitted valid bid of the same amount is present on the day of the sale a coin will be tossed to determine which of the two identical bids will be considered the highest designated bid to use as the starting point for supplemental oral bidding. If no sealed bids are received, oral bidding will begin at the appraised FMV. Oral bid increments will be a minimum of $500.

The highest qualifying bid for the parcel, whether sealed or oral, will be declared the high bid. The high bidder, if an oral bidder, must submit the full deposit amount by 4:30 p.m. MST on the day of the sale in the form of cash, personal check, bank draft, cashiers check, money order or any combination thereof, made payable to the Department of the Interior, Bureau of Land Management, for not less than 20 percent of the amount of the successful bid. Should the high bidder default, the next high qualified bidder for the parcel will be declared the high bidder.

The successful bidder, whether sealed or oral, shall submit the remainder of the full bid price prior to the expiration of 180 days from the date of the sale in the form of cash, personal check, bank draft, cashier's check, money order or any combination thereof, made payable to the Department of the Interior, Bureau of Land Management.

Failure to submit the full bid price prior to, but not including the 180th day following the day of the sale, shall result in cancellation of the sale and the deposit shall be forfeited.

Additional Information: The BLM may accept or reject any or all offers, or withdraw any parcel of land or interest therein from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws. If not sold, the parcel may be identified for sale at a later date without further legal notice.

In order to establish the FMV for the subject public land through appraisal, certain assumptions have been made of the attitudes and limitations of the land and potential effects of local regulations and policies on potential future land uses.

Through publication of this notice, the BLM gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable local government policies, laws, and regulations that would affect the subject lands, including any required dedication of lands for public uses.

No warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale. Furthermore, conveyance of the subject lands will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing or projected use of neighboring and nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer.

Patent Terms And Conditions:

Excepting and Reserving to the United States:

a. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

b. A right-of-way, NMLC–53190, issued to New Mexico State Highway Department for State Highway 82, pursuant to Sections 16 and 17 of the ''Federal Highway Act'' (42 Stat. 212).

c. All minerals.

Subject to: Valid existing rights including, but not limited to, rights-of-way for roads, public utilities and flood control improvements. Encumbrances of record, appearing in the BLM public files for the parcel proposed for sale are available for review during business hours, 7:45 a.m. to 4:30 p.m. MST, Monday through Friday, at the BLM, CFO.

Public Comments: Interested parties may submit written comments regarding the proposed sale to the Field Manager, BLM, CFO, up to 45 days after publication of this Notice in the **Federal Register**. Any adverse comments will be reviewed by the Pecos District Manager, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior. Any comments received during this process, as well as the commentor name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish to have your name and/or address made available to the public. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A request from a commentor to have their name and/or address withheld from public release will be honored to the extent permissible by laws.

Detailed information concerning the sale, including the restrictions, reservations, sale procedures and conditions, planning and environmental documents is available for review at the BLM, CFO, or by calling (505) 234–5972.

Authority: 43 CFR 2711.1–2 (a) and (c).

Dated: November 30, 2006.

Jim Stovall,

Acting Carlsbad Field Manager.

[FR Doc. E7–371 Filed 1–12–07; 8:45 am]

BILLING CODE 4310–OX–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420-BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of portions of the subdivisional lines, and the subdivision of sections 8 and 9, T. 7 S., R. 24 E., Boise Meridian, Idaho was accepted October 11, 2006.

The plat representing the dependent resurvey of portions of the west boundary and the boundaries of certain mineral surveys in unsurveyed sections 6 and 7, and the retracement of a portion of the boundaries of certain mineral surveys in

unsurveyed section 6, T. 48 N., R. 5 E., Boise Meridian, Idaho was accepted November 1, 2006.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines, and the boundary of Mineral Survey No. 2210, and the subdivision of section 33, T. 4 S., R. 3 W., and the dependent resurvey of portions of the west and north boundaries and subdivisional lines, and boundaries of certain mineral surveys, T. 5 S., R. 3 W., and a portion of the boundary of Mineral Survey No. 1099, T. 5 S., R. 4 W., Boise Meridian, Idaho were accepted November 29, 2006.

The plat representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, and the subdivision of section 7, T. 11 S., R. 15 E., Boise Meridian, Idaho was accepted December 6, 2006.

The plat representing the dependent resurvey of portions of the south boundary, subdivisional lines, and boundaries of certain mineral surveys, and the subdivision of section 34, T. 48 N., R. 4 E., Boise Meridian, Idaho was accepted December 13, 2006.

This survey was executed at the request of the Bureau of Indian Affairs to meet certain administrative and management purposes. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines and the subdivision of section 7, T. 46 N., R. 4 W., Boise Meridian, Idaho was accepted September 29, 2006.

This survey was executed at the request of the National Park Service to meet certain administrative and management purposes.

The lands surveyed are:

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of section 9, T. 7 S., R. 13 E., Boise Meridian, Idaho was accepted October 4, 2006.

Dated: January 9, 2007.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. E7–397 Filed 1–12–07; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Mall and Memorial Parks; Notice of Intent To Prepare a National Mall Plan

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to prepare the National Mall Plan, Washington, DC.

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service (NPS) will be preparing a National Mall Plan to provide a long-term vision plan for the use and management of the National Mall, which has been defined by Congress as a ''substantially completed work of civic art,'' and Pennsylvania Avenue National Historic Park.

DATES: Information related to ongoing public involvement opportunities will be provided at the following park Web site: *http://www.nps.gov/nationalmallplan.*

SUPPLEMENTARY INFORMATION: The planning effort will result in a National Mall Plan that differs from a General Management Plan in that it covers a longer-term time frame and addresses a finer level of detail. While National Mall & Memorial Parks includes many national park units throughout the Nation's Capital, this plan will address only the National Mall, which is comprised of West Potomac Park, the Washington Monument and the Mall, and the related Pennsylvania Avenue National Historic Park. A map of the study area is available at *http://www.nps.gov/nationalmallplan.* In cooperation with the agencies with jurisdiction over properties adjoining the National Mall, attention will also be given to impacts outside its boundaries that affect the integrity of the park. Public involvement and civic engagement will be key components in the preparation of the National Mall Plan. Public scoping will help to identify alternatives and major issues to be considered.

The plan will identify types and locations, and character of needed visitor facilities and services, which could include food service, seating, lighting, restrooms and crowd controls, etc. The plan could also identify desired site improvements, such as floral displays, fountains, and other embellishments that are not commemorative in nature. Additional planning issues may be defined during scoping.

FOR FURTHER INFORMATION CONTACT: Project Executive Susan Spain may be contacted at National Mall & Memorial Parks, 900 Ohio Drive SW., Washington DC 20024–2000, by telephone at (202) 245–4692, or by e-mail at *susan_spain@nps.gov.*

Dated: December 22, 2006.

Lisa A. Mendelson-Ielmini,

Acting Regional Director, National Capital Region.

[FR Doc. E7–396 Filed 1–12–07; 8:45 am]

BILLING CODE 4312–39–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before December 30, 2006. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 31, 2007.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

FLORIDA

St. Johns County

Homeland School, 249 Church Ave., Homeland, 07000001

IDAHO

Blaine County

Ketchum Ranger District Administrative Site, 131/171 River St., Ketchum, 07000005

Canyon County

Boise River and Canal Bridge, (Metal Truss Highway Bridges of Idaho MPS) Plymouth St., Caldwell, 07000003

Power County

Sparks, Walter, House, (American Falls, Idaho, Relocated Townsite MPS) 408 Roosevelt St., American Falls, 07000002

St. John's Episcopal Church,

(American Falls, Idaho, Relocated Townsite MPS) 328 Roosevelt St., American Falls, 07000004

Washington County

Weiser Oregon Short Line Railroad Depot, One State St., Weiser, 07000006

MAINE

Aroostook County

Jacobson, Pehr J., House, 452 New Sweden Rd., New Sweden, 07000013

Kennebec County

Spruce Point Camps, 84 Bearnstow Rd., Mount Vernon, 07000011

Lincoln County

Chimney Farm, 617 East Neck Rd., Nobleboro, 07000012

Whitefield Union Hall, 901 Townhouse Rd., Whitefield, 07000014

Washington County

Chaloner House, 3 Pleasant St., Lubec, 07000009

York County

Pike, LeRoy F., Memorial Building, 17 Maple St., Cornish, 07000010

MISSOURI

Henry County

Clinton Square Historic District, Roughly 100 Blocks on N & S Main; S. Washington; W Franklin; W Jefferson, Clinton, 07000019

Jackson County

Holy Rosary Historic District, Roughly bounded by 5th and Campbell, 5th and Harrison and 9th E. Missouri Ave., Kansas City, 07000007

Twenty-Ninth Street Colonnaded Apartments Historic District, (Colonnade Apartment Buildings of Kansas City, MO MPS) 900–906 E. 29th St. and 2843 N. Campbell; 910–912 E. 29th St.; 914 E. 29th St., Kansas City, 07000018

Montgomery County

Gloe, Heinrich, House, 358 Hwy P, Rhineland, 07000022

St. Louis Independent City

Falstaff Brewing Corporation Plant Number 1, 3644–3690 Forest Park Blvd., St. Louis (Independent City), 07000008

Forest Park Southeast Historic District (Boundary Increase II), 4121–25, 4127–29, 4131, 4133, 4137, 4139–41, 4143, 4145, 4501–07, 4509–11, 4510, and 4512–14 Manchester Ave., St. Louis (Independent City), 07000015

Jack Rabbit Candy Company Building, 1928–1930 Martin Luther King, St. Louis (Independent City), 07000024

Jones, William Cuthbert, House, 3724 Olive St., St. Louis (Independent City), 07000017

Koken Barbers' Supply co. Historic District, Bounded by Ohio, Sidney and Victor Sts., and alley E of Texas Ave., St. Louis (Independent City), 07000023

Laclede Gas Light Company Pumping Station G, 4401 Chouteau Ave., St. Louis (Independent City), 07000020

Lee, Robert E., Hotel, 205 N. 18th St., St. Louis (Independent City), 07000021

NORTH DAKOTA

Cass County

Union Storage & Transfer Cold Storage Warehouse and Amour Creamery Building, 1026–1032 Northern Pacific Ave. and 1034–1102 Northern Pacifice Ave., Fargo, 07000016

OHIO

Coshocton County

Muskingum River Navigation Historic District, Coshocton, Muskingum, Morgan, Washington Counties, Coshocton, 07000025

Franklin County

Canal Winchester School, 100 South Washington St., Canal Winchester, 07000026

Hamilton County

West Fourth Street Historic District (Boundary Increase), 1–35, 2–18 W. Fourth St., Cincinnati, 07000028

Marion County

Marion Township Sub-District #8 School, 2473 OH 4 N, Marion, 07000027

PENNSYLVANIA

Bucks County

Funk, Jacob, House and Barn, 3609 PA 212, Springfield, 07000030

Dauphin County

Legislative Route 1 Sycamore Allee, Legislative Route 1, approx. 1 mil N and S of Halifax, Halifax and Reed, 07000029

McKean County

Lynn Hall, W side of U.S. 6, 1.5 mi. W of Port Allegany, Liberty Township, 07000033

Philadelphia County

Rohm and Haas Corporate Headquarters, 100 Independence Mall West, Philadelphia, 07000031

Washington County

First National Bank of Charleroi, 210 Fifth St., Charleroi Borough, 07000032

WISCONSIN

Crawford County

Cipra Wayside Mound Group, (Late Woodland Stage in Archeological Region 8 MPS) Address Restricted, Wauzeka, 07000034

Richland County

Shadewald I Mound Group, (Late Woodland Stage in Archeological Region 8 MPS) Address Restricted, Eagle Township, 07000035

[FR Doc. E7–376 Filed 1–12–07; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Black Mesa and Kayenta Coal Mines, Coal Slurry Preparation Plant and Pipeline, and Coconino Aquifer Water-Supply System, Coconino, Mohave, Navajo, and Yavapai Counties, Arizona, and Clark County, NV

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Extension of comment period for the Black Mesa Project draft environmental impact statement (EIS) and scheduling of additional public meeting.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is extending the comment period for the Black Mesa Project draft EIS and scheduling an additional public meeting in Leupp, Arizona.

DATES: To ensure consideration in the preparation of the final EIS, written comments must be received by OSM by 4 p.m., m.s.t., on February 6, 2007. A public meeting to receive comments on the draft EIS will be held in Leupp, Arizona, on January 11, 2007, from noon to 4 p.m. at the Leupp Chapter House on Navajo Route 15.

ADDRESSES: The draft EIS is available for review on OSM's Internet Web site at *http://www.wrcc.osmre.gov/WR/BlackMesaEIS.htm.* Paper and computer compact disk (CD) copies of the draft EIS are also available for review at the Office of Surface Mining, Western Region, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733.

A limited number of CD and paper copies of the draft EIS have been prepared and are available upon request. Because of the time and expense in producing and mailing CD and paper copies, OSM requests that you review the Internet or publicly-available copy, if possible. You may obtain a CD or paper copy by contacting the person identified below in **FOR FURTHER INFORMATION CONTACT**. In your request, indicate whether you want a CD or paper copy.

Comments on the draft EIS may be submitted in writing or by e-mail over the Internet. At the top of your letter or in the subject line of your e-mail message, indicate that the comments are ''BMP Draft EIS Comments.'' Include your name and return address in your letter or e-mail message.

- E-mail comments should be sent to *BMKEIS@osmre.gov.* If you do not receive a confirmation from the system that OSM has received your e-mail comment, contact the person identified in **FOR FURTHER INFORMATION CONTACT** below.
- Written comments sent by first-class or priority U.S. Postal Service should be mailed to: Dennis Winterringer, Leader, Black Mesa Project EIS, OSM Western Region, P.O. Box 46667, Denver, Colorado 80201–6667.
- Comments delivered by U.S. Postal Service Express Mail or by courier service should be sent to: Dennis Winterringer, Leader, Black Mesa Project EIS, OSM Western Region, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733.

FOR FURTHER INFORMATION CONTACT: Dennis Winterringer, Leader, Black

Mesa Project EIS, OSM Western Region, by telephone at (303) 844–1400, extension 1440, or by e-mail at *BMKEIS@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Extension of the Comment Period and Scheduling of an Additional Public Meeting
II. Background on the Black Mesa Project EIS
III. Availability of Your Comments for Public Review
IV. Specificity of Comments
V. Public Meetings

I. Extension of the Comment Period and Scheduling of an Additional Public Meeting

On November 22 and December 1, 2006, OSM and the Environmental Protection Agency respectively published in the **Federal Register** notices announcing availability of the Black Mesa Project draft EIS for comment (71 FR 67637 and 71 FR 69562). In the former notice, OSM announced a comment period closing date of January 22, 2007, and the locations, dates, and times for 11 public meetings that will be held from January 2 through 11, 2007.

Subsequent to the publishing of the notices OSM received requests to extend the comment period and a request to reschedule one of the meetings. In consideration of the comment period extension requests, OSM is extending the comment period for 15 days to February 6, 2007. In consideration of the request to reschedule the public meeting in Leupp, Arizona, that was originally announced for January 9, 2007, from 6 p.m. to 9 p.m. at the Leupp Chapter House, OSM has decided to hold the meeting as planned and to also hold another meeting at the same location on January 11, 2007, from noon to 4 p.m.

II. Background on the Black Mesa Project EIS

Pursuant to the National Environmental Policy Act of 1969 (NEPA), OSM prepared a draft EIS analyzing the effects of the proposed Black Mesa Project. The proposed Project consists of Peabody Western Coal Company's operation and reclamation plans for coal mining at the Black Mesa Mine Complex near Kayenta, Arizona; Black Mesa Pipeline Incorporated's (BMPI's) Coal Slurry Preparation Plant at the Black Mesa Mine Complex; BMPI's reconstruction of the 273-mile long Coal Slurry Pipeline across northern Arizona from the Coal Slurry Preparation Plant to the Mohave Generating Station in Laughlin, Nevada; and Salt River Project's and Mohave Generation Station co-owners' construction and operation of a water supply system consisting of water wells in the Coconino aquifer (C aquifer) near Leupp, Arizona, and of a water supply pipeline running 108 miles across the Navajo and Hopi Reservations from the wells to the Coal Slurry Preparation Plant. More information about the project and EIS can be found on OSM's Internet Web site at *http://www.wrcc.osmre.gov/WR/BlackMesaEIS.htm.*

III. Availability of Your Comments for Public Review

Our practice is to make comments, including names and home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments and submit your comments by regular mail, not by e-mail. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute an 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.

IV. Specificity of Written Comments

Written comments, including e-mail comments, should be sent to OSM at the addresses given in the **ADDRESSES** section of this notice. Be specific in your comments and indicate the chapter, page, paragraph, and sentence your comments pertain to.

V. Public Meetings

Meeting rooms for the 12 public meetings will be set up in four areas: (1) An area where an audio-visual presentation on the Black Mesa Project and EIS will be made, (2) an area with displays where meeting attendees may discuss the project proposal and the EIS process with OSM and others, (3) an area where meeting attendees may record and submit written comments, and (4) an area where an OSM representative and a transcriber will record oral comments.

To assist the transcriber and ensure an accurate record, OSM requests that each presenter of oral comments provide a written copy of his or her comments, if possible.

Hopi, Hualapai, and Navajo interpreters will be present respectively at meetings on the Hopi, Hualapai, and Navajo Reservations.

If you are disabled or need reasonable accommodations to attend one of the meetings, contact the person under **FOR FURTHER INFORMATION CONTACT** at least 1 week before the meeting.

Dated: January 10, 2007.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. E7–454 Filed 1–12–07; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–NEW]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: COPS Interoperable Communications Technology Program (ICTP) assessment.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 205, page 62298, on October 24, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for 30 days for public comment until February 15, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your

comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Proposed collection; comments requested

(2) *Title of the Form/Collection:* COPS Interoperable Communications Technology Program (ICTP) Assessment

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement and partner public safety agencies that are recipients of COPS ICTP grants from Fiscal Years 2003–2006.

(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 approximately 400 respondents across a three-year assessment period can provide responses within 90 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 600 total burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: January 10, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–418 Filed 1–12–07; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0007]

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Release and Receipt of Imported Firearms, Ammunition and Implements of War

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 205, page 62299 on October 24, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 15, 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:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Release and Receipt of Imported Firearms, Ammunition and Implements of War.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 6A (5330.3C). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Other: Business or other for-profit, Not-for-profit institutions. *Abstract:* The data provided by this information collection request is used by ATF to determine if articles imported meet the statutory and regulatory criteria for importation and if the articles shown on the permit application have been actually imported.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 20,000 respondents, who will complete the form within approximately 24 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 8,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: January 9, 2007.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E7–415 Filed 1–12–07; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0087]

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: eForm 6 Access Request.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 199, page 60754 on October 16, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 15, 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:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* eForm 6 Access Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5013.3. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: none. *Abstract:* Respondents must complete the eForm 6 Access Request form in order to receive a user ID and password to obtain access to ATF's eForm 6 System. The information is used by the Government to verify the identity of the end users prior to issuing passwords.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 500 respondents, who will complete the form within approximately 18 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 150 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: January 9, 2007.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E7–416 Filed 1–12–07; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 1–07]

Sunshine Act Meeting Notice

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thursday, January 25, 2007, at 1 p.m.

SUBJECT MATTER: Issuance of Proposed Decisions, Amended Proposed Decisions, and Amended Final Decisions in claims against Albania.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Mauricio J. Tamargo,

Chairman.

[FR Doc. 07–128 Filed 1–11–07; 10:58 am]

BILLING CODE 4410–01–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–NEW]

Agency Information Collection Activities: Existing Collection in Use Without OMB Control Number; Comments Requested

ACTION: 30-Day notice of information collection under review: Firearms Inquiry Statistics (FIST) Program.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics (BJS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 200, pages 61070–

61071 on October 17, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 15, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Matthew Hickman, Bureau of Justice Statistics, 810 Seventh St., NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Existing collection in use without OMB control number.

(2) *Title of the Form/Collection:* Firearms Inquiry Statistics (FIST) Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Not applicable.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State and Local Government. This information collection is a survey of State and local agencies that conduct background checks on individuals applying to purchase firearms from federally licensed firearm dealers. The information will provide national statistics on the total number of applications and rejections annually.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 683 respondents will complete a fifteen minute form twice annually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 341.5 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 9, 2007.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E7–417 Filed 1–12–07; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 26, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 26, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 5th day of January 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX—21 TAA

[Petitions instituted between 12/26/06 and 12/29/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60667	Icelandic USA, Inc. (State)	Cambridge, MD	12/26/06	12/22/06
60668	ZF Lemforder, Inc. (Wkrs)	Brewer, ME	12/26/06	12/15/06
60669	Connor Corporation (Union)	Fort Wayne, IN	12/27/06	12/27/06
60670	Jeld-Wen Millwork Mfg. (Comp)	Klamath Falls, OR.	12/27/06	12/20/06
60671	Dura Automotive Systems, Inc. (Wkrs)	West Union, IA	12/27/06	12/21/06
60672	Affordable Upholstery LLC (Comp)	Maynardville, TN	12/28/06	12/24/06
60673	Manthei, Inc. (Comp)	Petoskey, MI	12/28/06	12/27/06

APPENDIX—21 TAA—Continued

[Petitions instituted between 12/26/06 and 12/29/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60674	UNITE, New York Joint Board (UNITE)	Union City, NJ	12/28/06	12/12/06
60675	Pittsburgh Corning Corporation (Comp)	Port Allegany, PA.	12/28/06	12/21/06
60676	Staver Foundry, Inc. (State)	Virginia, MN	12/28/06	12/27/06
60677	Win Depot, LLC (Wkrs)	Long Island City, NY.	12/28/06	12/27/06
60678	Keystone Powdered Metal (Comp)	St. Marys, PA	12/28/06	12/28/06
60679	Greenwood Mills, Inc. (Comp)	Greenwood, SC	12/29/06	12/19/06
60680	Cecilware Corporation (Comp)	Astoria, NY	12/29/06	12/18/06
60681	Boeing Company (The) (TN/TA)	Oak Ridge, TN	12/29/06	12/06/06
60682	Meridian Automotive Systems (Wkrs)	Kentwood, MI	12/29/06	12/21/06
60683	Chesmore Seed Company (Wkrs)	St. Joseph, MO	12/29/06	12/28/06
60684	Mohican Mills, Inc. (Comp)	Lincolnton, NC	12/29/06	12/05/06
60685	ACE Style Intimate Apparel, Inc. (Wkrs)	New York, NY	12/29/06	12/23/06
60686	Simonds Industries, Inc. (USWA)	Newcomerstown, OH.	12/29/06	12/28/06
60687	Wheatland Tube Co. (USWA)	Sharon, PA	12/29/06	12/11/06

[FR Doc. E7–467 Filed 1–12–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of December 18 through December 29, 2006.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–60,531; Intelliden, Inc., Colorado Springs, CO: November 29, 2005.

TA–W–60,560; Electronic Data Systems, EDS-Xerox Account, Rochester, NY: November 21, 2005.

TA–W–60,371; Grupo Antolin North America, CAD Department, Auburn Hills, MI: November 6, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–60,302; BMC Software, Inc., Waltham, MA: October 25, 2005.

TA–W–60,575; Storeroom Solutions, Inc., Working Onsite at Tower Automotive, Inc., Granite City, IL: December 11, 2005.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,126; Michelin North America, BF Goodrich Tire Manufacturing, Opelika, AL: September 20, 2005.

TA–W–60,256; Eaton Corporation, Clutch Division, Auburn, IN: December 17, 2006.

TA–W–60,438; Graphic Electronics, Inc., Tulsa, OK: November 14, 2005.

TA–W–60,515; Maytag Corporation, A Wholly Owned Subsidiary of Whirlpool Corporation, Newton, IA: December 24, 2006.

TA–W–60,527; Danley IEM, LLC, Cleveland, OH: November 13, 2005.

TA–W–60,570; Sanyo Manufacturing Corporation, A Subsidiary of Sanyo Electric, Forrest City, AR: December 8, 2005.

TA–W–60,446; Vollrath Company LLC (The), Oconomowoc, WI: November 9, 2005.

TA–W–60,474; General Chemical Performance Products, Newark, NJ: November 22, 2005.

TA–W–60,475; Deco Engineering, Inc., A Subsidiary of Newcor, Inc., Royal Oak, MI: November 22, 2005.

TA–W–60,478; Ford Motor Company, St. Louis Assembly Plant, Vehicle Operations, Hazelwood, MO: November 21, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,387; Arimon Technologies, Inc., Manitowoc, WI: November 1, 2005.

TA–W–60,496; Hill Rom Company, Inc., Batesville Manufacturing Operation, Batesville, IN: November 27, 2005.

TA–W–60,502; Superior Industries International, Inc., Johnson City, TN: November 28, 2005.

TA–W–60,541; Siemens VDO Automotive Corp., Elkhart, IN: December 4, 2005.

TA–W–60,561; Aramark Uniform Services, Lawrenceville, GA: December 7, 2005.

TA–W–60,584; Hart and Cooley, Inc., Holland, MI: December 11, 2005.

TA–W–60,586; Dyno Nobel, Inc., Wolf Lake, IL: November 21, 2005.

TA–W–60,629; General Electric Lighting, Inc., Austintown Products Plant, Youngstown, OH: December 12, 2005.

TA–W–60,411; Littelfuse, Inc., Electronic Testing and Packaging Department, Des Plaines, IL: November 9, 2005.

TA–W–60,569; Metaldyne, Powertrain Products, Solon, OH: December 5, 2005.

TA–W–60,580; Lear Corporation, Electronic Switch Division, Zanesville, OH: November 30, 2005.

TA–W–60,642; M.A. Moslow and Brothers, Inc., Buffalo, NY: July 30, 2006.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,421; Fisher and Company, Inc., Corporate Offices, St. Clair Shores, MI: October 11, 2005.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–60,575; Storeroom Solutions, Inc., Working Onsite at Tower Automotive, Inc., Granite City, IL.

TA–W–60,531; Intelliden, Inc., Colorado Springs, CO.

TA–W–60,371; Grupo Antolin North America, CAD Department, Auburn Hills, MI.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–60,302; BMC Software, Inc., Waltham, MA.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

TA–W–60,560; Electronic Data Systems, EDS-Xerox Account, Rochester, NY.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–60,436; Watts Regulator, Carolinas Division, Spindale, NC.

TA–W–60,458; Wheeling Pittsburgh Steel Corp., Allenport, PA.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,542; GreatBatch Hittman, Inc., Columbia, MD.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–59,863; Delphi Corporation, Automotive Holdings Group, Moraine, OH.

TA–W–60,399; Customized Manufacturing, Inc., McKenzie, TN.

TA–W–60,454; Forest City Technologies, Wixom Division, Wixom, MI.

TA–W–60,508; Enhanced Presentations, Inc., Wilmington, NC.

TA–W–60,464; Key Technology, Inc., Medford Office Division, Medford, OR.

TA–W–60,480; Emcor Facilities Services, Inc., On-Site Contracted Workers at Hewlett-Packard Co., Corvallis, OR.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

None.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–60,507; Washington Mutual Bank, Florence, SC.

TA–W–60,517; CDI Corporation, IT Solutions Division, Lexington, KY.

TA–W–60,567; Accordis, Inc., Chicago Service Center, A Subsidiary of Zavata, Chicago, IL.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of December 18 through December 29, 2006. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 8, 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–462 Filed 1–12–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,700]

Joy Technologies, Inc.; DBA Joy Mining Machinery; MT. Vernon Plant, MT. Vernon, IL; Notice of Negative Determination on Remand

On September 25, 2006, the U.S. Court of International Trade (USCIT) granted the U.S. Department of Labor's motion for a voluntary remand in *Former Employees of Joy Technologies, Inc.* v. *U.S. Secretary of Labor,* Court No. 06–00088. SAR 240.

Case History

On August 9, 2005, the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 483, (''Union'') filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers and former workers of Joy Technologies, Inc., DBA Joy Mining Machinery, Mt. Vernon Plant, Mt. Vernon, Illinois (the subject facility) producing underground mining machinery (the subject worker group). AR 2.

The Department's negative determination, issued on September 15, 2005, was based on findings that sales and employment at the subject facility increased in 2004 from 2003 levels, that sales remained stable in January through July 2005 over the corresponding 2004 period, and that employment increased during January through July 2005 over the corresponding 2004 period. The denial was also based on the findings of no shift of underground mining machinery production abroad and no increased imports of underground mining machinery during the relevant period. AR 130–135. The Notice of the Department's determination was published in the **Federal Register** on October 31, 2005 (70 FR 62345). AR 142.

On November 3, 2005, workers requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. In the request for reconsideration, the workers asserted that the Department's interpretation of the reasons for the plant closure and the activities of the subject workers was erroneous. According to the workers, production and employment increased at the subject facility from 2003 to 2004 due to a ''Contract Agreement'' between the subject firm and the Union and that ''the worker group at Joy, Mt. Vernon, IL has been an upstream supplier to the Joy Mining Machinery facility located in Franklin, PA. [p]roducing various components used in the final assembly of the firms products'' and that in ''2004, the worker group * * * resumed being an upstream supplier of component parts * * * to be used in final production or to be sold as new replacement components to Joy Mining Machinery customers.'' The workers allege that ''[t]hese components are being produced in a foreign country (Mexico).'' AR 145–147.

In support of the allegation, the workers provided the Department with a copy of a November 17, 2005 electronic message from a Joy official to the Union which confirmed that the Joy, Mt. Vernon, Illinois facility supplied components for Joy, Franklin, Pennsylvania, AR 159, and stated that ''three sets of track frames that were fabricated in Mexico were finished in the Mt. Vernon machine and weld shops.'' AR 160.

On November 16, 2005, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The Notice of affirmative determination was published in the **Federal Register** on December 15, 2005 (70 FR 74373).

During the reconsideration investigation, the Union informed the Department that it is not involved with the request for reconsideration and directed the Department to speak with the workers. AR 149.

According to workers Jerome Tobin and John Moore, the subject facility is an upstream supplier to the Joy plant in Franklin, Pennsylvania; the Franklin, Pennsylvania facility outsourced production to Mexico; the component parts made at the subject facility were outsourced to Mexico, and the components were sent to Joy, Eagle Pass, Texas. *Id.* During a conference call, the workers also stated that they would file a new petition as secondarily-affected workers. *Id.* In a later conference call, Jerome Tobin, John Moore, and Steve Lisenbey, stated that Joy had outsourced production to Extreme Machine. *Id.*

During the reconsideration investigation, the Department found that

during the relevant period, the subject facility produced shuttle cars, rebuilt electrical motors and armored face conveyors (AFC), assembled gearboxes, and produced components used in the final assembly of mining machinery produced at other Joy facility, including the Franklin, Pennsylvania facility. AR 146. According to the Joy Mining Machinery ''Global Caplight'' article, dated July 29, 2005, the subject firm opened a new, larger production facility in Lebanon, Kentucky that is ''scheduled to open in the fall of 2005'' and will ''manufacture shuttle cars, rebuild motors and rebuild AFC gearcases.'' AR 126.

The reconsideration investigation also found that from May 2004 through September 2005, when the subject facility closed, the subject worker group produced ''69 conveyors, 72 conveyor supports and 86 crawler track frames (43 sets).'' AR 148. The Department also found that ''three sets of track frames that were fabricated in Mexico'' were sent to the subject facility for finishing. AR 160.

A careful review of the administrative record revealed that the subject firm had cooperated with the investigation in good faith and had no incentive to prevent the subject workers from receiving TAA benefits, AR 29–30. Further, the subject firm decided ''to bring products * * * into Mount Vernon for a period of time to maintain work for employees who would ultimately lose their jobs with the plant closure.'' AR 160. Indeed, the subject firm stated that it wants employees ''to receive all of the benefits to which they are legally entitled.'' *Id.*

On January 19, 2006, the Department issued a Negative Determination on Reconsideration. AR 180. The Department found that there was no shift of production to Mexico, that the work at issue was ''temporary work'' which was assigned to several Joy Mining Machinery (Joy) facilities (including the Mt. Vernon, Illinois facility), that the workers' separations were due to a shift of operations to an affiliated, domestic facility in Kentucky, and that the subject workers are not eligible to apply for TAA as workers of a secondarily-affected company. AR 180.

The Department's Notice of determination on reconsideration was published in the **Federal Register** on January 20, 2006 (71 FR 4937). AR 185–186. A corrected Notice of determination was issued on February 6, 2006, AR 187, and was published in the **Federal Register** on February 22, 2006 (71 FR 9162). AR 191.

On March 15, 2006, the Plaintiffs appealed the negative reconsideration determination to the USCIT.

In an August 24, 2006 letter, Plaintiffs' counsel stated that a voluntary remand is appropriate because the Department failed to (1) Identify the manufacturing functions at the subject facility; (2) investigate the allegation of imports, particularly from Mexico; (3) investigate about the shift of production to Kentucky; and (4) investigate imports by Joy's customers, and because the administrative record is incomplete. SAR 193–198.

In order to address the issues raised above, the Department sought, and was granted, a voluntary remand. SAR 240.

Plaintiffs' Allegations

In the complaint, Plaintiffs asserted ''we were an upstream supplier to the Joy Mining Machinery facility at Franklin, PA. * * * Joy Mining Machinery outsources the components to * * * Mexico * * * these Mexican facilities * * * produce the component work that was formerly done * * * at Joy Mining Machinery Mt. Vernon, Illinois'' and the work done by Plaintiffs ''is not being done at the new Joy Mining Machinery facility in Lebanon, Kentucky.'' SAR 238–239. In subsequent submissions, Plaintiffs asserted that they manufactured components for Joy's Franklin, Pennsylvania facility, SAR 194, 204–205, and may have produced components for other Joy domestic facilities. SAR 205. Plaintiffs also asserted that component production shifted to Mexico, that Joy increased imports of components. SAR 204–205, and that components were stamped ''hecho en Mexico.'' SAR 260.

Remand Investigation

While conducting the remand investigation, the Department contacted Plaintiffs' counsel, SAR 200–201, 202–234, 242–392, 409–411, Joy corporate counsel, SAR 200–201, 235, 412–415, 420–421, and individuals identified by the Plaintiffs as having relevant information, SAR 200–201, 407–408, 416–419, 422–423.

During the remand investigation, the Department received several affidavits from Plaintiffs. A summary of relevant facts of each affidavit follows:

Robin Buckingham states that the subject facility always manufactured both finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a ''substantial part'' of the subject facility's work is performed as ''an upstream supplier'' for the Franklin, Pennsylvania; between 2002 and 2004, the subject facility imported mining machinery components from Mexico; and that a former Joy supervisor had spoken to him about the parts stamped ''hecho en Mexico.'' SAR 257–262.

Gary Coles states that the subject facility always manufactured both finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a ''substantial part'' of the subject facility's work is performed as ''an upstream supplier'' for the Franklin, Pennsylvania; the subject facility had sold completed components ''directly to customers''; from 2002 and through 2004, the subject facility imported mining machinery components from Mexico; and that a Joy sales manager had spoken to him about the parts stamped ''hecho en Mexico.'' SAR 268–273.

Steve Lisenbey states that the subject facility always manufactured both finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a ''substantial part'' of the subject facility's work is performed as ''an upstream supplier'' for the Franklin, Pennsylvania; in January 2002, a subject facility manager stated that ''Joy had formed a partnership with a Mexican supplier to outsource the fabrication of continuous miner components'' and ''components fabricated in Mexico did not meet the International Organization for Standardization (''ISO'') standards,'' so ''the completed components Joy outsourced to Mexico had to be brought to Mt. Vernon for the final machining''; in 2004, the subject facility imported crawler track frames from Mexico; and the Joy, Lebanon, Kentucky facility ''does not have the same manufacturing functions and duties'' as the subject facility because it does not fabricate components. SAR 280–283.

John Moore states that the subject facility always manufactured both finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a ''substantial part'' of the subject facility's work is performed as ''an upstream supplier'' for the Franklin, Pennsylvania; that the subject facility ''took sales orders directly from

customers''; in 2003 and 2004, the subject facility ''did the final machining on completed crawler track frames that originated in Mexico''; the subject facility ''retrofitted gathering pans'' were marked ''hecho en Mexico''; and in ''approximately October or November 2005, a sales manager for Joy ''told me that Joy was outsourcing manufacture and assembly of mining equipment to Mexico.'' SAR 292–296.

Robert Patterson stated that the subject facility manufactured finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a ''substantial part'' of the subject facility's work is performed as ''an upstream supplier'' for the Franklin, Pennsylvania facility; in 2003 and 2004, the subject facility ''machined completed crawler track frames that originated in Mexico''; and the subject facility received components stamped ''hecho en Mexico.'' SAR 304–307.

Jerome Tobin stated that the subject facility always manufactured both finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a ''substantial part'' of the subject facility's work is performed as ''an upstream supplier'' for the Franklin, Pennsylvania facility; in 2004, the subject facility ''machined completed crawler track frames that originated in Mexico''; the subject facility received track frames and components stamped ''hecho en Mexico''; and on ''October 17, 2006,'' Merlin Orser, the President of the Union's local at Franklin, Pennsylvania, ''confirmed for me that the Lebanon facility does only assembly work * * * does not perform the manufacturing functions that the Mt. Vernon facility performed when it was open.'' SAR 316–320.

David Vaughn states that the subject facility manufactured finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a ''substantial part'' of the subject facility's work is performed as ''an upstream supplier'' for the Franklin, Pennsylvania facility; in 2004, the subject facility ''did the final machining on completed crawler track frames originated in Mexico''; the subject facility received components stamped ''hecho en Mexico''; and a former Joy supervisor ''told me that at Coal Age he is outsourcing the manufacture of continuous miner frames to a company in Mexico * * * the same Mexican company for outsourcing that Joy used to fabricate the continuous miner components.'' SAR 328–332.

Ronald Wilkey states that the subject facility always manufactured both finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a ''substantial part'' of the subject facility's work is performed as ''an upstream supplier'' for the Franklin, Pennsylvania facility; in 2004, the subject facility ''did the final machining on completed crawler track frames originated in Mexico''; the subject facility received components stamped ''hecho en Mexico''; that ''in approximately August 2005, I was one of the laborers who helped to unload a truck full of crawler track frames that had originated in Mexico''; and that the subject facility had received component parts stamped ''hecho en Mexico.'' SAR 340–343.

Jesse Russell Hamilton states that subject facility always manufactured both finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a ''substantial part'' of the subject facility's work is performed as ''an upstream supplier'' for the Franklin, Pennsylvania facility; in 2004, the subject facility ''machined crawler track frames that originated in Mexico''; and the subject facility received components stamped ''hecho en Mexico.'' SAR 356–359.

Steven Kirkpatrick states that the subject facility always manufactured both finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a ''substantial part'' of the subject facility's work is performed as ''an upstream supplier'' for the Franklin, Pennsylvania facility; in 2004, the subject facility ''machined crawler track frames that originated in Mexico''; the subject facility received mining machinery component parts marked ''hecho en Mexico''; and in 2003, ''DMUs came into the Mt. Vernon plant from Mexico.'' SAR 366–370.

Robert Baxley stated that the subject facility always manufactured both finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a ''substantial part'' of the subject facility's work is performed as ''an upstream supplier'' for the Franklin, Pennsylvania facility; in 2004, the subject facility ''did the final machining on completed crawler track frames that originated in Mexico''; the subject facility received crawler track frames and other component parts stamped ''hecho en Mexico''; and ''in November 2005, I took pictures of the Mexican crawler track frames that had been brought into the Joy Mt. Vernon facility earlier in the year.'' SAR 378–381.

Darrell Cockrum states that in August 2005, Mr. Peircey from Engles Trucking told him that he had picked up a shipment of crawler track frames at Extreme Machine, Youngstown, Ohio; that the shipment had originated in Mexico; that Extreme Machine ''had a large number of crawler track frames that Joy had fabricated in Mexico''; Joy had shipped the frames from Mexico to Extreme Machine for final machining; and that the frames in the August 2005 shipments were from Mexico and sent to the subject facility for final machining. SAR 394–395.

William Perkins states that in 2004 and 2005, he photographed and inspected conveyor supports, discharge tails, and crawler track frames that had originated in Mexico and were stamped ''hecho en Mexico.'' SAR 410–411.

While the Department has carefully reviewed the Plaintiffs' submissions, the Department has not received any information to support the allegation of a shift of production abroad. Further, on December 28, 2006, the Department contacted Plaintiffs' counsel to request any information not already in the record. SAR 201. No additional information was received.

According to current and former Joy officials, the subject facility produced finished mining machinery and finished components. AR 146, SAR 247–250, 414. Joy confirmed that the subject facility closed in September 2005, that production of finished mining machinery shifted to a Joy facility in Lebanon, Kentucky, and that the subject firm does not have an affiliated production facility in Mexico. SAR 248.

Because the workers who produce finished mining machinery and mining components at the subject facility are not separately identifiable by product line, the Department determines that the subject workers were engaged in the

production of finished mining machinery and components.

To be certified as eligible to apply for TAA, the following criteria must be met:

(1) A significant number or proportion of the workers in such workers' firm (or appropriate subdivision of the firm) have become, or are threatened to become, totally or partially separated;

(2) Sales or production, or both, of such firm or subdivision have decreased absolutely; and

(3) Increases (absolute or relative) of imports of articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production, or

(4) There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States, is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act or there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Because the subject facility closed on September 23, 2005, the Department determines that criteria (1) and (2) have been met.

Pursuant to 29 CFR 90.2, ''increased imports'' means that imports have increased, absolutely or relative to domestic production, compared to a representative base period. The regulation also establishes the representative base period as the one-year period preceding the relevant period (the twelve-month period prior to the date of the petition).

Because the petition date is August 9, 2005, the relevant period for the case at hand is July 2004 through August 2005 and the representative base period is July 2003 through August 2004.

Because Plaintiffs allege increased imports of mining machinery components and it is undisputed that Joy did not import finished mining machinery, AR 13–14, 170, and that Joy shifted finished mining machinery production to an affiliated facility in Lebanon, Kentucky, SAR 280–283, 316–320, the scope of the Department's remand investigation is limited to mining machinery components like or directly competitive with those produced at the subject facility during the relevant period.

In order for TAA criteria (3) to be satisfied, it must be shown that increased imports of mining machinery components during the relevant period ''contributed importantly'' to workers' separations and the decline in sales or production. Therefore, the presence of increased imports is established if the import level during July 2004 through August 2005 is greater than the import level during July 2003 through August 2004.

Per the Plaintiffs' request, the Department contacted two individuals who were identified as having information relevant to increased imports of mining machinery components by the subject firm. SAR 407, 416–417, 419, 422.

One of the individuals, a former Joy manager, who was identified by several Plaintiffs, had left Joy prior to the relevant period and was therefore unable to speak about events during July 2004 through September 2005. SAR 407, 419. The other individual, a vendor with whom Joy currently conducts business, stated that the mining machinery components did not come from Mexico but were shipped from, and back to, the subject firm's Franklin, Pennsylvania facility. SAR 416–417.

Data previously provided by the subject firm reflect that there were no imports during the relevant period. AR 13–14. Rather, the subject firm has indicated that it had brought in extra work from Mexico in order to create work for the workers. AR 160. Because the subject firm has repeatedly expressed its concern for the subject worker group, AR 29–30, 160 and SAR 428, the Department has no reason to believe that the subject firm is being less than forthcoming during the remand investigation.

Even if there were increased subject firm imports during the relevant period, the increased imports could not have ''contributed importantly to such total or partial separation, or threat thereof, *and* to such decline in sales or production'' (emphasis added) because sales for Joy increased during the relevant period. AR 29–30. In the event that there were company-wide sale declines, the Department may interpret a closure of an affiliated plant as an effort by the company to adjust to increased foreign competition. However, this is not the case at hand.

Plaintiffs also allege that the Department failed to inquire into Joy's customers' import activities. SAR 193–198. Again, because sales for Joy increased during the relevant period, there were no declining customers for the Department to survey about their decreased purchases. AR 29–30.

As such, having given full consideration to all information submitted by the Plaintiffs, the Department determines that TAA criterion (3) has not been met.

Plaintiffs allege that the subject firm shifted mining machinery component production to Mexico. SAR 204. As stated before, Joy does not have an affiliated production facility in Mexico. AR 170, SAR 204, 251. Therefore, there is no facility to which Joy can shift production. Further, the record further substantiates that the subject firm had shifted production to other Joy domestic facilities, rather than to a foreign supplier. AR 9, 20, 29–30, 130–131, 159–160, 169–170, SAR 248, 251, 415, 425. While several Plaintiffs have asserted that all activities did not shift to Joy's Lebanon, Kentucky facility, the evidence supports the conclusion that any shift of production was to other Joy domestic facilities, and not to a foreign production facility. As such, having given full consideration to all information submitted by the Plaintiffs, the Department determines that TAA criterion (4) has not been met.

After careful review of the administrative record and the submissions of the remand investigation, the Department has inquired into the various allegations of the Plaintiffs and has determined that they are without merit.

In addition, in accordance with Section 246 of the Trade Act of 1974, as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA.

In order to apply the Department to issue a certification of eligibility to apply for ATAA, the subject worker group must be certified eligible to apply for TAA. Since the workers are denied eligibility to apply for TAA, they cannot be certified eligible to apply for ATAA.

Conclusion

After careful review of the findings of the remand investigation, I affirm the notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Joy Technologies, Inc., DBA Joy Mining Machinery, Mt. Vernon Plant, Mt. Vernon, Illinois.

Signed at Washington, DC, this 8th day of January 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–463 Filed 1–12–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications Of Eligibility To Apply For Worker Adjustment Assistance And Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 26, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 26, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 8th day of January 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX.—TAA PETITIONS INSTITUTED BETWEEN 1/3/07 AND 1/5/07

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60688	Lego Systems, Inc. (Comp)	Enfield, CT	01/03/07	01/02/07
60689	Ronfeldt Associates, Inc. (Comp)	Toledo, OH	01/03/07	12/21/06
60690	Bestop, Inc. (Comp)	Broomfield, CO	01/03/07	01/02/07
60691	Baxter Corporation (The) (Comp)	Shelby, NC	01/03/07	01/02/07
60692	Anaheim Manufacturing Co (Comp)	Anaheim, CA	01/03/07	01/02/07
60693	Continental Connector (Wkrs)	Bloomfield, NJ	01/03/07	12/08/06
60694	Stover Industries, Inc. (Union)	Pt. Pleasant, WV	01/03/07	2/29/06
60695	Longview Fibre (CIC)	Leavenworth, WA	01/03/07	12/28/06
60696	LeNature's, Inc. (Wkrs)	Latrobe, PA	01/03/07	12/04/06
60697	St. Croix Manufacturing (Wkrs)	Grantsburg, WI	01/03/07	12/12/06
60698	Commonwealth Sprague Capacitor, Inc. (Wkrs)	North Adams, MA	01/03/07	12/18/06
60699	Filtronic Comtek Lane (State)	Salisbury, MD	01/04/07	01/03/07
60700	Quality Staffing Services (State)	Salisbury, MD	01/04/07	01/03/07
60701	Uniflex Holdings, Inc. (Comp)	Hicksville, NY	01/04/07	01/03/07
60702	Knitech LLC (Wkrs)	Fort Payne, AL	01/04/07	12/07/07
60703	Thyssenkrupp Budd Company (Wkrs)	Detroit, MI	01/04/07	12/13/06
60704	Hewlett-Packard Corporation (Wkrs)	Mahwah, NJ	01/04/07	12/29/06
60705	Syngenta Crop Protection (Wkrs)	Pasadena, TX	01/04/07	12/21/06
60706	Ameritex Yarn, LLC (Wkrs)	Spartanburg, SC	01/04/07	01/02/07
60707	Dyno Nobel (State)	Simsbury, CT	01/05/07	01/05/07
60708	Hooven Allison, LLC (Comp)	Madison, GA	01/05/07	12/29/06
60709	Carauster York Carton Plant (USW)	York, PA	01/05/07	12/20/06
60710	Crane Plumbing (State)	Hearne, TX	01/05/07	01/07/07
60711	Hurd Lock and Manufacturing Co. (AFLCIO)	Greeneville, TN	01/05/07	01/04/07
60712	Keneric Corporation (Comp)	Obion, TN	01/05/07	12/28/06
60713	Missouri Fabricated Products (Wkrs)	Caruthersville, MO	01/05/07	01/05/07
60714	Extreme Tool and Engineering (Comp)	Wakefield, MI	01/05/07	01/05/07

[FR Doc. E7–466 Filed 1–12–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,172]

Sunshine School Uniforms and Supply Company Including On-Site Leased Workers of ADP Total Source Medley, Florida; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 23, 2006, applicable to workers of Sunshine School Uniforms, and Supply Company, Medley, Florida. The notice was published in the **Federal Register** on November 16, 2006 (71 FR 66799).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of school uniforms.

New information shows that leased workers of ADP Total Source were employed on-site at the Medley, Florida location of Sunshine School Uniforms and Supply Company.

Information also shows that all workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for ADP Total Source.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Sunshine School Uniforms and Supply Company, Medley, Florida who were adversely affected by a shift of production to Guatemala.

The amended notice applicable to TA–W–60,172 is hereby issued as follows:

''All workers of Sunshine Schools Uniforms and Supply Company, including on-site leased workers ADP Total Source, Medley, Florida who became totally or partially separated from employment on or after September 27, 2005, through October 23, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 4th day of January 2007.

Ellott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–464 Filed 1–12–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,705]

Syngenta Crop Protection; Pasadena, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 4, 2007 in response to a petition filed on behalf of workers at Syngenta Crop Protection, Pasadena, Texas (TA–W–60,705).

The petition was filed by three workers without three signatures. Without three signatures, the petition has been deemed invalid. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 5th day of January, 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–465 Filed 1–12–07; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to Previously Approved Information Collections; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until March 19, 2007.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, E-mail: *_OCIOmail@ncua.gov*.

OMB Reviewer: NCUA Desk Officer, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428 or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0155.

Form Numbers: CLF–8700 CLF–8705 CLF–8706 NCUA–7005 CLF–10.

Type of Review: Extension of a currently approved collection.

Title: Central Liquidity Facility group/agent membership and loan activity forms.

Description: Forms used in conjunction with agent member's request for facility advances, to request agent membership in the Central Liquidity Facility and/or to establish terms of relationship between credit unions, agent members and agent group representatives.

Respondents: Credit unions.

Estimated No. of Respondents/Recordkeepers: 151.

Estimated Burden Hours per Response: 36.55 minutes.

Frequency of Response: Reporting and other (once).

Estimated Total Annual Burden Hours: 92.

Estimated Total Annual Cost: None.

By the National Credit Union Administration Board on January 9, 2007.

Mary Rupp,

Secretary of the Board.

[FR Doc. E7–451 Filed 1–12–07; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to Currently Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until March 19, 2007.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, E-mail: *_OCIOmail@ncua.gov*.

OMB Reviewer: NCUA Desk Officer, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428 or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0167.

Form Number: N/A.

Type of Review: Revision to a currently approved collection.

Title: 12 CFR, Part 741.11 of NCUA's Rules and Regulations, Foreign Branching.

Description: Part 741.11 contains a provision that any insured credit union must apply for and receive approval from the regional director before establishing a credit union branch outside the United States unless the foreign branch is located on a United States military institution or embassy outside the United States. The application must include (1) a business plan, (2) written approval by the state supervisory agency if the applicant is a state-chartered credit union, and (3) documentation evidencing written permission from the host country to establish the branch that explicitly recognizes NCUA's authority to examine and take any enforcement actions, to include conservatorship and liquidation actions.

Estimated No. of Respondents/ Recordkeepers: 2.

Estimated Burden Hours per Response: 16 hours.

Frequency of Response: Reporting and other (one time only).

Estimated Total Annual Burden Hours: 32.

Estimated Total Annual Cost: $ 0.

By the National Credit Union Administration Board on January 9, 2007.

Mary Rupp,

Secretary of the Board.

[FR Doc. E7–452 Filed 1–12–07; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services; Sunshine Act Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of the forthcoming meeting of the National Museum and Library Services Board. This notice also describes the function of the Board. Notice of the meeting is required under the Sunshine in Government Act.

TIME AND DATE: Monday, January 29, 2007 from 1:45 p.m. to 4:30 p.m.

AGENDA: Committee Meetings of the Tenth National Museum and Library Service Board Meetings:

1:45 p.m.–3 p.m. Meeting of the Committee on Partnerships & Government Affairs.
I. Staff Reports.
II. Other Business.

3:15 p.m.–4:30 p.m. Meeting of the Committee on Policy and Planning.
I. Staff Reports.
II. Other Business.

PLACE: The meetings will be held at the Hilton Cincinnati Netherland Plaza, 35 West Fifth Street, Cincinnati, Ohio. Telephone: (513) 421–9100.

TIME AND DATE: Tuesday, January 30, 2007, from 10 a.m. to 1 p.m.

AGENDA: Tenth National Museum and Library Services Board Meeting:

I. Welcome
II. Approval of Minutes
III. Financial Update
IV. Legislative Update
V. Committee Reports
VI. Board Program: Library and Museum and 21st Century Skills
VII. Board Updates
VIII. Adjournment

PLACE: The meeting will be held in the Discovery Room at the Freedom Center, 50 East Freedom Way, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Events and Board Liaison, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is established under the Museum and Library Services Act, 20 U.S.C. 9101 *et seq*. The Board advises the Director of the Institute on general policies with respect to the duties, powers, and authorities related to Museum and Library Services.

If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1800 M Street, NW., 9th Fl., Washington, DC 20036. Telephone: (202) 653–4676; TDD (202) 653–4699 at least seven (7) days prior to the meeting date.

Dated: January 9, 2007.

Kate Fernstrom,

Chief of Staff.

[FR Doc. 07–138 Filed 1–11–07; 1:45 pm]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board; Commission on 21st Century Education in Science, Technology, Engineering and Mathematics; Amended Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given of a change in the location of a meeting of the National Science Board Commission on 21st Century Education in Science, Technology, Engineering, and Mathematics. The meeting, originally set for January 18, 2007, from 8 a.m.–5 p.m. to be held at the Arizona State Capitol, 1700 W. Washington Street, Phoenix, AZ 85007 (published in Vol. 71 FR 78227, December 28, 2006) will be held at the same time at the Hyatt Regency Phoenix, 122 North Second Street, Phoenix, Arizona, USA 85004. Telephone: 602–252–1234

Type of Meeting: Open.

Purpose of Meeting: The purpose of this meeting is for the Commission to discuss its draft recommendations relating to K–12 STEM education. A provisional agenda for the meeting will be available at *http://www.nsf.gov/nsb/edu-com/*.

Contact Person: Dr. Elizabeth Strickland, Commission Executive Secretary, National Science Board Office, 4201 Wilson Boulevard,

Arlington, VA 22230; Phone: 703–292–4527, E-mail *estrickl@nsf.gov.*

Russell Moy,

Attorney-Advisor.

[FR Doc. E7–558 Filed 1–12–07; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (1173).

Dates/Time: February 1, 2007, 8:30 a.m.–5:30 p.m. and February 2, 2007, 8:30 a.m.–2 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235 S, Arlington, VA 22304.

Type of Meeting: Open.

Contact Person: Dr. Margaret E.M. Tolbert, Senior Advisor and Executive Liaison, CEOSE, Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8040. *mtolbert@nsf.gov.*

Minutes: May be obtained from the Executive Liaison at the above address.

Purpose of Meeting: To provide advice and recommendations concerning broadening participation in science and engineering.

Agenda:

Thursday, February 1, 2007

Welcome and introduction of the New CEOSE Chair by the Outgoing CEOSE Chair;

Opening Statement by the New CEOSE Chair.

Introductions.

Presentations and Discussions:

- Broadening Participation Initiatives, Issues, and Achievements of a Major Office and a Directorate of the National Science Foundation
- Discussion with the Director of the National Science Foundation
- Diversity Initiatives of the Chemistry Division of the National Science Foundation
- Report on NSF Funding to Minority Serving Institutions
- Ad Hoc Subcommittee Reports on Communications, Preparation of the CEOSE Biennial Report to Congress, Institutional Transformation, and Widening Creative Pathways

Public Comment Session (Sign up required).

Friday, February 2, 2007

Opening Statement by the New CEOSE Chair.

Presentations/Discussions:

- Reports of CEOSE Liaisons to National Science Foundation Advisory Committees
- Briefing on AAAS Session, Lessons Learned: Broadening Federal Participation Efforts'', Scheduled for February 17, 2007
- Deliberations on Key Areas of Focus in the Future, Recommendations, and Action Items

Completion of Unfinished Business.

Dated: January 9, 2007.

Susanne Bolton,

Committee Managment Officer.

[FR Doc. 07–112 Filed 1–12–07; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* State Agreements Program, as authorized by Section 274(b) of the Atomic Energy Act.

2. *Current OMB approval number:* 3150–0029.

3. *How often the collection is required:* One time or as needed.

4. *Who is required or asked to report:* Thirty-four Agreement States who have signed Section 274(b) Agreements with NRC.

5. *The number of annual respondents:* 34.

6. *The number of hours needed annually to complete the requirement or request:* 1,066.

7. *Abstract:* Agreement States are asked on a one-time or as-needed basis to respond to a specific incident, to gather information on licensing and inspection practices and other technical statistical information. The results of such information requests, which are authorized under Section 274(b) of the Atomic Energy Act, are utilized in part by NRC in preparing responses to Congressional inquiries. Agreement State comments are also solicited in the areas of proposed procedure and policy development.

Submit, by March 19, 2007, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Margaret A. Janney, U.S. Nuclear Regulatory Commission, T–5 F52, Washington, DC 20555–0001, by telephone at 301–415–7245, or by Internet electronic mail to: *Infocollects@Nrc.gov.*

Dated at Rockville, Maryland, this 9th day January, 2007.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–403 Filed 1–12–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on January 31, 2007, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, January 31, 2007, 10 a.m.–11:30 a.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: January 9, 2007.

Michael R. Snodderly,

Branch Chief, ACRS/ACNW.

[FR Doc. E7–404 Filed 1–12–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission 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 December 22, 2006 to January 4, 2007. The last biweekly notice was published on January 3, 2007 (72 FR 147).

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*.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin.

Date of amendment request: December 14, 2006.

Description of amendment request: The proposed amendments revise the technical specifications to add the FERRET Code as an approved methodology for determining reactor coolant system pressure and temperature limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change revises Technical Specification (TS) 5.6.5, ''Reactor Coolant System (RCS) Pressure and Temperature Limits Report (PTLR)'', to add the FERRET Code as an approved methodology for determining RCS pressure and temperature limits.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or the manner in which the plant is operated and maintained. The proposed change does not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. Therefore, the proposed change does not significantly increase the probability of any accident previously evaluated.

There will be no change to normal plant operating parameters, engineered safety feature actuation setpoints, accident mitigation capabilities, or accident analysis assumptions or inputs. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, the probability or consequences of any accident previously evaluated will not be significantly increased as a result of the proposed change.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

The proposed change incorporates the FERRET Code as an approved methodology for determining RCS pressure and temperature limits. The change does not impose any new or different requirements or

eliminate any existing requirements. The proposed change is consistent with the safety analysis assumptions and current plant operating practice.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. Equipment important to safety will continue to operate as designed. The change does not result in any event previously deemed incredible being made credible. The change does not result in adverse conditions or result in any increase in the challenges to safety systems. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

The proposed change incorporates the FERRET Code as an approved methodology for determining RCS pressure and temperature limits. The proposed change does not alter safety limits, limiting safety system settings, or limiting conditions for operation. The setpoints at which protective actions are initiated are not altered by the proposed change.

There are no new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed amendment will not otherwise affect the plant protective boundaries, will not cause a release of fission products to the public, nor will it degrade the performance of any other structures, systems or components (SSCs) important to safety. Therefore, the requested change will not result in 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: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Acting Branch Chief: L. Raghavan.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri.

Date of amendment request: August 17, 2006.

Description of amendment request: The amendment would revise Technical Specifications (TSs) 2.1.1, ''Reactor Core SLs [Safety Limits],'' 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' 3.4.1, RCS [reactor coolant system] Pressure, Temperature, and Flow Departure from Nucleate Boiling (DNB) Limits,'' and 5.6.5, ''Core Operating Limits Report (COLR).'' The changes would (1) relocate certain operating cycle-specific parameters limits, including TS Figure 2.1.1–1, ''Reactor Core Safety Limits,'' from the above TSs to the plant COLR, (2) add two new safety limits for departure from nucleate boiling ratio (DNBR) and peak fuel centerline temperature, and (3) add several topical reports to TS 5.6.5 and have the reports in TS 5.6.5 cited by only the report title and number. The TSs would state that the limits to be met or the values of denoted parameters are specified in the COLR. The existing TS 5.6.5 has seven core operating limits that are listed in the specification, and this would be expanded to include the three additional limits from TSs 2.1.1, 3.3.1, and 3.4.1. The changes are consistent with NRC-approved Standard Technical Task Force (TSTF) Traveler TSTF–339, Revision 2, ''Relocate TS Parameters to COLR,'' and TSTF–363, Revision 0, ''Relocate Topical Report References in ITS [Improved Technical Specification] 5.6.5, COLR.''

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 change[s] involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no design [or equipment] changes. The design of the reactor trip system (RTS) instrumentation and engineered safety feature actuation system (ESFAS) instrumentation will be unaffected and these protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to this amendment request will be maintained.

The proposed changes will not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes will not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended [safety] functions to mitigate the consequences of an initiating event within the assumed acceptance limits.

The proposed changes are programmatic and administrative in nature. These changes do not physically alter safety-related systems nor affect the way in which safety-related systems perform their functions. Additional Safety Limits on the DNB [departure from nucleate boiling] design basis and peak fuel centerline temperature are being imposed in TS 2.1.1, ''Reactor Core Safety Limits,'' and the Reactor Core Safety Limits figure is being relocated to the COLR. The additional Safety Limits are consistent with the values stated in the FSAR [Final Safety Analysis Report for the Callaway Plant]. The proposed changes do not, by themselves, alter any of the relocated limits. The removal of the cycle-specific parameter limits from the TS[s] does not eliminate existing requirements to comply with the parameter limits. [The value of the limits is relocated to the COLR, but the requirement to follow that limit remains in the TSs by the reference to the limits or values in the COLR, and the values of the limits are not being changed by this amendment.] TS 5.6.5.b continues to ensure that the analytical methods used to determine the core operating limits meet NRC reviewed and approved methodologies [by the requirement stated in TS 5.6.5.b that ''the analytical methods used to determine the core operating limits shall be those previously reviewed and approved by the NRC'']. TS 5.6.5.c, [which is] unchanged by this application, will continue to ensure that applicable limits of the safety analyses are met [by continuing to state this as a requirement in the TSs].

The proposed changes to reference only the Topical Report number and title do not alter the use of the analytical methods used to determine core operating limits that have been reviewed and approved by the NRC. [This remains a requirement stated in TS 5.6.5.b.] This [proposed] method of referencing Topical Reports would allow the use of current [NRC-approved] Topical Reports to support [the] limits in the COLR without [the licensee] having to submit an amendment to the operating license. Implementation of revisions to Topical Reports for Callaway Plant applications would still be reviewed in accordance with 10 CFR 50.59(c)(2)(viii) and, where required, receive prior NRC review and approval. [The criteria in the regulation governing changes to the plant without NRC approval, 10 CFR 50.59, would have to be met before the licensee could use a later version of an NRC-approved Topical Report that is listed in TS 5.6.5.b.]

The cycle-specific parameter limits being transferred from the TS[s] to the COLR will continue to be controlled under existing programs and procedures. The FSAR accident analyses will continue to be examined with respect to future changes in the cycle-specific parameters using NRC reviewed and approved reload design methodologies [(i.e., NRC reviewed and approved Topical Reports)], ensuring that the evaluation of new reload designs under 10 CFR 50.59 is bounded by previously accepted analyses.

All accident analysis acceptance criteria will continue to be met with the proposed changes. The proposed changes will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR. The applicable radiological dose acceptance criteria will continue to be met.

[The proposed changes do not alter any requirements in the TSs, but they do add two

new safety limits to TS 2.2.1. The changes also relocate certain limits or parameter values from the TSs to the COLR; however, these limits and values are still required to be met and be determined from NRC-approved methodologies that apply to the Callaway Plant. Therefore, there are no changes to accident analyses previously evaluated and described in the FSAR.]

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. [Do] the proposed change[s] create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no proposed design changes nor are there any changes in the method by which any safety-related plant SSC performs its safety function. Th[ese] change[s] will not affect the normal method of plant operation or change any operating parameters. No equipment performance requirements will be affected. The proposed changes will not alter any assumptions made in the safety analyses.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment. [No equipment is being added to the plant by the amendment.]

The proposed amendment will not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Relocation of cycle-specific parameter limits has no influence on, nor does it contribute in any way to, the possibility of a new or different kind of accident. The relocated cycle-specific parameter limits will continue to be calculated using the NRC reviewed and approved methodologies. The proposed changes do not alter assumptions made in the safety analyses. Operation within the core operating limits will continue to be observed.

Therefore, the proposed changes do not create the possibility of a new or different accident from any accident previously evaluated.

3. [Do] the proposed change[s] involve a significant reduction in a margin of safety?

Response: No.

There will be no effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impacts on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F\Delta H$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The applicable radiological dose consequence acceptance criteria will continue to be met.

The proposed changes do not eliminate any surveillances or alter the frequency of surveillances [(i.e., the surveillance test intervals)] required by the Technical Specifications. The nominal RTS and ESFAS trip setpoints will remain unchanged. None of the acceptance criteria for any accident analysis will be changed.

The development of cycle-specific parameter limits for future reload designs will continue to conform to NRC reviewed and approved methodologies, and will be performed pursuant to 10 CFR 50.59 to assure that plant operation [is] within [these] cycle-specific parameter limits.

The proposed changes will have no impact on the radiological consequences of a design basis accident.

[The proposed changes do not alter any requirements in the TSs. They relocate certain limits or parameter values from the TSs to the COLR; however, these limits and values are still required to be met and be determined from NRC-approved methodologies that apply to the Callaway Plant.]

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: John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: David Terao.

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.*

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin.

Date of application for amendment: September 25, 2006.

Brief description of amendment: The amendment revises Technical Specification (TS) 4.2.a, ''ASME [American Society of Mechanical Engineers] Code Class 1, 2, 3, and MC Components and Supports.'' The revised TS 4.2.a.2, references the ASME Code for Operation and Maintenance of Nuclear Power Plants.

Date of issuance: December 14, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 189

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 24, 2006 (71 FR 62308).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 14, 2006.

No significant hazards consideration comments received: No.

DukePower Company LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina.

Date of application for amendments: December 20, 2005, as supplemented May 4 and August 31, 2006.

Brief description of amendments: The amendments revised the McGuire 1 and

2 licensing basis to adopt a selective implementation of the alternative source term radiological analysis methodology. The amendments also revised Technical Specification 3.9.4, ''Containment Penetrations.''

Date of issuance: December 22, 2006.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 236, 218

Renewed Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register:*** August 24, 2006 (71 FR 50105)

The supplements dated May 4 and August 31, 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.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois.

Date of application for amendments: December 9, 2004, as supplemented by letters dated August 16, August 24, September 13, and October 12, 2006.

Brief description of amendments: The amendments adopt Technical Specification Task Force (TSTF) Standard Technical Specification (STS) Change Traveler 360 (TSTF–360), Revision 1, ''DC Electric Rewrite.'' The amendment revised Technical Specification (TS) Section 3.8.4, ''DC Sources-Operating,'' TS 3.8.5, ''DC Sources-Shutdown,'' TS 3.8.6, ''Battery Cell Parameters,'' and adds a new TS Section 5.5.14, ''Battery Monitoring and Maintenance Program.''

Date of issuance: December 19, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 179/165.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** April 12, 2005 (70 FR 19115)

The August 16, August 24, September 13, and October 12, 2006 supplements contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 19, 2006.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia.

Date of application for amendment: May 30, 2006, as supplemented by letter dated June 30, 2006.

Brief description of amendment: The proposed amendments would relocate the American Society for Testing and Materials (ASTM) standard being used to test the total particulate concentration of the stored fuel oil to the Technical Specification (TS) Bases. This proposed change is described in TS Task Force (TSTF) Standard TS Change Traveler TSTF–374, Rev. 0, ''Revision to TS 5.5.13 and Associated TS Bases for Diesel Fuel Oil.'' In addition, the licensee has proposed to use a ''water and sediment test'' instead of the ''clear and bright'' test provided in TSTF–374.

Date of issuance: December 11, 2006.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 249, 229.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments change the licenses and the technical specifications.

Date of initial notice in ***Federal Register:*** August 15, 2006 (71 FR 46941)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 11, 2006.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 5th day of January 2007.

For The Nuclear Regulatory Commission.

John W. Lubinski,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–321 Filed 1–12–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55045; File No. SR–Amex–2007–02]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Options Fee Changes

January 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 4, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Amex. The Amex has designated this proposal as one establishing or changing a member due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to modify its Options Fee Schedule. The text of the proposed rule change is available at the Amex, on the Amex's Web site at *http://www.amex.com,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Options Fee schedule to eliminate the licensing fee of $0.10 a contract which is currently charged on options on the iShares Russell 1000 Index Fund (symbol: IWB), the iShares Russell 1000 Growth Index Fund (symbol: IWF), the iShares Russell 1000 Value Index Fund (symbol: IWD), the iShares Russell 2000 Index Fund (symbol: IWM), the iShares Russell 2000 Growth Index Fund (symbol: IWO), the iShares Russell 2000 Value Index Fund (symbol: IWN), and the iShares Russell 3000 Index Fund (symbol: IWV) (collectively, the ''ETF Options'').

The Exchange is proposing to eliminate the licensing fee applicable to the ETF Options as of January 3, 2007 due to the termination of existing licensing agreements on December 31, 2006.

The Exchange asserts that the proposal is equitable as required by Section 6(b)(4) of the Act.[5]

2. Statutory Basis

The proposed fee change is consistent with Section 6(b)(4) of the Act[6] regarding the equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and paragraph (f)(2) of Rule 19b–4 thereunder[8] because it establishes or changes a member due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–02 and should be submitted on or before February 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–381 Filed 1–12–07; 8:45 am]

BILLING CODE 8011–01–P

[5] Section 6(b)(4) requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55048; File No. SR–Amex–2006–119]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change Relating to the Definition of Complex Trade as Applied to Trades Through the Options Intermarket Linkage

January 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared substantially by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to revise Amex Rule 940(b)(3) to amend the definition of ''Complex Trade.'' The text of the proposed rule change appears below, with additions italicized and deletions in [brackets]:

Options Intermarket Linkage

Rule 940 (a) No Change

(b) Definitions—The following terms shall have the meaning specified in this Rule solely for the purpose of this Section 4:

(1)–(2) No Change

(3) ''Complex Trade'' means the execution of an order in an option series in conjunction with the execution of one or more related order(s) in different options series in the same underlying security occurring at or near the same

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

time *for the purpose of executing a particular investment strategy and for an equivalent number of contracts, provided that the number of contracts of the legs of a spread, straddle or combination order may differ by a permissible ratio* [for the equivalent number of contracts and for the purpose of executing a particular investment strategy]. *The permissible ratio for this purpose is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00).*

(4) through (20) No Change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has substantially 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 Amex proposes to revise Amex Rule 940(b)(3) to amend the definition of ''Complex Trade.'' For the purpose of the Options Intermarket Linkage (the ''Linkage''), the Amex defines a ''Complex Trade'' as a trade reflecting the execution of an order in an options series in conjunction with one or more other orders in different series in the same underlying security ''for the equivalent number of contracts.'' A Complex Trade is exempt from the trade-through rule provided by Amex Rule 942(b)(7).

In contrast to the Linkage definition of Complex Trade, the definition of ''ratio order'' set forth in Amex Rule 950—ANTE(e)(vii) does not require that there be an equivalent number of contracts in the orders. Specifically, Rule 950–ANTE(e)(vii) permits ratios that are equal to or greater than one-to-three and less than or equal to three-to-one. The Exchange applies modified priority rules to ratio orders as well as other complex orders, including spread orders, straddle orders, and combination orders.[3]

This proposal will conform the Linkage definition of Complex Trade in Amex Rule 940(b)(3) to the Amex's definition of a ratio order. According to the Amex, the other options exchanges also will adopt a similar definition, thereby resulting in a uniform application of the definition of Complex Trade across exchanges. The Amex believes that this uniformity will facilitate efficient executions of Complex Trades on all markets. In addition, the Exchange submits that the proposal will align the Linkage rules with the Amex's internal market rules to facilitate the trading of complex orders.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5),[5] in particular, in that it is 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Amex neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change; or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Amex–2006–119 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–119. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–119 and should be submitted on or before February 6, 2007.

[3] *See* Amex Rule 950–ANTE(d), Commentary .01.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–384 Filed 1–12–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55050; File No. SR–BSE–2006–03]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto, Relating to the Treatment of Limit Orders That Are Submitted to the Boston Options Exchange During a Price Improvement Period

January 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 8, 2006, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change. On January 4, 2007, the BSE filed Amendment No. 1 to the proposed rule change. The proposed rule change is described in Items I, II, and III below, which Items have been prepared substantially by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As described in more detail herein, the Exchange proposes to modify the Boston Options Exchange (''BOX'') Rules to clarify the treatment of Limit Orders that are submitted to the BOX during a Price Improvement Period (''PIP'').[3] In addition, this proposal clarifies that certain Improvement Orders (as explained below) are not accepted by the BOX Trading Host. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.bostonstock.com/legal/pending_rule_filings.html*.

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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify the treatment of Limit Orders that are submitted to the BOX during a PIP. In addition, this proposal clarifies that certain Improvement Orders (as explained below) are not accepted by the BOX Trading Host.

I. Background and Introduction

In general, the BOX PIP is a three-second auction starting at a price better than the current National Best Bid and Offer (''NBBO''), during which BOX Participants compete to participate in the execution of the Customer Order submitted to the PIP (the ''PIP Order'') by submitting specially designated orders called Improvement Orders in one penny increments that are only accepted in a PIP auction. A Limit Order, in the same series as the PIP Order, that is submitted to BOX during a PIP auction is considered an ''unrelated order'' pursuant to the BOX PIP Rules,[4] and under certain circumstances, may prematurely terminate the PIP or may immediately execute against the PIP Order. When the PIP is prematurely terminated, the PIP Order is matched against the best prevailing orders on BOX (whether Improvement Orders or unrelated orders received by BOX during the PIP).[5] Then the Limit Order is filtered from trading through the NBBO and executed accordingly.[6]

Competing Principles Underlying the Treatment of Unrelated Orders in a PIP

The BOX trading system operates under four main principles when handling the interaction of an unrelated Limit Order with the PIP process. Specifically, the BOX system:

1. Allows the PIP to continue for as long as possible. The BSE believes that in most cases this will maximize the price improvement potential to the PIP Order.
2. Maintains the relative price/time priority of all orders on the system, including Improvement Orders.
3. Will not allow Improvement Orders to lock or cross the BOX Book.
4. Never ''holds-up'' the processing of any order and seeks to execute an order as quickly as practicable in order to mitigate the risk of adverse market movements.

On the few occasions when these four principles intersect or are in conflict, BSE has sought to maintain a reasonable balance between the interests of all orders while offering each order the best available price, without violating any BOX Rules or the securities laws. Therefore, the first principle, allowing the PIP to continue for as long as possible, will apply until it conflicts with any of the other three (3) principles.

Consideration of the size of orders or the potential execution volume at any PIP price level is not one of these main principles of the BOX system. The BOX system does not consider the number of contracts that may be executed at the best PIP improvement price when determining priority or when the PIP should terminate. Having at least one contract available at the best improvement price is all that is required.

II. Same Side Limit Orders—Premature Termination Events

The submission to BOX of a Limit Order that is on the same side of the market as the PIP Order will prematurely terminate the PIP, allowing the PIP Order to be immediately executed against the best prevailing orders on BOX (whether Improvement Orders or unrelated orders received by BOX during the PIP), if at the time the Limit Order is submitted to BOX:

i. The Buy (Sell) Limit Order price is equal to or higher (lower) than the National Best Offer (Bid) and either:

[6] 17 CFR 200.30–3(a)(12).

[1] 5 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms not otherwise defined herein shall have the meanings prescribed under the BOX Rules.

[4] *See* paragraph (a) of Section 18 of Chapter V of the BOX Rules.

[5] Pursuant to Paragraph (e)(iii) of Section 18 of Chapter V of the BOX Rules.

[6] Pursuant to Paragraph (b) of Section 16 of Chapter V of the BOX Rules (''Filter Rule''). Pursuant to the Filter Rule, a Limit Order that has a Buy (Sell) limit price equal to or better than the National Best Offer (Bid), and the Best BOX Offer (Bid) is not equal to the National Best Offer (Bid), the Limit Order is ''exposed'' for three seconds to seek potential BOX orders that can match the National Best Offer (Bid) before the order is routed to an away market that is equal to the National Best Offer (Bid).

(a) The BOX Best Offer (Bid) is equal to the National Best Offer (Bid); or

(b) The BOX Best Offer (Bid) is higher (lower) than the National Best Offer (Bid) and the price of the best Improvement Order is equal to or lower (higher) than the National Best Offer (Bid); or

ii. The Buy (Sell) Limit Order price is lower (higher) than the National Best Offer (Bid) and its limit price equals or crosses the price of the best Improvement Order.[7]

In short, a same side Limit Order will terminate the PIP if the Limit Order matches the best BOX price (*i.e.*, the BOX BBO or the best Improvement Order) provided the best BOX price is better than or equal to the NBBO (*i.e.*, the Limit Order is marketable)[8] or if the Limit Order is non-marketable and its limit price is superior to the best Improvement Order. Therefore, the first factor to consider when determining whether the PIP will prematurely terminate is whether the Limit Order is marketable upon receipt by BOX.

A. If the Limit Order Is Marketable

The rule contemplates two different marketable Limit Order scenarios.

1. Scenario One

At the time of the submission of the Limit Order, the Buy (Sell) Limit Order price is equal to or higher (lower) than the National Best Offer (Bid) and the BOX Best Offer (Bid) is equal to the National Best Offer (Bid).[9] The following example illustrates this scenario.

Example A—

TABLE A

NBBO	BOX BBO	PIP order	Best IO price	Limit order price	Limit order size	Early termination	PIP order execution
2.00–2.10	2.00–2.10	Buy 20k	2.07	Buy at 2.10	20	YES	2.07

As shown in Table A, assume the NBBO and the BOX BBO in the relevant series are $2.00 bid—$2.10 offer and the PIP Order is a buy order for 20 contracts. The PIP starts at $2.09 (one penny better than the National Best Offer). During the PIP auction, Improvement Orders are submitted to the PIP until the price of the best Improvement Order is $2.07 for 20 contracts. Then a Limit Order to buy 20 contracts at a limit price of $2.10 is submitted to BOX. In this example, since the Buy Limit Order price of $2.10 is equal to the National Best Offer also at $2.10 and the BOX Best Offer of $2.10 is equal to the National Best Offer at $2.10, then the PIP will immediately terminate. Upon termination, the PIP Order will execute in full against the best Improvement Order at $2.07 and any remaining Improvement Orders will be immediately cancelled. The Buy Limit Order will then execute against the BOX Offer at $2.10. The result would be the same regardless of the Limit Order size or if the best Improvement Order was anywhere between $2.09 through $2.01.[10]

BSE wants to maximize the price to the PIP Order while also minimizing any potential market risk to the Limit Order by having BOX execute the Limit Order as soon as a matching order is available at the National Best Offer (Bid). In order to avoid a delay of the Limit Order execution against the matching BOX Offer, which Offer might otherwise be cancelled, BSE has chosen to strike a balance among the competing principles and give the PIP Order the price improvement that is immediately available to the PIP Order by prematurely terminating the PIP auction. In this Example A, if a PIP is not underway the Limit Order could execute against the BOX Offer at $2.10. However, in this situation in which a PIP is underway, allowing the PIP to continue and immediately executing the Limit Order at $2.10 against the BOX Offer would violate BOX price priority rules. This is because the best Improvement Order at $2.07 is at a lower (*i.e.*, better) price than the limit price of $2.10. On BOX, even though Improvement Orders may only execute against PIP Orders, price priority rules still apply, and no order can be executed at a price inferior to the best price available to another order.

2. Scenario Two

At the time of the submission of the Limit Order, the Buy (Sell) Limit Order price is equal to or higher (lower) than the National Best Offer (Bid), the BOX Best Offer (Bid) is higher (lower) than the National Best Offer (Bid), and the price of the best Improvement Order is equal to or lower (higher) than the National Best Offer (Bid).[11] The following is an example of this market scenario.

Example B—

TABLE B

NBBO	BOX BBO	PIP order	Best IO price	Limit order price	Limit order size	Early termination	PIP order execution
2.00–2.05	2.00–2.10	Buy 20k	2.05	Buy at 2.05	20	YES	2.05

If we take Example A above and make the following changes in the market scenario: the NBBO improves to $2.00 bid—$2.05 offer after the PIP begins, the best Improvement Order is for 20 contracts at $2.05, and a Limit Order with a limit price to buy at $2.05 is submitted to BOX, the PIP would also terminate prematurely. In this Example B, since the Buy Limit Order price of $2.05 is still equal to the National Best Offer also at $2.05 (*i.e.*, marketable), the BOX Best Offer ($2.10) is higher than the National Best Offer ($2.05) and the price of the best Improvement Order ($2.05) is equal to the National Best Offer at $2.05, the market conditions meet the requirements of the rule and

[7] *See* proposed paragraph (i) of Section 18 of Chapter V of the BOX Rules.

[8] A Limit Order is marketable when the Buy (Sell) Limit Order price is equal to or higher (lower) than the National Best Offer (Bid).

[9] *See* proposed paragraph (i)(i)(a) of Section 18 of Chapter V of the BOX Rules.

[10] The Trading Host will not accept Improvement Orders equal to or lower than $2.00 because the BOX system will not allow Improvement Orders to lock or cross the Best Bid or Offer on the BOX Book. *See* proposed Supplementary Material .03 to Section 18 of Chapter V of the BOX Rules and discussion below.

[11] *See* proposed paragraph (i)(i)(b) of Section 18 of Chapter V of the BOX Rules.

the PIP will immediately terminate. The PIP Order will execute in full against the best Improvement Order at $2.05 and any remaining Improvement Orders will be immediately cancelled. Because the Limit Order matches the National Best Offer at $2.05 the Limit Order would be exposed internally on BOX at $2.05 pursuant to the Filter Rule.[12]

As in Scenario One, BSE wants to maximize the price to the PIP Order while also limiting the market risk to the Limit Order, by having BOX give the Limit Order the opportunity to execute as soon as practicable at the National Best Offer (Bid). In this case, because the BOX Offer at $2.10 is inferior to the National Best Offer at $2.05, the Limit Order would ordinarily (*i.e.*, absent a PIP auction underway) be exposed at $2.05 pursuant to the Filter Rule. However, if the BOX trading system were to continue the PIP, no further price improvement would be possible when the best Improvement Order is $2.05. The Trading Host could not accept Improvement Orders equal to or lower than the $2.05 Limit Order price as long as the Limit Order is being exposed because the Limit Order would have priority and the BOX system will not allow Improvement Orders to lock or cross the opposite side BOX Best Bid of $2.05.[13]

Alternatively, if BOX were to hold the unrelated Limit Order until the end of the PIP auction this could cause the Limit Order to lose an opportunity to trade. Rather, BSE has chosen to strike a balance among the competing principles by giving the PIP Order the then-available price improvement and prematurely terminating the PIP.

If the best Improvement Order was only at $2.07 in Example B, the best Improvement Order price would be higher than the National Best Offer price of $2.05, and the PIP would continue because it does not create a situation that violates BOX price/time priority rules. The Limit Order would be exposed internally on BOX at $2.05. Although the PIP continues, the Trading Host would not accept Improvement Orders equal to or lower than the $2.05 Limit Order price because it will not allow Improvement Orders to lock or cross the opposite side order exposed on the BOX Book.[14]

B. If the Limit Order Is Non-Marketable

The PIP auction will also prematurely terminate early when at the time of the submission, the Buy (Sell) Limit Order price is lower (higher) than the National Best Offer (Bid) (*i.e.*, non-marketable) and the price of the Limit Order equals or crosses the price of the best Improvement Order.[15] The following is an example of this market scenario.

Example C—

TABLE C

NBBO	BOX BBO	PIP order	Best IO price	Limit order price	Limit order size	Early termination	PIP order execution
2.00–2.10	2.00–2.10	Buy 20k	2.05	Buy/Sell at 2.05	20	YES	2.05

As shown in Table C, assume the NBBO and the BOX BBO are $2.00 bid—$2.10 offer and the PIP Order is a buy order for 20 contracts. The PIP starts at $2.09 (one penny better than the National Best Offer). During the PIP auction, Improvement Orders are submitted to the PIP until the price of the best Improvement Order is $2.05 for 20 contracts. Then a Limit Order to buy 20 contracts at a limit price of $2.05 is submitted to BOX. In this Example C, since the Buy Limit Order price of $2.05 is lower than the National Best Offer at $2.10 and the limit price equals or crosses the price of the best Improvement Order (*i.e.*, $2.05), then the PIP will immediately terminate. The PIP Order will execute in full against the best Improvement Order at $2.05 and any remaining Improvement Orders will be immediately cancelled. The Buy Limit Order will then be placed on the BOX Book at $2.05.

As in the other scenarios, BSE wants to maximize the price to the PIP Order and also limit the market risk to the Limit Order, by having BOX display the Limit Order and giving the Limit Order the opportunity to execute as soon as practicable. In this case, because the Buy Limit Order at $2.05 is better than the current BOX Best Bid at $2.00, the Limit Order must be displayed at $2.05 pursuant to the Display Rule.[16] However, if the BOX trading system were to continue the PIP, it could create a situation very similar to the one explained in Scenario 2 and Example B above. Specifically, no further price improvement would be possible when the best Improvement Order is $2.05. The Trading Host could not accept Improvement Orders equal to or lower than the $2.05 Limit Order price as long as the Limit Order is being displayed because the Limit Order would have priority and the BOX system will not allow Improvement Orders to lock or cross the opposite side BOX Best Bid of $2.05.[17]

For clarification purposes only, the following is a similar scenario in which the PIP would *not* prematurely terminate.

Example D—

TABLE D

NBBO	BOX BBO	PIP order	Best IO price	Limit order price	Limit order size	Early termination	PIP order execution
2.00–2.10	2.00–2.10	Buy 20k	2.07	Buy at 2.05	20	NO	2.07 or 2.06

Assume we take Example C above and make the following changes in the market scenario: Improvement Orders are submitted to the PIP until the price of the best Improvement Order is $2.07 for 20 contracts. Upon receipt of the Buy Limit Order, there wouldn't be an order on BOX that the Limit Order could execute against and the Limit Order

[12] Section 16(b) of Chapter V of the BOX Rules.

[13] *See* proposed Supplementary Material .03 to Section 18 of Chapter V of the BOX Rules and discussion below.

[14] *See* proposed Supplementary Material .03 to Section 18 of Chapter V of the BOX Rules and discussion below.

[15] *See* proposed paragraph (i)(ii) of Section 18 of Chapter V of the BOX Rules.

[16] Section 16(a) of Chapter V of the BOX Rules.

[17] *See* proposed Supplementary Material .03 to Section 18 of Chapter V of the BOX Rules and discussion below.

would then be placed on the BOX Book at $2.05 and displayed as the BOX Best Bid. Because the Improvement Order at $2.07 is higher than the $2.05 Limit Order price, the PIP will continue. BOX will not accept Improvement Orders lower than $2.06 [18] because this would lock or cross the BOX Best Bid (the Limit Order at $2.05).

III. Opposite Side Limit Order-Immediate Execution

The submission to BOX of a Limit Order on the opposite side of a PIP Order will immediately execute against a PIP Order when the Sell (Buy) Limit Order price is equal to or crosses the National Best Bid (Offer) and;

i. The BOX Best Bid (Offer) is equal to the National Best Bid (Offer); or

ii. The BOX Best Bid (Offer) is lower (higher) than the National Best Bid (Offer) and neither the best Improvement Order nor BOX Best Offer (Bid) is equal to or crosses the National Best Bid (Offer).

In short, the opposite side Limit Order will immediately execute against a PIP Order when the Limit Order could match the BOX Best Bid (Offer) and/or the National Best Bid (Offer) and the Limit Order is superior to the best Improvement Order. Whether the opposite side Limit Order is marketable [19] or not upon receipt by BOX is the first factor to consider when determining whether the Limit Order will immediately execute against the PIP Order. If the Limit Order is marketable and the best Improvement Order is not equal to or lower (higher) than the National Best Bid (Offer), then the Limit Order immediately executes against the PIP Order up to the lesser of (a) the size of the PIP Order, or (b) the size of the Limit Order.[20] The execution price of the PIP Order against the Limit Order in this case will be determined by whether the BOX Best Bid (Offer) is equal to the National Best Bid (Offer) or it is lower (higher) than the National Best Bid (Offer) at the time of execution. Where the Limit Order is for at least the full size of the PIP Order, the PIP is prematurely terminated with the cancellation of all the Improvement Orders.

A. If the BOX BBO Equals the NBBO

If the BOX Best Bid (Offer) is equal to the National Best Bid (Offer) at the time of the execution, then the execution price will be one penny better than the National Best Bid (Offer).

Example E—

TABLE E

NBBO	BOX BBO	PIP order	Best IO price	Limit order price	Limit order size	Execute against PIP order	PIP order execution
2.00–2.10	2.00–2.10	Buy 20k	2.07	Sell at 2.00	20	YES	2.01

As shown in Table E, assume the NBBO and the BOX BBO in the relevant series is $2.00 bid—$2.10 offer and the PIP Order is a buy order for 20 contracts. The PIP starts at $2.09 (one penny better than the National Best Offer). During the PIP interval, Improvement Orders are submitted to the PIP until the price of the best Improvement Order is $2.07. Then, assume a Limit Order to sell 20 contracts with a limit price of $2.00 is submitted to BOX. Because the Sell Limit Order price is equal to the National Best Bid at $2.00 (*i.e.*, marketable) and the BOX Best Bid of $2.00 is equal to the National Best Bid, the Limit Order will be immediately executed in full against the PIP Order at $2.01, one penny better than the National Best Bid. Since the Limit Order is the same size as the PIP Order, the PIP terminates as well in this example. Any Improvement Orders will be immediately cancelled.

BSE wants to maximize the price to the PIP Order and also limit the market risk to the Limit Order, by having BOX give the Limit Order the opportunity to execute as soon as a matching order is available. In this case the PIP Order is immediately available to execute against the Limit Order at $2.01, which provides price improvement to both the PIP Order and the Limit Order. ''Holding'' the Limit Order until the PIP has run its full course might cause the Limit Order to miss the $2.00 BOX Best Bid which could be cancelled or modified during the lapse. Also, the PIP Order could have missed the opportunity to receive an execution at $2.01. In contrast, allowing the PIP to continue without immediately executing the Limit Order against the PIP Order would cause a violation of BOX priority rules. First, in this example, executing the Limit Order against the PIP Order at the National Best Bid of $2.00 would violate the time priority of the $2.00 order on the BOX Book that is the BOX Best Bid price. Additionally, if the Limit Order did not immediately execute against the PIP Order, the Limit Order would have been executed at $2.00 with the BOX Best Bid, which would be a priority violation of the PIP Order, which can trade at $2.01. In order to not violate priority rules and also to not hold up the Limit Order from executing against a matching order, BSE has chosen to strike a balance among the competing principles and give the PIP Order as well as the Limit Order the price improvement that is immediately available.

In contrast, the PIP would continue if the Limit Order in Example E had a limit price of $2.05 instead of $2.00, making it non-marketable, in which case the Limit Order would be placed on the BOX Book and displayed. Meanwhile, BOX gives the PIP Order the opportunity for further improvement. Since the Limit Order price of $2.05 is better than the best Improvement Order at $2.07, the Limit Order might be available to execute against the PIP Order at the end of the PIP process.[21]

Example F—

[18] The BOX Trading Host is programmed to continue to accept Improvement Orders at $2.06 or higher and will not accept Improvement Orders at $2.05 or lower unless the Limit Order is cancelled, in which case the Trading Host will begin to accept them again.

[19] For an opposite side Limit Order, it is marketable when the Sell (Buy) Limit Order price is equal to or lower than the National Best Bid (Offer).

[20] The remainder of the Limit Order, if any, is filtered from trading through the NBBO pursuant to the Filter Rule and executed accordingly. The remainder of the PIP Order, if any, continues in the PIP process.

[21] The Limit Order could be cancelled before the end of the PIP, in which case the Limit Order would not be available to execute with the PIP Order.

TABLE F

NBBO	BOX BBO	PIP order	Best IO price	Limit order price	Limit order size	Execute against PIP order	PIP order execution
2.00–2.10	2.00–2.10	Buy 20k	2.07	Sell at 2.00	30	YES	2.01

If we take Example E above and make the following changes in the market scenario: A Limit Order to sell 30 contracts with a limit price of $2.00 is submitted to BOX, the Limit Order would be partially executed against the PIP Order at $2.01 and the remainder of the Limit Order (10 contracts) would be filtered from trading through the NBBO pursuant to the Filter Rule and execute with the size of BOX Bid at $2.00. However, if in this Example F the Limit Order was a Limit Order to sell 10 contracts, the Limit Order would be executed in full against the PIP Order at $2.01, and the remainder of the PIP Order would continue in the PIP process.

B. The BOX BBO Does Not Equal the NBBO

When the BOX Best Bid (Offer) is lower (higher) than the National Best Bid (Offer) and neither the best Improvement Order nor BOX Best Offer (Bid) is equal to or crosses the National Best Bid (Offer), the PIP Order will execute against the Limit Order and the execution price will be the National Best Bid (Offer).

Example G —

TABLE G

NBBO	BOX BBO	PIP order	Best IO price	Limit order price	Limit order size	Execute against PIP order	PIP order execution
2.05–2.10	2.00–2.10	Buy 20k	2.07	Sell at 2.00	15	YES	2.05

As shown in Table G, assume the NBBO in the relevant series is $2.05 bid and $2.10 offer and the BBO is at $2.00 bid − $2.10 offer, the PIP Order is a buy order for 20 contracts, and the best Improvement Order is $2.07. Then an opposite side unrelated Limit Order to sell 15 contracts at $2.00 is received. Because the Sell Limit Order price is lower than or equal to the National Best Bid at $2.05 (*i.e.*, marketable), the BOX Best Bid of $2.00 is lower than the National Best Bid at $2.05, and the best Improvement Order at $2.07 does not equal or cross the National Best Bid at $2.05, the Sell Limit Order will be immediately executed in full against the PIP Order at the National Best Bid of $2.05. The PIP will proceed to duration for 5 contracts, which may or may not receive additional Improvement Orders lower than the $2.07 price (perhaps to the best possible price for the PIP Order of $2.01).

BSE wants to maximize the price to the PIP Order while limiting the market risk to the Limit Order, by having BOX give the Limit Order the opportunity to execute as soon as a matching order is available. In this case it is the PIP Order that is immediately available at the price of $2.05, which provides price improvement to both the PIP Order and the Limit Order. This situation occurs because the BOX Best Bid of $2.00 is lower than the National Best Bid of $2.05, so pursuant to the Filter Rule, the BOX system will seek to have the Limit Order executed at the National Best Bid price of $2.05. Since this price is lower than the BOX Best Offer ($2.10), and also lower than the best Improvement Order ($2.07), the Limit Order is also the best price available for the PIP Order. Therefore, in order to maximize the price improvement to the PIP Order the unrelated opposite side Limit Order will immediately execute against the PIP Order ensuring the PIP Order a $2.05 price for 15 contracts.

The benefit of this policy can also be shown by contrasting it with the possible outcomes if BOX allowed the PIP to continue without immediately executing the Limit Order against the PIP Order. In this situation, if the Limit Order does not execute against the PIP Order, then the Limit Order would be exposed on the BOX Book at $2.05 to seek a buy order at $2.05. However, the Limit Order could be cancelled prior to the receipt of a response, in which case the PIP Order would end up trading with the Improvement Order at an inferior price ($2.07) to the Limit Order price ($2.05). Alternatively, allowing the Limit Order to be exposed on the BOX Book at $2.05 could result in the submission of a responsive buy order, which would stop the PIP at that point because the buy order is a same side unrelated order. Therefore, it is more reasonable to avoid this unnecessary, and potentially detrimental, delay and instead follow Example G by immediately executing the PIP Order and the Limit Order at $2.05 upon receipt of the Limit Order.

C. Addition Example—Opposite Side Limit Order

In order to further clarify the operation of the rule for opposite side Limit Orders, consider the following example where the Limit Order *does not* immediately execute against the PIP Order.

Example H—

TABLE H

NBBO	BOX BBO	PIP order	Best IO price	Limit order price	Limit order size	Execute against PIP order	PIP order execution
2.05–2.10	2.00–2.10	Buy 20k	2.05	Sell at 2.00	15	NO	2.05

Take Example G above and make the following changes in the market scenario: The price of the best Improvement Order is $2.05. The Limit Order will not immediately execute against the PIP Order at $2.05 because the PIP Order is already likely to receive at least a partial execution at $2.05 with the best Improvement Order.[22] Therefore, the PIP continues in order to seek further price improvement with the unrelated Limit Order being exposed as a sell at $2.05 in accordance with the Filter Rule.

IV. Matching Unrelated Orders

In order to further clarify the operation of the rule for unrelated Limit Orders as discussed above, consider the following example where the first unrelated Limit Order *does not* terminate the PIP and a second unrelated order that could match the first is received by BOX.

Example I—

TABLE I

NBBO	BOX BBO	PIP order	Best IO price	IO size	#1 Limit order price	#1 Limit order size	#2 Limit order price	#2 Limit order size	PIP order execution
2.05–2.10	2.00–2.10	Buy 20k	2.05	5	Sell at 2.00	20	Buy at 2.05	20	2.05

Take Example H above and make the following changes in the market scenario: The size of the best Improvement Order at $2.05 is only 5 contracts; a ''same side'' unrelated order is also received (Limit Order #2). As in Example H, the ''opposite side'' Limit Order #1 will not immediately execute against the PIP Order at $2.05 because the PIP Order is already likely to receive at least a partial execution at $2.05 with the best Improvement Order (in this case 5 contracts). Therefore, the PIP continues in order to seek further price improvement with the unrelated Limit Order #1 being exposed as a sell at $2.05 in accordance with the Filter Rule.

However, if a buy order for $2.05 is received in response to the exposure of the sell Limit Order #1, this Limit Order #2 would also be considered an unrelated same side Limit Order. As in Example C, since the buy Limit Order price of $2.05 is lower than the National Best Offer at $2.10 and the limit price equals the price of the best Improvement Order ($2.05), then the PIP will immediately terminate. As stated above, when the PIP is prematurely terminated, the PIP Order is matched against the best prevailing orders on BOX (whether Improvement Orders or unrelated orders received by BOX during the PIP).[23] Therefore, in this Example I the PIP Order will execute in full—5 contracts against the best Improvement Order at $2.05 and the remaining 15 contracts against the exposed opposite side unrelated Limit Order #1 at $2.05 because the Limit Order was next in time priority. Since the two unrelated orders match, the remaining size of Limit Order #1 will then execute 5 contracts against Limit Order #2 at $2.05. The remaining 15 contracts of Limit Order #2 will then be placed on the BOX Book and displayed at $2.05.

Additional Matching Unrelated Order Examples

Example J—

TABLE J

NBBO	BOX BBO	PIP order	Best IO price	Limit order price	Limit order size	Execute against second limit order	PIP order execution
2.00–2.10	2.00–2.10	Buy 20k	2.07	Sell at 2.05	20	NO	2.05

As shown in Table J, assume the NBBO and the BOX BBO in the relevant series is $2.00 bid—$2.10 offer and the PIP Order is a buy order for 20 contracts. The PIP starts at $2.09 (one penny better than the National Best Offer). During the PIP interval, Improvement Orders are submitted to the PIP until the price of the best Improvement Order is $2.07. Then, assume a Limit Order to sell 20 contracts (*i.e.*, opposite side of the market from the PIP Order) with a limit price of $2.05 is submitted to BOX. The PIP would continue because the Sell Limit Order price is higher than the National Best Bid, making it non-marketable, in which case the Limit Order would be placed on the BOX Book and displayed as the new BOX Best Offer (and new National Best Offer) at $2.05. Meanwhile, BOX gives the PIP Order the opportunity for further improvement. Since the Limit Order price of $2.05 is better than the best Improvement Order at $2.07, the Limit Order might be available to execute against the PIP Order at the end of the PIP process. Then a Limit Order to buy 20 contracts (*i.e.* on the same side of the

[22] This occurs even if the aggregate quantity of the best Improvement Orders at $2.05 or lower do not equal the full size of the PIP Order (*i.e.*, the system does not check to determine that the combined quantity of all the Improvement Orders at $2.05 or lower is for the full size quantity of the PIP Order). *See* Example I.

[23] Pursuant to Paragraph (e)(iii) of Section 18 of Chapter V of the BOX Rules.

market as the PIP Order), with a limit price of $2.05 is submitted to BOX. Since the buy Limit Order price of $2.05 is equal to the new National Best Offer, then the PIP immediately terminates. The Sell Limit Order would be executed with the PIP Order in full at $2.05. The Buy Limit Order would be placed on the BOX Book and displayed as the BOX Best Bid at $2.05.

Example K—

TABLE K

NBBO	BOX BBO	PIP order	Best IO price	Limit order price	Limit order size	Execute against second limit order	PIP order execution
2.00–2.10	2.00–2.10	Buy 20k	2.04	Sell at 2.05	20	YES	2.05

As shown in Table K, assume the NBBO and the BOX BBO in the relevant series is $2.00 bid—$2.10 offer and the PIP Order is a buy order for 20 contracts. The PIP starts at $2.09 (one penny better than the National Best Offer). The only difference from Example J is that during the PIP interval Improvement Orders are submitted to the PIP until the price of the best Improvement Order is $2.04. Then, assume a Limit Order to sell 20 contracts (*i.e.*, opposite side of the market from the PIP Order) with a limit price of $2.05 is submitted to BOX. The PIP would continue because the Sell Limit Order price is higher than the National Best Bid, making it non-marketable, in which case the Limit Order would be placed on the BOX Book and displayed as the new BOX Best Offer (and new National Best Offer) at $2.05. Meanwhile, BOX gives the PIP Order the opportunity for further improvement. Since the Limit Order price of $2.05 is worse than the best Improvement Order at $2.04, the Limit Order would not execute against the PIP Order at the end of the PIP process. Then a Limit Order to buy 20 contracts (*i.e.* on the same side of the market as the PIP Order), with a limit price of $2.05 is submitted to BOX. Since the buy Limit Order price of $2.05 is equal to the new National Best Offer, then the PIP immediately terminates. The best Improvement Order would be executed with the PIP Order in full at $2.04. The Sell Limit Order would then execute with the Buy Limit Order in full at $2.05.

V. Improvement Order Clarification

The BOX Trading Host does not accept Improvement Orders that lock or cross the BOX Book on the same side of the market as the PIP Order. To accept such Improvement Orders would violate the price priority of the resting orders on the BOX Book.

VI. Reports

BSE is currently obligated to provide certain reports to the Commission that provide data about BOX-Top and Market Orders that terminate the PIP prematurely, as well as BOX-Top and Market Orders that immediately execute against a PIP Order. BSE represents that it will provide the same information for Limit Orders that terminate the PIP prematurely or immediately execute against a PIP Order.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[24] in general, and Section 6(b)(5) of the Act,[25] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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 by clarifying the treatment of Limit Orders that are submitted to the BOX during a PIP and that certain Improvement Orders are not accepted by the BOX Trading Host.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BSE–2006–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2006–03. 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

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2006–03 and should be submitted on or before February 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–406 Filed 1–12–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55058; File No. SR–DTC–2006–17]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding the Security Holder Report Service to the Security Position Report Service

January 8, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 17, 2006, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on January 5, 2007, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to add a new service, the Security Holder Report (''SHR'') service, to DTC's Security Position Report (''SPR'') service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SPRs are reports prepared by DTC that show for each issuer whose securities are eligible for DTC's book entry services the identity of each DTC participant having that issuer's securities credited to its participant account and the quantity of that issuer's securities that the DTC participant has credited to its participant account as of a selected date. Most securities are registered with the issuer's transfer agent in the name of DTC's nominee, Cede & Co. Issuers rely on DTC to provide them with SPR information. DTC also provides SPR information to trustees and authorized third party agents. These entities typically need SPR information provided by DTC in order to properly conduct proxy, record date, and voting rights related functions.

Some authorized users of the SPR service also perform regulatory reporting functions for which they require the participants' identities but do not need the corresponding quantity of securities credited to each participant. Currently, such users are required to order from DTC an SPR, which costs $120 per CUSIP. In order to mitigate user expenses, DTC is proposing to offer the SHR service as part of its SPR service. The SHR will allow authorized users to obtain reports with only participant identity. SHRs will result in lower production costs to DTC and in greater protection of participant information and will allow a lower fee to be charged than that for standard SPRs. The SHR fees are:

(i) $55.00 per CUSIP for the first 500 CUSIPS and

(ii) $6.00 per CUSIP for requests of 501 or more CUSIPS.

The proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder applicable to DTC because it will foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and, in general, protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact on or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(4)[5] thereunder because the proposed rule change effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

[6] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on January 5, 2007, the date on which the last amendment to the proposed rule change was filed with the Commission. 15 U.S.C. 78s(b)(3)(C).

Number SR–DTC–2006–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2006–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *https://login.dtcc.com/dtcorg/*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2006–17 and should be submitted on or before February 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–389 Filed 1–12–07; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55053; File No. SR–NYSEArca–2006–38]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade iShares® S&P Global Index Funds and iShares® MSCI EAFE Index Fund Pursuant to Unlisted Trading Privileges

January 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2006, NYSE Arca, Inc. (''NYSE Arca'' 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 substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposal from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'') proposes to trade shares (''Shares'') of the following index funds (''Funds'')[3] pursuant to unlisted trading privileges (''UTP'') based on NYSE Arca Equities Rule 5.2(j)(3):

- iShares S&P Global Energy Sector Index Fund (Symbol: IXC)
- iShares S&P Global Financials Sector Index Fund (IXG)
- iShares S&P Global Health Care Sector Index Fund (IXJ)
- iShares S&P Global Telecommunications Sector Index Fund (IXP)
- iShares S&P Global Information Technology Sector Index Fund (IXN)
- iShares S&P/TOPIX 150 Index Fund (ITF)
- iShares S&P Latin America 40 Index Fund (ILF); and
- iShares MSCI EAFE Index Fund (EFA)

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nysearca.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to trade the Shares pursuant to UTP. The index underlying each Fund (''each, an Index'') consists of both U.S. and/or foreign stocks. The investment objective of each Fund is to provide investment results that correspond generally to the price and yield performance of its underlying Index. In seeking to achieve its respective investment objective, each Fund utilizes a ''representative sampling'' strategy, which is a passive investment strategy, to track its applicable Index. Each Fund will attempt to hold a representative sample of the Index's component securities utilizing quantitative analytical models. At least 90% of each Fund's total assets will be invested in the Index's component securities. Each Fund also may invest up to 10% of its total assets in stocks that are not included in its Index.

The Commission previously approved the original listing and trading of the Shares on the American Stock Exchange LLC (''Amex'').[4] The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for the Shares on the Exchange are the same as those set forth in NYSE Arca Equities Rule 7.34, except that the Shares, with the exception of iShares S&P/TOPIX 150 Index Fund, will not trade during the Opening Session (4 a.m. to 9:30 a.m.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* e-mail dated January 4, 2007 from Michael Cavalier, Assistant General Counsel, NYSE Group, Inc. to Mitra Mehr, Special Counsel, Division of Market Regulation, Commission, reflecting a technical correction to the names of the relevant funds.

[4] *See* Securities Exchange Act Release No. 44700 (August 14, 2001), 66 FR 43927 (August 21, 2001) (SR–Amex–2001–34).

Eastern Time) unless the Indicative Optimized Portfolio Value (''IOPV'') is calculated and disseminated during that time. The iShares S&P/TOPIX 150 Index Fund will trade during the Opening Session since there is no overlap in trading hours of the Opening Session and the foreign markets trading the S&P/TOPIX 150 Index Fund securities. Also the last calculated IOPV for this Fund is available to investors during the Opening Session by means of the consolidated tape or major market data vendors and remains unchanged during the Opening Session.

Quotations for and last sale information regarding the Shares for each Fund are disseminated through the Consolidated Quotation System. The provider of each underlying Index disseminates the value of such index intra-day on a real-time basis as individual component securities of the underlying Index change in price. The intra-day value of each underlying Index is disseminated every 15 seconds throughout Amex's trading day by organizations authorized by each respective underlying Index provider. Amex disseminates the net asset value (''NAV'') for each Fund on a daily basis and the final dividend amounts that each Fund pays.

To provide updated information relating to the Shares for use by investors, professionals, and persons wishing to create or redeem them, Amex disseminates the IOPV for each Fund as calculated by a securities information provider. The IOPV is disseminated on a per-share basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4 p.m. or 4:15 p.m. Eastern Time, depending on the time Amex specifies for the trading of the Shares.

For the iShares S&P/TOPIX 150 Index Fund, there is no overlap in trading hours between the foreign markets trading the underlying Index component securities and Amex. Therefore, for this Fund, the IOPV is calculated based on closing prices in the principal foreign market for securities in the Fund portfolio, which are then converted from the applicable foreign currency to U.S. dollars. The IOPV for this Fund is updated every 15 seconds during Amex's regular trading hours of 9:30 a.m. to 4 p.m. or 4:15 p.m. Eastern Time, as applicable, to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency.

Each of the other Funds includes companies trading in markets with trading hours overlapping Amex's regular trading hours. During the overlap period for these Funds, an IOPV calculator updates an IOPV every 15 seconds to reflect price changes in the principal foreign markets, and converts such prices into U.S. dollars based on the current currency exchange rates. When the foreign market or markets are closed but Amex is open for trading, the IOPV is updated every 15 seconds to reflect changes in currency exchange rates.

The IOPV may not reflect the value of all securities included in the applicable underlying Index, and the IOPV does not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. Therefore, the IOPV on a per-share basis disseminated during Amex's regular trading hours should not be viewed as a real-time update of the NAV of a particular Fund, which is calculated only once a day. The IOPV is intended to closely approximate the value per-share of the portfolio of securities for a Fund and provide for a close proxy of the NAV at a greater frequency for investors.

The Commission has granted each Fund an exemption from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 (''1940 Act'').[5] Any product description used in reliance on the Section 24(d) exemptive order will comply with all representations made and all conditions contained in the application for orders under the 1940 Act.[6]

In connection with the trading of the Shares, the Exchange would inform ETP Holders in an Information Circular of the special characteristics and risks associated with trading the Shares, including how they are created and redeemed, the prospectus or product description delivery requirements applicable to the Shares, applicable Exchange rules, how information about the value of each underlying Index is disseminated, and trading information.

In addition, before an ETP Holder recommends a transaction in the Shares, the ETP Holder must determine that the Shares are suitable for the customer, as required by NYSE Arca Equities Rule 9.2(a)–(b).

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Shares.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[7] in general and Section 6(b)(5) of the Act[8] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and to protect investors and the public interest. In addition, the Exchange believes that the proposal is consistent with Rule 12f–5 under the Act[9] because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2006–38 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–NYSEArca–2006–38. This file number should be included on the

[5] 15 U.S.C. 80a–24(d).

[6] *See In the Matter of iShares, Inc., et al.,* Investment Company Act Release No. 25623 (June 25, 2002).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 240.12f–5.

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–38 and should be submitted on or before February 6, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[12] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[13] The Commission notes that it previously approved the listing and trading of the Shares on Amex.[14] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[15] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[16] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Quotation System. Furthermore, an IOPV calculator updates the applicable IOPV every 15 seconds to reflect price changes in the principal foreign markets and converts such prices into U.S. dollars based on the current currency exchange rate. When the foreign market or markets are closed but Amex is open for trading, the IOPV is updated every 15 seconds to reflect changes in currency exchange rates. NYSE Arca Equities Rule 7.34 describes the situations when the Exchange would halt trading when the IOPV or the value of the Index underlying one of the Funds is not calculated or widely available.

The Commission notes that, if the Shares should be delisted by Amex, the original listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to monitor the trading of the Shares.

2. In connection with the trading of the Shares, the Exchange would inform ETP Holders in an Information Circular of the special characteristics and risks associated with trading the Shares.

3. The Information Circular would inform participants of the prospectus or product delivery requirements applicable to the Shares.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on Amex is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that earlier finding or preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSEArca–2006–38) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Nancy M. Morris,

Secretary.

[FR Doc. E7–390 Filed 1–12–07; 8:45 am]

BILLING CODE 8011–01–P

[10] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78*l*(f).

[13] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[14] *See supra* note 3.

[15] 17 CFR 240.12f–5.

[16] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55051; File No. SR–NYSEArca–2007–01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Uniform Definition of Complex Trade

January 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 3,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared substantially by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to modify the definition of ''Complex Trade'' in NYSE Arca Rule 6.92(a)(4). The text of the proposed rule change appears below, with additions *italicized* and deletions in [brackets]:

Rules of NYSE Arca, Inc.

Rule 6.92

Definitions

(a) The following terms have the meaning specified in this Rule solely for the purposes of Rules 6.92–6.95.

(1)–(3) No Change.

(4) ''Complex Trade'' means the execution of an order in an option series in conjunction with the execution of one or more related order(s) in different options series in the same underlying security occurring at or near the same time *for the purpose of executing a particular investment strategy and for an equivalent number of contracts, provided that the number of contracts of the legs of a spread, straddle, or combination order may differ by a permissible ratio* [for the equivalent number of contracts and for the purpose of executing a particular investment strategy]. *The permissible ratio for this purpose is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00).*

(5)–(21) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has substantially 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

NYSE Arca Rule 6.92(a)(4) defines a ''Complex Trade'' as it pertains to the Options Intermarket Linkage (''Linkage''). Under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage, the term ''Complex Trade'' may be defined, and periodically redefined, by the Options Linkage Authority Operating Committee (the ''Committee'').

On September 15, 2006, the Committee voted to update the definition of ''Complex Trade'' in order to include transactions in more than one options series in any ratio from one-to-three (.333) to three-to-one (3.00). Accordingly, the participant exchanges agreed to adopt and file uniform rules defining ''Complex Trade'' in furtherance of the Linkage. NYSE Arca believes that a uniform definition of Complex Trade will facilitate the best execution of complex orders and resolve potential trade-through liability issues by eliminating conflicting definitions among the participant exchanges.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(5),[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Arca does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NYSE Arca neither solicited nor received written comments with respect to the proposed rule change.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2007–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at

the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–01 and should be submitted on or before February 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–405 Filed 1–12–07; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

National Women's Business Council; Public Meeting

In accordance with the Women's Business Ownership Act, Public Law 106–554 as amended, the National Women's Business Council (NWBC) will hold a public meeting on Wednesday, February 7, 2007, starting at 8:30 a.m. to 12:30 p.m. The meeting will take place at the U.S. Small Business Administration, Eisenhower Conference Rooms A & B, 409 Third Street, SW., Second floor, Washington, DC 20024.

The purpose of the meeting is to discuss the NWBC's fiscal year 2007 strategy, agenda and action items, legislative updates, and status of fiscal year 2006 projects, along with an exchange of ideas about goals for the women's business community for the next three, five and ten years. Anyone wishing to attend the Council meeting must contact Katherine Stanley no later than Friday, February 2, 2007 by e-mail at *katherine.stanley@sba.gov* or fax to 202–205–6825. Anyone wishing to make a presentation to the Council during the meeting must contact Margaret M. Barton in writing at the National Women's Business Council, 409 Third Street, SW., Suite 210, Washington, DC 20024, by e-mail at *Margaret.barton@sba.gov* or fax to 202–205–6825 by Friday, January 26, 2007, in order to be put on the agenda.

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–402 Filed 1–12–07; 8:45 am]

BILLING CODE 8025–01–P

[5] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region II Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region II Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Friday, January 26, 2007, at 10 a.m. The meeting will take place at Madison Square Garden—Theater Entrance, 7th Avenue between W 32nd and W 33rd Streets, New York, NY 10001. The purpose of the meeting is to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Herbert Austin, in writing or by fax, in order to be placed on the agenda. Herbert Austin, Deputy District Director, SBA, New York District Office, 26 Federal Plaza, Suite 3100, New York, NY 10278, phone (212) 264–1482 and fax (202) 401–2224, e-mail: *Herbert.austin@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–400 Filed 1–12–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region IV Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region IV Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Wednesday, January 17, 2007, at 10 a.m. The meeting will take place at BellSouth Building, Economic Development Theatre, (Mezzanine Level), 333 Commerce Street, Nashville, TN 37201. The purpose of the meeting is to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Jose Mendez, in writing or by fax, in order to be placed on the agenda. Jose Mendez, Agency Event Coordinator, SBA, 409 3rd Street, SW., Washington, DC 20416, phone (202) 205–6178 and fax (202) 401–2707, e-mail: *Jose.mendez@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–401 Filed 1–12–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5665]

Industry Advisory Panel: Notice of Open Meeting

The Industry Advisory Panel of Overseas Buildings Operations will meet on Tuesday, February 13, 2007 from 9:30 a.m. until 3:30 p.m. Eastern Standard Time. The meeting will be held in room 1107 of the U.S. Department of State, located at 2201 C Street, NW., (entrance on 23rd Street) Washington, DC. For logistical and security reasons, it is imperative that everyone enter and exit using only the 23rd Street entrance. The majority of the meeting is devoted to an exchange of ideas between the Department's Bureau of Overseas Building Operations' senior management and the panel members, on design, operations and building maintenance. Members of the public are asked to kindly refrain from joining the discussion until Director Williams opens the discussion to the public.

Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by February 2, 2007, their name, professional affiliation, date of birth, citizenship, and a valid government-issued ID number (i.e., U.S. government ID, U.S. military ID, passport, or drivers license (and state)) by e-mailing: *iapr@state.gov<mailto:iapr@state.gov>*. Due to limited space, please remember that only one person per company may register.

If you have any questions, please contact Andrea Specht at *spechtam@state.gov* or on (703) 516–1544.

Dated: January 7, 2007.

Charles E. Williams,

Director & Chief Operating Officer, Overseas Buildings Operations, Department of State.

[FR Doc. E7–421 Filed 1–12–07; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 5427]

Notice of Meeting of the Advisory Committee on International Law

A meeting of the Advisory Committee on International Law will take place on Friday, January 26, 2007, from 10 a.m. to approximately 4 p.m., in Room 1105 of the United States Department of State, 2201 C Street, NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, John B. Bellinger, III, and will be open to the public up to the capacity of the meeting room. Participants at the meeting will discuss a range of issues relating to current international legal topics, including the effectiveness of international trade law and international human rights law; issues related to the Geneva Conventions; the legal framework for detention and trial of international terrorists; and issues relating to the immunities of foreign states and international organizations and their respective officials.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public who wish to attend the session should, by Wednesday, January 24, 2007, notify the Office of the Assistant Legal Adviser for Claims and Investment Disputes (telephone: 202–647–8351) of their name, date of birth; citizenship (country); ID number, *i.e.*, U.S. government ID (agency), U.S. military ID (branch), passport (country) or driver's license (state); professional affiliation, address and telephone number in order to arrange admittance. This includes admittance for government employees as well as others. All attendees must use the ''C'' Street entrance. One of the following valid IDs will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. government agency ID. Because an escort is required at all times, attendees should expect to remain in the meeting for the entire morning or afternoon session.

Dated: January 10, 2007.

Karin L. Kizer,

Attorney Adviser, Office of Claims and Investment Disputes, Office of the Legal Adviser, Executive Director, Advisory Committee on International Law, Department of State.

[FR Doc. E7–512 Filed 1–12–07; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 5664]

International Security Advisory Board (ISAB) Meeting Notice; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app 2 section 10(a)(2), the Department of State announces a meeting of the International Security Advisory Board, formerly the Arms Control and Nonproliferation Advisory Board (ACNAB), to take place on February 5, 2007, at the Department of State, Washington, DC.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app 2 § 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this Board meeting will be closed to the public in the interest of national defense and foreign policy because the Board will be reviewing and discussing matters classified in accordance with Executive Order 12958.

The purpose of the ISAB is to provide the Department with a continuing source of independent advice on all aspects of arms control, disarmament and international security, and related aspects of public diplomacy. The agenda for this meeting includes classified discussions related to the Board's ongoing studies on current U.S. policy and issues regarding Weapons of Mass Destruction Terrorism and Space Policy as well as discussions regarding international nuclear proliferation and related aspects of public diplomacy.

For more information, contact Matthew Zartman, Deputy Executive Director of the International Security Advisory Board, Department of State, Washington, DC 20520, telephone: (202) 736–4244.

Dated: January 5, 2007.

George W. Look,

Executive Director of the International Security Advisory Board, Department of State.

[FR Doc. E7–422 Filed 1–12–07; 8:45 am]

BILLING CODE 4710–27–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Action by the Commission Approving Projects and Certain Other Items

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Notice of action by the Commission approving projects and certain other items.

SUMMARY: Pursuant to its authority under the Susquehanna River Basin Compact, Pub. L. 91–575, 84 Stat. 1509 *et seq.* (the ''Compact'') and its Regulations for Review of Projects, 18 CFR Parts 803, 804 and 805, the SRBC, following a public hearing, approved certain water resources projects and took certain other actions listed below at its meeting held in Camp Hill, Pennsylvania on December 5, 2006.

Opportunity For Review: In accordance with Section 3.10(6) of the Compact and Paragraph (o) of the Federal Reservations to the Compact, all such actions of the SRBC are reviewable in federal district court provided that an action for such review is commenced within 90 days from the effective date of the determination sought to be reviewed. For purposes of judicial review, the effective date for actions identified in this notice shall be the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, 717–238–0423, Ext. 306; Fax: 717–238–2436; e-mail: *rcairo@srbc.net* or Michael G. Brownell, Chief, Water Resources Management, 717–238–0425, Ext. 223; Fax: 717–238–2436; e-mail *mbrownell@srbc.net.* Further details on the docket actions taken on the projects listed below are also available on SRBC's Web site at *http://www.srbc.net.*

SUPPLEMENTARY INFORMATION:

List of Approved Projects

1. Albany International—Groundwater withdrawal (30-day averages) of 0.125 mgd from Well 1, 0.125 mgd from Well 2, 0.100 mgd from Well 3, and 0.050 mgd from Well 4, and a total groundwater withdrawal limit of 0.380 mgd, for manufacture of monofilament, Village of Homer, Cortland County, New York.
2. Knight Settlement Sand & Gravel, LLC—Consumptive water use of up to 0.198 mgd, for processing of sand and gravel and concrete production, Town of Bath, Steuben County, New York.
3. United Water PA—Dallas Operation—Groundwater withdrawal (30-day average) of 0.216 mgd from the Gephart Well, and a total system withdrawal limit (30-day average) of 0.740 mgd, for public water supply, Dallas Township, Luzerne County, Pennsylvania.
4. Blue Ridge Trail Golf Club, Inc.—Groundwater withdrawal (30-day averages) of 0.099 mgd from Well 1, 0.096 mgd from Well 2, and 0.086 mgd from Well 3, and a total groundwater withdrawal limit of 0.185 mgd, for golf course irrigation, Dorrance and Rice Townships, Luzerne County, Pennsylvania.
5. Aqua Pennsylvania, Inc,—Well ER–4—Groundwater withdrawal (30-day average) of 0.072 mgd from well er–4, for public water supply, Black Creek and Hazle Townships, Luzerne County, and East Union Township, Schuylkill County, Pennsylvania.
6. Eagle Rock Resort Co.—Wells A and C—Surface water withdrawal of up to 3.068 mgd from an abandoned quarry, and groundwater withdrawal (30-day averages) of 0.144 mgd

from Well A and 0.072 mgd of groundwater from Well C, and a consumptive water use of up to 0.675 mgd, for snowmaking and golf course irrigation, Black Creek and Hazle Townships, Luzerne County, and East Union Township, Schuylkill County, Pennsylvania.

7. PPL Montour, LLC—Surface water withdrawal of up to 36.000 mgd, from West Branch Susquehanna River, Delaware Township, Northumberland County, Pennsylvania, and consumptive water use of up to 26.200 mgd (peak day) for power plant operation and flue gas desulfurization at the Montour Steam Electric Station, and for the ancillary production of commercial wallboard, Derry Township, Montour County, Pennsylvania.

8. Sunnyside Ethanol, LLC—Surface water withdrawal of up to 1.980 mgd, from West Branch Susquehanna River, and a consumptive water use of up to 1.600 mgd, for manufacture of fuel grade ethanol and carbon dioxide, Curwensville Borough, Clearfield County, Pennsylvania.

9. Country Club of Harrisburg—Surface water withdrawal of up to 0.382 mgd, when available, from Fishing Creek, and a consumptive water use of up to 0.382 mgd, for golf course irrigation, Middle Paxton Township, Dauphin County, Pennsylvania.

10. Country Club of Harrisburg—Groundwater withdrawal (30-day averages) of 0.162 mgd from Well 1, when available, and 0.043 mgd from Well 2, for golf course irrigation, Middle Paxton Township, Dauphin County, Pennsylvania.

11. Middlesex Township Municipal Authority—Groundwater Withdrawal (30-Day Average) of 1.440 mgd from Well 1, for Public Water Supply, Middlesex Township, Cumberland County, Pennsylvania.

12. New Morgan Landfill Company, Inc., dba Conestoga Landfill—Consumptive water use of up to 0.085 mgd, for landfill operations, Robeson and Caernarvon Townships, Berks County, Pennsylvania.

13. Morgantown Properties, LP—Withdrawal of up to 0.288 mgd from Mill Pond Reservoir, for public water supply, and consumptive water use through an out-of-basin diversion of up to 0.040 mgd, for water supply to the Robeson Woods and Joanna Furnace Developments, Berks County, Pennsylvania, and an into-basin diversion of up to 0.040 mgd of wastewater, from the Robeson Woods and Joanna Furnace Developments, Berks County, Pennsylvania.

14. Manheim Township—Groundwater withdrawal (30-day averages) of 0.120 mgd from the Foundation Well and 0.210 mgd from Golf Course Well, and consumptive water use of up to 0.330 mgd, for irrigation of a golf course and ancillary recreational areas, Manheim Township, Lancaster County, Pennsylvania.

15. Lancaster County Solid Waste Management Authority—Frey Farm and Creswell Landfills—Consumptive water use of up to 0.065 mgd for landfill operations, and a total groundwater withdrawal (30-day average) of 0.880 mgd, for leachate collection and treatment, Manor Township, Lancaster County, Pennsylvania.

16. Exelon Generation Co., LLC–Peach Bottom Atomic Power Station—Surface water withdrawal of up to 2,363.620 mgd, from Conowingo Reservoir, Drumore Township, Lancaster County, Pennsylvania, and consumptive water use of up to 32.490 mgd (Peak Day) for power plant operation at the Peach Bottom Atomic Power Station, Drumore Township, Lancaster County, and Peach Bottom Township, York County, Pennsylvania.

17. Town of Perryville—Withdrawal of up to 1.000 mgd from the Susquehanna River, and consumptive water use through an out-of-basin diversion of up to 1.000 mgd, for water supply to the Town of Perryville, Cecil County, Maryland.

18. City of Baltimore Department of Public Works—Surface water withdrawal of up to 0.360 mgd, from the Susquehanna River, for filtration plant design studies, Harford County, Maryland.

In other action, the Commission accepted a settlement in lieu of penalty offer from AES Ironwood, L.L.C., of South Lebanon Township, Lebanon Co., Pa.; approved a final rulemaking action published separately in the **Federal Register** on December 29, 2006 at pages 78569–78593; extended a suspension of its consumptive use regulation to agricultural water users, pending an anticipated resolution of this issue by the member states; and revised its project fee schedule for project review applications.

Dated: January 4, 2007.

Paul O. Swartz,

Executive Director.

[FR Doc. E7–391 Filed 1–12–07; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending January 5, 2007

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2007–26818.

Date Filed: January 5, 2007.

Parties: Members of the International Air Transport Association.

Subject: TC23 Africa-South East Asia Resolutions and Fares Tables (Memo 0313) Minutes: TC23 Middle East, Africa TC3 Passenger Tariff Coordinating Conference (Memo 0321) Intended effective date: 1 April 2007.

Docket Number: OST–2007–26819.

Date Filed: January 5, 2007.

Parties: Members of the International Air Transport Association.

Subject: TC23/123 Middle East-South East Asia Resolutions and Fares Tables (Memo 0308) Minutes: TC23 Middle East, Africa–TC3 Passenger Tariff Coordinating Conference (Memo 0317) Intended effective date: 1 April 2007.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–407 Filed 1–12–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 5, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1996–2016.

Date Filed: January 3, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 24, 2007.

Description: Application of Continental Airlines, Inc., requesting renewal of its Route 739 certificate to provide scheduled air transportation of persons, property, and mail between Newark and the coterminal points Sao Paulo and Rio de Janeiro, Brazil.

Docket Number: OST–2007–26807.

Date Filed: January 3, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 24, 2007.

Description: Application of Inter Island Airways, Inc., requesting a certificate of public convenience and necessity authorizing interstate and foreign scheduled air transportation of persons, property, and mail in the following geographic areas: Tutuila Island, American Samoa; Ofu Island and Tau Island of the Manu' a Group in

American Samoa; and Maota and Faleolo, Independent State of Samoa.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–408 Filed 1–12–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–26824]

Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to renew an information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 7, 2006. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by February 15, 2007.

ADDRESSES: You may send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2007–26824.

FOR FURTHER INFORMATION CONTACT: David Walterscheid, (720) 963–3073, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: State Right-of-Way Operations Manuals.

OMB Control Number: 2125–0586.

Background: Section 23, of the Code of Federal Regulations Part 710, reduces Federal regulatory requirements and places primary responsibility for a number of approval actions at the State level. Part 710.201 requires that States must certify at 5-year intervals that their State Right-of-Way Operations Manuals are representative of their procedures, or submit an updated manual. State Transportation Departments (STDs) are required to update their manuals to reflect changes in Federal requirements for programs administered under Title 23 U.S.C. These manuals reflect how the STDs plan to perform real estate acquisition and property management, and maintain the integrity of the right-of-way for highway and related transportation systems. The State manuals may be submitted to FHWA electronically or they can be made available by postings on State Web sites.

Respondents: 50 State Departments of Transportation, the District of Columbia and Puerto Rico.

Frequency: The States update their operations manuals for review annually.

Estimated Average Burden per Response: 75 hours per respondent.

Estimated Total Annual Burden Hours: The total is 3,900 burden hours annually.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: January 9, 2007.

James R. Kabel,

Chief, Management Programs and Analysis, Division.

[FR Doc. E7–395 Filed 1–12–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 10, 2007.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before February 15, 2007.

OMB Number: 1559–0023.

Type of Review: Revision.

Form: CDFI 0011.

Title: NMTC Program Allocation Agreement—Disclosure, Audited Financial Statements.

Description: Entities receiving a New Markets Tax Credit Program Allocation must enter into an allocation agreement with the CDFI Fund. The allocation agreement contains certain disclosure and reporting requirements.

Respondents: State, Local and Tribal Governments, Business and other for profit and Not for profit institutions.

Estimated Total Burden Hours: 76 hours.

OMB Number: 1559–0011.

Type of Review: Extension.

Form: CDFI 0016.

Title: Conflict of Interest Package for CDFI Fund Non-Federal Readers.

Description: The CDFI Fund seeks to collect information from potential contractors hired to evaluate Fund program applications to identify, evaluate, and avoid potential conflicts of interest which the contractors may have with such applications.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 112 hours.

OMB Number: 1559–0024.

Type of Review: Revision.

Form: CDFI 0010.

Title: New Markets Tax Credit (NMTC) Program Allocation Tracking System (ATS).

Description: The purpose of the NMTC Program ATS is to obtain information on investors making qualified investments in community development entities that receive a New Markets Tax Credit allocation.

Respondents: State, Local and Tribal Governments, Business and other for profit and Not for profit institutions.

Estimated Total Burden Hours: 2,040 hours.

Clearance Officer: Ashanti McCallum (202) 622–9018. Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E7–458 Filed 1–12–07; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Disclosure and Reporting of CRA-Related Agreements (12 CFR Part 35).''

DATES: Comments must be received by March 19, 2007.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0219, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0219, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The OCC is proposing to extend OMB approval of the following information collection:

Title: Disclosure and Reporting of CRA-Related Agreements (12 CFR Part 35).

OMB Number: 1557–0219.

Description: This submission covers an existing regulation and involves no change to the regulation, the information collection requirements, or the burden estimates. The OCC requests only that OMB extend its approval of the information collection.

National banks and their affiliates (hereinafter referred to collectively as national banks) occasionally enter into agreements with nongovernmental entities or persons (NGEPs) that are related to national banks' Community Reinvestment Act (CRA) responsibilities. Section 48 of the Federal Deposit Insurance Act (FDI Act) requires disclosure of certain of these agreements, and imposes reporting requirements on national banks and other insured depository institutions (IDIs), their affiliates, and NGEPs. 12 U.S.C. 1831y. As mandated by the FDI Act, the OCC, the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Office of Thrift Supervision issued regulations to implement these disclosure and reporting requirements. The reporting provisions of these regulations constitute collections of information under the Paperwork Reduction Act (PRA). The regulation issued by the OCC is codified at 12 CFR 35; the collections of information contained in that regulation are known as ''CRA Sunshine.''

Section 48 of the FDI Act applies to written agreements that: (1) Are made in fulfillment of the CRA, (2) involve funds or other resources of an IDI or affiliate with an aggregate value of more than $10,000 in a year, or loans with an aggregate principal value of more than $50,000 in a year, and (3) are entered into by an IDI or affiliate of an IDI and a NGEP. 12 U.S.C. 1831y(e).

The parties to a covered agreement must make the agreement available to the public and the appropriate agency. The parties also must file a report annually with the appropriate agency concerning the disbursement, receipt and use of funds or other resources under the agreement. The collections of information in CRA Sunshine implement these statutorily mandated disclosure and reporting requirements. The parties to the agreement may request confidential treatment of proprietary and confidential information in an agreement or annual report. 12 CFR 35.8. 12 U.S.C. 1831y(a)–(c).

The information collections are found in 12 CFR 35.4(b); 35.6(b)(1); 35.6(c)(1); 35.6(d)(1)(i) and (ii); 35.6(d)(2); 35.7(b); and 35.7(f)(2)(ii).

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 362.

Estimated Total Annual Responses: 2,813.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 3,899.

Comments submitted in response to this notice will be summarized, included in the request for OMB approval, and become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 9, 2007.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E7–388 Filed 1–12–07; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change—International Business & Mercantile REassurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 6 to the Treasury Department Circular 570, 2006 Revision, published June 30, 2006, at 71 FR 37694.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: International Business & Mercantile REassurance Company (NAIC #21439),

an Illinois corporation, has formally changed its name to Old Republic General Insurance Corporation, effective June 1, 2006. A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to Old Republic General Insurance Corporation, Chicago, Illinois. This new Certificate replaces the Certificate of Authority issued to this company under its former name. The underwriting limitation of $16,725,000 established for this company as of July 1, 2006, remains unchanged until June 30, 2007. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2006 Revision, to reflect this change.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (*see* 31 CFR part 223). A list of qualified companies is published annually as of July 1, in the Circular, which outlines details as to underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: December 22, 2006.

Teresa Casswell,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 07–117 Filed 1–12–07; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection: Comment Request for Notice 2006–83

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006–83, Chapter 11 Bankruptcy Cases.

DATES: Written comments should be received on or before March 19, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Allan Hopkins, at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Chapter 11 Bankruptcy Cases.

OMB Number: 1545–2033.

Notice Number: Notice 2006–83.

Abstract: The IRS needs bankruptcy estates and individual chapter 11 debtors to allocate post-petition income and tax withholding between estate and debtor. The IRS will use the information in administering the internal revenue laws. Respondents will be individual debtors and their bankruptcy estates for chapter 11 cases filed after October 16, 2005.

Current Actions: There are no changes being made to the notice.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 3,000.

Estimated Time Per Respondent/Recordkeeper: 30 minutes.

Estimated Total Annual Burden Hours: 1,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 5, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–379 Filed 1–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 20, 2007.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, February 20, 2007 from 9 am ET to 10 am ET via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–2085, or write Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Audrey Y. Jenkins. Ms. Jenkins can be reached at 1–888–912–1227 or 718–

488–2085, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: January 8, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–377 Filed 1–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 20, 2007, at 10 a.m., central time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, February 20, 2007, at 10 a.m., Central Time via a telephone conference call. You can submit written comments to the Panel by faxing the comments to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, PO Box 3205, Milwaukee, WI 53201–3205, or you can contact us at *http://www.improveirs.org*. This meeting is not required to be open to the public, but because we are always interested in community input we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 231–2360 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: January 8, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–378 Filed 1–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 13, 2007, at 9:30 a.m. central time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 231–2365.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, February 13, 2007, at 9:30 a.m. Central Time via a telephone conference call. You can submit written comments to the Panel by faxing to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, PO Box 3205, Milwaukee, WI 53201–3205, or you can contact us at *http://www.improveirs.org*. This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 231–2365 for additional information.

The agenda will include the following: Various IRS issues.

Dated: January 8, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–380 Filed 1–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance (VITA) Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 6, 2007, at 3 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be held Tuesday, February 6, 2007, at 3 p.m., Eastern Time via a telephone conference call. You can submit written comments to the Panel by faxing to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, P.O. Box 3205, Milwaukee, WI 53201–3205, or you can contact us at *http://www.improveirs.org*. Public comments will also be welcome during the meeting. Please contact Barbara Toy at 1–888–912–1227 or (414) 231–2360 for additional information.

The agenda will include the following: Various VITA Issues.

Dated: January 8, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–382 Filed 1–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 7, 2007, at 1 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988)

that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Wednesday, February 7, 2007, at 1 p.m. Eastern Time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or (414) 231–2360, or write Barbara Toy, TAP Office, MS–1006–MIL, PO Box 3205, Milwaukee, WI 53201–2105, or FAX to (414) 231–2363, 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 Barbara Toy.

The agenda will include the following: Discussion of issues and responses brought to the joint committee, office report, and discussion of next meeting.

Dated: January 8, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–383 Filed 1–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, February 1, 2007, from 11 a.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

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 Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, February 1, 2007, from 11 a.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include: Various IRS issues.

Dated: January 8, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–385 Filed 1–12–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of a computer-matching program.

SUMMARY: In accordance with subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) this notice announces that the Department of Veterans Affairs (VA), recipient agency, intends to conduct a recurring computer-matching program with the Office of Personnel Management (OPM), source agency.

The VA will match pension and parents' dependency and indemnity compensation (DIC) records with OPM recipient records. The goal of this match is to compare income status as reported to VA with benefit records maintained by OPM. The authority to conduct this match is 38 U.S.C. 5106.

DATES: VA will file a report of the subject matching agreement with the Senate Committee on Homeland Security and Governmental Affairs; the House Committee on Government Reform; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OBM). The matching program will be effective as indicated in this notice.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m., and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS).

FOR FURTHER INFORMATION CONTACT: Pamela Liverman (212C), (202) 273–7280.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), OPM and VA have determined that a computer matching agreement is the most cost effective and efficient way to verify statements of applicants and recipients.

VA has an obligation to verify the income information submitted by individuals in receipt of income-dependent benefits. Title 38 U.S.C. 5106 requires that Federal agencies disclose this information to VA upon request. By comparing the information received through the matching program between VA and OPM on a recurring basis, VA will be able to make timely and more accurate adjustments in the benefits payable.

A. Participating Agencies

The U.S. Office of Personnel Management and the U.S. Department of Veterans Affairs.

B. Purpose of the Match

The purpose of the matching agreement is to identify beneficiaries receiving VA income dependent benefits and OPM benefits, to update VA's master records and adjust VA income dependent benefit payments as prescribed by law. This agreement reflects both agencies' responsibilities under the Privacy Act (5 U.S.C. 552a) and the regulations promulgated.

C. Authority for Conducting the Matching Program

The authority to conduct this match is 38 U.S.C. 5106.

D. Records to Be Matched

The VA records involved in the match are the VA system of records, Compensation, Pension and Education and Rehabilitation Records—VA (58 VA 21/22), first published at 41 FR 9294 (March 3, 1976), and last amended at 70 FR 34186 (June 13, 2005), with other amendments as cited therein.

The OPM records consist of information from the OPM Civil Service Retirement Pay File identified as OPM Central-1, Civil Service Retirement and

Insurance Records, published at 60 FR 63081, December 8, 1995, and last amended on May 3, 2000, at 65 FR 25775.

E. Description of Computer Matching Program

VA plans to match records of veterans and surviving spouses and children who receive pension, and parents who receive DIC, with benefit records maintained by OPM. The match with OPM will provide VA with data from OPM civil service benefit records.

VA will provide OPM with a tape, which contains the names, VA claim numbers, social security numbers, verification codes and VA regional office identifiers for all individuals in receipt of income-dependent benefits. OPM will return a tape to VA, which contains information on OPM payment amounts and the surnames in OPM's records that match the names and social security numbers provided by VA.

VA will use this information to update the master records of VA beneficiaries receiving income dependent benefits and to adjust VA benefit payments as prescribed by law. Otherwise, information about a VA beneficiary's income is obtained only from reporting by the beneficiary. The proposed matching program will enable VA to ensure accurate reporting of income.

F. Inclusive Dates of the Matching Program

The match will start no sooner than 30 days after publication of this Notice in the **Federal Register**, or 40 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

This computer-matching program is subject to public comment and review by Congress and the Office of Management and Budget. In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget.

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

Approved: December 19, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E7–364 Filed 1–12–07; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
January 16, 2007

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 21, 25, 33, 121, and 135

Extended Operations (ETOPS) of Multi-Engine Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 25, 33, 121, and 135

[Docket No. FAA–2002–6717; Amendment Nos. 1–55, 21–89, 25–120, 33–21, 121–329, 135–108]

RIN 2120–AI03

Extended Operations (ETOPS) of Multi-Engine Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule applies to air carrier (part 121), commuter, and on-demand (part 135) turbine powered multi-engine airplanes used in extended-range operations. However, all-cargo operations in airplanes with more than two engines of both part 121 and part 135 are exempted from the majority of this rule. Today's rule establishes regulations governing the design, operation and maintenance of certain airplanes operated on flights that fly long distances from an adequate airport. This final rule codifies current FAA policy, industry best practices and recommendations, as well as international standards designed to ensure long-range flights will continue to operate safely. To ease the transition for current operators, this rule includes delayed compliance dates for certain ETOPS requirements.

DATES: *Effective date:* These amendments become effective February 15, 2007. *Compliance date:* Some sections of the final rule have a delayed compliance date as discussed in section VI of this document and provided in Table 2 of the appendix.

FOR FURTHER INFORMATION CONTACT: For technical information on operational issues, contact Robert Reich, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–8166; facsimile (202) 267–5229; e-mail *Robert Reich@faa.gov.* For technical information on certification issues, contact Steve Clark, Transport Airplane Directorate, ANM–140S, 1601 Lind Ave., Renton, WA 98055; telephone (425) 917–6496; facsimile (425) 917–6590; e-mail *Steven.P.Clark@FAA.gov.* For legal information, contact Bruce Glendening, Office of the Chief Counsel, Division of Regulations, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591; telephone (202) 267–3073; facsimile (202) 267–7971; e-mail *Bruce.Glendening@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

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

(2) Visiting the Office of Rulemaking's web page at *http://www.faa.gov/regulations_policies/rulemaking/recently_published.*

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

You can search comments in the docket by the name of the individual submitting or signing the comment. You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

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

Glossary of Terms Used in This Final Rule

Technical terms used in this final rule are located in 14 CFR 1.2. Definitions used in the rule are found in sections 1.1 and 121.7, and appendix G to part 135 of the final rule language.

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I. Executive Summary

This rule is a result of the FAA's desire to review the current body of rules and guidance for extended-range flight operations and to codify a uniform set of regulations for airplane and engine design in parts 21, 25, and 33, and airplane operations in parts 121 and 135.

Extended operations, or ETOPS, for long-range international travel provide many benefits related to savings in time, fuel, and operational efficiencies. However, there are unique safety concerns associated with these operations. When one travels great distances from airports, the safety of these operations depends on the risk of critical loss of engine thrust, additional system failures during a diversion for any cause, the distance from an adequate airport used in a diversion, and the conditions encountered upon arrival at the diversion airport.

Part 121 domestic, U.S. flag, and supplemental rules have limited the amount of time two-engine airplanes could fly from an airport (14 CFR 121.161). In the past, the risks associated with longer flights were accepted as a function of the number of engines on an airplane and were based on the reliability of engines existing at the time the part 121 rules were initially issued. Airplanes with more than two engines had minimal part 121 regulatory guidance since engine and system redundancies reduce the safety risk associated with engine failures during diversions.[1] Current part 121 regulations for airplanes with more than two engines require adequate oxygen supplies to address emergencies (14 CFR 121.329), but do not explicitly require the operator to consider other risk mitigation measures, such as providing the extra fuel necessary to reach a diversion airport. Likewise, the FAA has regulated turbine-powered on-demand operations under separate part 135 guidance, which specifies performance criteria when an engine is inoperative but not any restrictions based on the potential distance from an airport. (See 14 CFR 135.381 and 135.383.) A lack of regulatory oversight in areas of equipment requirements and fuel planning for a maximum diversion creates a very real safety risk apart from engine reliability.

As engine reliabilities increased during the previous three decades, there had been increasing pressure from the airline industry for the FAA to recognize technological advances and allow part 121 two-engine airplanes to fly farther from airports than § 121.161 allowed. The FAA developed advisory circulars (AC 120–42, June 6, 1985; AC 120–42A, December 30, 1988) that provided guidance for the operation of part 121 two-engine airplanes beyond the regulatory limits.[2] These advisory circulars introduced the term ''ETOPS'' for these extended operations and addressed airplane and engine design aspects, maintenance programs, and operations. Under this guidance, ETOPS operations for part 121 two-engine airplanes are permitted to fly up to 180 minutes from an airport sufficient to accommodate a landing, provided certain criteria are met. The FAA Administrator thus authorizes qualified operators to engage in long-range operations in remote areas. As a result of the FAA's ETOPS programs, two-engine airplane operators can fly over most of the world other than the South Polar Region, a small section in the South Pacific, and the North Polar area under certain winter weather conditions.

Operations under these programs have been highly successful. Although part 121 two-engine ETOPS have increased worldwide from less than 1,000 per *month* in 1985 to over 1,000 per *day* in 2004, engine reliability, as measured by the in-flight shutdown rate (IFSD rate), has improved to a point that is better than one-half the rates experienced in the 1980s.

With the growing success of the current ETOPS guidelines established for part 121 two-engine operators, the FAA recognized in the 1990s that we could no longer continue to administer this program as a special authorization under an operating rule. The FAA also recognized that there were certain aspects of the ETOPS guidelines not solely relevant to two-engine airplanes. Also during this period, the International Civil Aviation Organization (ICAO) established international standards requiring member states to define diversion time thresholds for all two-engine airplane operations. For the United States, this requirement includes airplanes operated under part 135. In addition, the airline industry requested the FAA develop standards extending the existing limit beyond which two-engine airplanes may operate.

The FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) in June 2000 to codify the existing policies and practices to be applicable to all airplanes, regardless of the number of engines, by developing comprehensive ETOPS standards for 14 CFR parts 25, 33, 121, and 135, as appropriate. The FAA also tasked ARAC to develop ETOPS operational requirements for diversion times greater than 180 minutes up to whatever extent may be justified.

During this same period, the FAA developed guidance for polar operations. These operations became more commonplace with the opening up of Siberian airspace following the fall of the former Soviet Union. Although not defined as ETOPS, this guidance has been expanded in today's rule to include both the North and South Polar Areas and has been incorporated into the overall ETOPS rule package. Significantly, this aspect of the rule applies to all turbine-powered multi-engine operations including all-cargo operations.

Today's rule codifies and expands existing FAA policy and route authorizations for all part 121 two-engine airplanes conducting ETOPS beyond certain distances from an adequate airport. This final rule also extends most requirements previously applicable only to part 121 two-engine airplanes to a limited number of part 121 passenger-carrying three- and four-engine airplane operations and applies the same limitations to comparable part 135 operations. Significantly, this rule excludes the ETOPS maintenance requirements from the operation of airplanes with more than two engines in both part 121 and 135. The FAA has accepted the safety case that current

[1] Airplanes with more than two engines are excluded from the section 121.161 requirement to remain within 60 minutes from an adequate airport. Section 121.193 is a requirement limiting all airplanes to 90 minutes from an airport unless they have the performance, after the failure of two engines, to land at an adequate airport. Section 121.329 requires all turbine powered airplanes to have enough supplemental oxygen after a decompression to ''allow successful termination of the flight.'' Section 121.565 requires only two engine airplanes to ''land at the nearest suitable'' airport after engine failure. For airplanes that have three or more engines the rule allows the pilot to proceed to an airport that he selects if, after consideration, he decides that proceeding to that airport is as safe as landing at the nearest suitable airport. Section 121.645 requires similar ''normal'' fuel carriage for all turbine-powered airplanes.

[2] Section 121.645 allows an operator to fly farther from an airport in a two-engine airplane if authorized by the FAA. The FAA granted such authorizations for Caribbean operations in the 1970's. Since the mid-1980's, the FAA has provided formal ETOPS guidance for part 121 operators on how to receive two-engine ETOPS authorization.

engine reliabilities and the level of engine redundancy on such airplanes is sufficient to protect such operations. The appendix has several charts and tables that demonstrate the interrelationship between the affected parts of Title 14, as well as their applicability and compliance schedules.

Under past ETOPS guidance, a part 121 operator of a two-engine airplane was required to use an airplane-engine combination approved for ETOPS. The manufacturer of the airplane obtained the ETOPS type design approval on behalf of the operator. Under today's rule (§ 121.162, G135.2.3), two-engine airplane-engine combinations already approved for ETOPS under previous FAA guidance can continue to be used in ETOPS operations under parts 121 and 135. No re-certification under the new § 25.1535 is required. Likewise, this rule allows airplanes with more than two engines manufactured within 8 years of when this rule becomes effective to be used in ETOPS operations without type design approval under the new § 25.1535. Airplanes with more than two engines manufactured more than 8 years after the effective date of this final rule must meet the certification requirements for airplane-engine combinations adopted today. Today's rule allows two-engine airplanes with existing type certificates to be approved for up to 180-minutes ETOPS without meeting requirements for fuel system pressure and flow, low fuel alerting, and engine oil tank design. These three provisions are new to this rule, and are not in the guidance previously used to approve two-engine airplanes for ETOPS.

The FAA is adopting a compliance schedule to allow an orderly transition to future safety requirements as the industry adjusts to the new, broader ETOPS operating criteria. We recognize that, in some cases, it is appropriate to permit existing airplanes to continue to operate under existing authorization. It is also appropriate in some cases to delay implementation of certain portions of the rule to minimize its economic impact. We are setting a 1-year compliance date for most requirements involving a set-up or installation program. In all cases when a delayed compliance date is established, we have determined that there is a minimal increase in safety benefit for implementing the rule immediately. In addition, the FAA has provided grandfather provisions for part 121 ETOPS operations using airplanes with more than two engines and for all ETOPS operations conducted under part 135.

The total anticipated costs of today's rule are estimated at $20.9 million over a 16-year period or $12.4 million, present value. The costs of the rule to part 121 operators and U.S. manufacturers of airplanes with more than two engines are estimated to be $7.7 million ($3.8 million, present value). Benefits to the rule are attributed to increased safety resulting from design, dispatch, and operational requirements. In addition, operators of two-engine airplanes may realize cost savings from decreased fuel requirements.

II. Summary of the FAA's Existing ETOPS Program

The requirements adopted today are based almost exclusively on the FAA's existing ETOPS program, with some additions. Accordingly, the FAA believes it helpful to discuss in some detail the existing guidance. As noted earlier, all airplanes operated under 14 CFR part 121 are required to comply with § 121.161. Unless otherwise authorized by the Administrator, this regulation limits the operation of two-engine airplanes to routes that contain a point no farther than 60 minutes flying time at an approved one-engine inoperative cruise speed in still air from an adequate airport. This restriction applies to all airplanes operating under this rule regardless of the terrain or area to be over flown.

The first deviations to § 121.161 were issued for 75-minutes ETOPS in the Caribbean Sea in 1977. In June of 1985, responding to an increasing desire by industry to obtain further deviations that would allow flights from the United States to Europe, the FAA issued Advisory Circular (AC) 120–42, which defined a process for obtaining authorization for ETOPS diversions up to 120 minutes. This AC was amended in 1988 with the publication of AC 120–42A, which expanded the maximum diversion period to no more than 180 minutes. This AC defined a process for obtaining three categories of ETOPS operational approval, *i.e.*, guidance for 75-minute ETOPS (based on the earlier Caribbean approvals), 120-minute ETOPS, and 180-minute ETOPS. The AC 120–42A guidance contains a two-fold approval process: a type design approval of the airplane-engine combination and an operational approval consisting of ETOPS maintenance, flight dispatch, and crew training elements. The ETOPS maintenance program also incorporates supplemental processes to the non-ETOPS continuous airworthiness maintenance program (CAMP).

The original guidance for extended range operations with two-engine airplanes in AC 120–42 allowed for an increase of up to 15 percent above the 120-minute limit (138-minute ETOPS). This provision was eliminated with the release of the guidance in AC 120–42A providing for operations up to 180 minutes.

However, recognizing a need for ETOPS diversion authority between 120 and 180 minutes, the FAA reinstated the 138-minute provision by issuing policy letter EPL 95–1 in 1994. In March of 2000, at the request of the industry, the FAA issued ETOPS Policy Letter EPL–20–1, ''207-minute ETOPS Operation Approval Criteria''. This document provided a similar 15 percent increase in the 180-minute maximum diversion time, *i.e.*, 207 minutes. However, this approval was limited to ETOPS operators flying in the North Pacific and only when weather or airport conditions did not permit normal 180-minute ETOPS flights.

The basic principles expressed throughout this body of guidance are that (1) the design of the airplane and its systems must be acceptable for the safe conduct of the intended operation, and (2) the operator must have the requisite experience and ability to maintain and operate the airplane at the required level of reliability and competence. The design standards and operational processes for ETOPS were designed to prevent circumstances that could cause an engine in-flight shutdown or otherwise cause a diversion and to protect the safety of a diversion if one does occur.

A. Airplane-Engine Type Design Approval

Since the introduction of AC 120–42, airplane-engine combinations have had to be approved by the FAA before ETOPS flights could be conducted. The type design approval of airplanes for ETOPS under AC 120–42 and –;42A involves a two-part process. First, the FAA determines that airplane systems meet certain design standards for safe operations during an airplane diversion. One criterion for approval is that a candidate airplane have at least three independent electrical generators. Another criterion is that a required auxiliary power unit (APU) can start after the airplane has been at high altitude for several hours (cold-soaked) and can run reliably for the remainder of the flight. There are other criteria governing airplane systems such as cargo compartment fire suppression, communication, navigation, flight control, wing and engine ice protection, cabin pressurization, and cockpit and

cabin environment. System safety analyses have to show that expected system failures will not prevent safe landing at a diversion airport. Systems with time limited capabilities, such as the cargo compartment fire suppression system, need to have the capacity to support a maximum length diversion, including a 15-minute allowance for a hold or go-around at the diversion airport.[3]

The second part of the approval process is an evaluation of engine in-flight shutdowns and other significant airplane system failures that have occurred while the airplane-engine combination has been in service. The candidate airplane-engine combination should accumulate at least 250,000 engine-hours of service experience for a meaningful evaluation, although the AC allows a lower number of hours with adequate compensating factors. An assessment of the causes of these in-flight shutdowns and other significant failures leads to a list of corrective actions that will prevent future occurrences of these events for similar causes. This list of corrective actions is contained in a configuration, maintenance, and procedures (CMP) document. The CMP document also contains minimum equipment requirements that come out of the airplane systems assessment from the first part of the process.[4]

AC 120–42A utilizes a relative risk model to support the expansion of maximum ETOPS diversion time for up to 180 minutes. This relative risk model is based on an airplane-engine combination maintaining a target IFSD rate at or below 0.02 per 1,000 engine-hours, which the model shows would allow a safe ETOPS flight for a 180-minute diversion. An applicant for ETOPS approval under this method has to show that the candidate airplane-engine combination has achieved this in-flight shutdown (IFSD) rate before the FAA will grant a 180-minute ETOPS approval. However, an applicant may also get an ETOPS approval for 120-minute ETOPS if the candidate airplane-engine combination IFSD rate is approximately 0.05 per 1,000 engine hours. For an IFSD rate that meets this standard, but is above the 0.02 for 180-minute ETOPS approval, the FAA conducts an assessment of the causes of in-flight shutdowns in the same manner as under AC 120–42, including the incorporation of corrective actions into a CMP document. The applicant must show that the incorporation of these corrective actions will bring the IFSD rate down to the target 0.02 level. After a year in service operating in 120-minute ETOPS, an airplane-engine combination is eligible for an expansion of its approval up to 180 minutes.

Once an ETOPS approval is granted, the FAA monitors the propulsion system IFSD rate of the world fleet to make sure that it remains at or below the target rate. If the IFSD rate for a particular airplane-engine combination in the world fleet goes above the target rate, the FAA asks the airplane and engine manufacturers what corrective actions they are taking to bring the rate below the target level. If, in our review of the manufacturer's corrective actions we determine that an unsafe condition exists, we may issue an airworthiness directive (AD) to correct the unsafe condition. We may also issue an AD to withdraw an ETOPS approval, or to require several corrective actions for causes that individually do not constitute an unsafe condition, but in the aggregate create an IFSD rate that is unacceptably high. In such cases, an operator's ETOPS approval may be predicated on compliance with the AD.

With the introduction of the Boeing Model 777, the FAA introduced a new method for an applicant to obtain an ETOPS type design approval without the service experience required for an approval under AC 120–42A. This method is known as the ''early ETOPS'' approval process.

The early ETOPS process takes a systems approach to the development of an airplane and engine. Without service experience to identify design flaws that could lead to in-flight shutdowns or diversions, an applicant must demonstrate that the design flaws on previously designed airplanes are not present in the new airplane. The applicant must also consider how the maximum length flight and diversion affect the design and function of airplane systems to ensure that they have the capability and reliability for safe ETOPS flight.

Rigorous ground and flight tests are required to demonstrate that the airplane-engine combination can successfully support an ETOPS program, including validation of maintenance procedures for systems whose failures could lead to an engine in-flight shutdown or a diversion. An enhanced problem reporting and resolution system identifies and corrects significant problems before the airplane is certified. After approval, this same system remains in place during the early service period to identify and correct such problems before they can lead to additional in-flight shutdowns and diversions.

B. Operational Requirements

AC 120–42A requires that each operator demonstrate its ability to maintain and operate the airplane so as to achieve the necessary reliability and to train its personnel to achieve competence in ETOPS. The operational approval to conduct ETOPS is made via amendment to the operator's operations specifications. Operator approval is based on the following levels of operator in-service experience:

1. 75-minute ETOPS—no minimum level required.
2. 120-minute ETOPS—12 consecutive months of operational experience with the airplane-engine combination listed in its application.
3. 180-minute ETOPS—12 consecutive months of operational experience at 120-minute ETOPS with the airplane-engine combination listed in its application.
4. 207-minute ETOPS—hold current approval for 180-minute ETOPS.

These in-service requirements can be reduced, or equivalent in-service experience can be substituted, based on a review by the FAA. The reduction of operator in-service requirements is called ''accelerated ETOPS'' and the substitution of equivalent experience is called ''simulated ETOPS.'' As a minimum, an ETOPS validation flight or flights must be completed prior to FAA approval. Guidance for both of these approval mechanisms are contained in draft appendices to the AC 120–42A.[5]

Certain operational requirements are also placed on the operator. The most prominent requirement is for the operator to plan airplane routings and to dispatch airplanes so as to remain within the approved diversion distance from adequate airports.[6] Further, these adequate airports must have certain required weather minimums both at dispatch and during the flight and must have minimum levels of rescue and fire fighting services (RFFS). The operator must have programs in place to monitor the conditions at these airports during ETOPS and have a methodology to provide the flight crew with this data.

[3] For a 180-minute ETPOS approval, these time-limited systems would have a 195-minute capacity to meet this requirement.

[4] The CMP document is an extension of the airplane type for an ETOPS approval. An operator wishing to fly an airplane in ETOPS has to comply with the CMP document as a condition for obtaining its operational approval.

[5] Although the AC was never officially revised to include these appendices, the FAA has approved operators for ETOPS using the draft policy.

[6] ''Adequate airport'' is a new definition that codifies various references in current regulatory language and practice. It defines the minimum requirements for sufficiency based on the landing limitations contained in 121.197 and the airport requirements of part 139.

The operator must also have a methodology to calculate the fuel and oil supply for the ''critical fuel scenario.''[7] Further, the operator must provide in its operations manual airplane performance data to support both this critical fuel requirement and any other area of operations calculations in their operations manual.

AC 120–42A also provides guidance on airplane system redundancy levels appropriate for ETOPS. An operator's Minimum Equipment List (MEL) based on this guidance may be more restrictive than the Master Minimum Equipment List (MMEL) when considering the kind of operation proposed and equipment and service problems unique to the operator. The FAA has established criteria for MMEL based on this guidance and the ETOPS approval level. Operational dispatch of an ETOPS flight is based on these criteria.[8]

Since the quality of maintenance and reliability programs can have an appreciable effect on the reliability of the propulsion system and the airframe systems required for ETOPS, AC 120–42A requires a two-engine airplane operator to have a maintenance and reliability program sufficient to maintain a satisfactory level of airplane systems reliability for the particular airplane-engine combination. The elements of such a program are contained in an ETOPS-approved CAMP. This CAMP begins with a basic CAMP that is approved for use in non-ETOPS operation, which is then supplemented for ETOPS with:

1. An ETOPS maintenance document,
2. An ETOPS pre-departure service check,
3. Dual maintenance procedures,
4. Verification procedures for corrective action to ETOPS significant systems,
5. ETOPS task identification,
6. Centralized maintenance control procedures,
7. ETOPS parts control program,
8. An airplane reliability program,
9. Propulsion system monitoring,
10. Engine condition monitoring program,
11. Oil consumption monitoring program,
12. An APU in-flight start program, if APU in-flight start capability is required for ETOPS,
13. Maintenance training for ETOPS, and
14. A system to ensure compliance with the minimum requirements set forth in the CMP document or the type design document for each airframe and engine combination.

C. Polar Policy

In February 2001, in response to several U.S. carriers' plans to conduct polar operations with two-engine airplanes, the FAA developed a ''Polar Policy Letter.'' This policy letter documented the requirement for airlines to develop necessary plans in preparation for polar flights and identified the necessary equipment and airplane configuration requirements for all airplanes regardless of the number of engines. The FAA's intent in issuing the policy letter was to establish a process that can be applied uniformly to all applicants for polar route authority.

This policy letter placed the following requirements on the operator:

1. Defined area of application,
2. Enhanced facilities requirements for ETOPS alternate airports,
3. Passenger recovery plan for diversion airports used to support operations,
4. A fuel freeze strategy,
5. Enhanced MEL requirements to include emergency medical kits and crew foul weather gear,
6. Consideration of solar flare,
7. Polar specific crew and dispatcher training,
8. MEL requirements similar to those for operations beyond 180-minute ETOPS, and
9. A validation flight prior to approval.

III. Notice of Proposed Rulemaking To Codify and Expand Existing ETOPS Program

A. Development of the NPRM

In response to FAA's tasking, the ARAC formed an ETOPS working group consisting of more than 50 representatives of U.S. and foreign airlines, aircraft and engine manufacturers, pilot unions, industry groups and airline accident family support groups, as well as representatives from the Joint Aviation Authority (JAA), ICAO, and the FAA.

After 2 years, the ETOPS working group produced a draft notice of proposed rulemaking (NPRM), advisory material, and a proposed preamble discussion to explain how the working group arrived at its recommendations. The ARAC presented the ETOPS working group final product to the FAA as a consensus document, which the FAA published, largely unchanged, as an NPRM on November 14, 2003 (68 FR 64730).

Among the recommendations were:

- Given the current reliability of part 121 two-engine airplanes, successful ETOPS processes should be expanded to allow two-engine ETOPS throughout the world.
- A comprehensive ETOPS rule should include all part 121 and part 135 airplanes used in specific long-range operations regardless of the number of engines.
- The term ETOPS should be retained, but its definition should be changed to ''extended operations'' to highlight its application to all extended airplane operations.

The ARAC ETOPS working group recognized that although engine reliability has improved significantly, diversions are sometimes necessary for reasons unrelated to engine performance, such as onboard fire, medical emergency or cabin decompression. Ensuring availability of en-route alternate airports, adequate fire fighting capabilities at these airports, and fuel planning to account for decompression are sound operational practices for all airplanes. Likewise, limits on an airplane's maximum allowable diversion time for certain time-limited systems (*e.g.*, cargo fire suppression) that were applied to two-engine airplanes under the existing AC guidance should also apply to airplanes with more than two engines. Accordingly, ARAC recommended adding certain safety requirements to long-range operations for parts 121 and 135 independent of the number of engines on an airplane.

B. Summary of the NPRM

The NPRM proposed an expansion of ETOPS for part 121 two-engine airplanes and implementation of consistent ETOPS requirements for airplanes flying beyond 180 minutes from an adequate airport. The NPRM addressed three specific areas: airplane and engine design and reporting requirements (parts 21, 25, and 33), air carrier operations and maintenance (part 121), and commuter and on-demand operations and maintenance (part 135). The NPRM also proposed definitions in part 1 for terms used in these three areas.

The two main objectives of the proposed airplane and engine design requirements were to prevent failures that result in airplane diversions and to protect the safety of diversions when

[7] AC 120–42A describes this scenario as any combination of engine failure and decompression at the most critical (furthest) distance from the airports used to plan the flight.

[8] Some examples of the increasing requirements of the MMEL for ETOPS approvals are (1) ETOPS beyond 120 minutes requires three generators; (2) ETOPS beyond 180 minutes requires SATCOM equipment, an engine-out auto land system, an auto throttle system, a fuel quantity indicating system, and minimum requirements for fuel cross feed and fuel boost pump electrical power.

they do occur. The proposed airplane and engine design requirements fell into five categories:

1. Designing to reliably provide functions necessary for safe ETOPS flights.
2. Eliminating sources of airplane diversions that occurred in current or past designs.
3. Ground and flight testing.
4. Reporting and correcting design problems.
5. Demonstrating reliability.

The airplane design requirements in part 25 were further divided into three parts: those applicable to all airplanes; those applicable to two-engine airplanes only; and those applicable to airplanes with more than two engines. Within each of the two latter parts, an applicant could choose to certify its airplane using existing service experience with the candidate airplane-engine combination, by conducting more thorough analysis and testing to certify a new airplane-engine combination without service experience (early ETOPS method) or through a combination of the two. Table 5 in the appendix summarizes how today's rule meets these design objectives from the NPRM.

Requirements specifically applicable to engines to make them eligible for installation on an ETOPS airplane were proposed for part 33. Only engines intended for installation on two-engine airplanes being certified for ETOPS, using the early ETOPS method in part 25 were contemplated under the proposed engine test requirements.

The NPRM proposed part 121 amendments to codify current two-engine ETOPS guidance, including the designation of areas where the ETOPS rule would apply. It also proposed additional communications requirements; fire-fighting capabilities necessary at an ETOPS alternate airport; a recovery plan for caring for stranded passengers; utilization of an expanded ETOPS CAMP; airplane system performance requirements; and additional training and reporting requirements for crewmembers and dispatchers.

Additionally, the FAA proposed other requirements for part 135 operations conducted beyond 180 minutes from an airport. The proposed part 135 amendments were similar to part 121 but recognized the differing regulatory history and nature of part 135 operations. For example, the fire and rescue equipment required at diversion airports for part 121 operations would not be required for part 135 operations since these operations are irregular and few in number.

Although most current air carrier operations can be conducted within 180 minutes flying time from an adequate airport, there are certain remote and demanding routes where diversion times greater than 180 minutes are required to reach an adequate en-route alternate airport. Knowing that all operators flying routes with greater than 180-minute diversion times would experience the same operating demands, the FAA proposed an ETOPS program to regulate flights in remote areas, which would benefit part 121 three- and four-engine airplanes and all part 135 airplane operations, regardless of the number of engines. The NPRM provided a public comment period to end on January 13, 2004. In response to requests, the FAA extended the comment period to March 15, 2004 (69 FR 551; January 6, 2004).

C. Summary of Comments

More than 50 commenters representing foreign regulatory bodies, associations, manufacturers, and foreign and U.S. operators responded to the NPRM. In general, the comments supported the work of the ARAC and agreed with the framework of the NPRM.

However, commenters took issue with the economic summary of the NPRM and its stated cost benefits. They believed, and we now agree, that these benefits were based on the incorrect premise that the operations proposed to be regulated as ETOPS for part 121 three- and four-engine and all part 135 airplanes were previously restricted and consequently would provide new opportunities to the industry. In addition, many of the commenters disputed specific provisions of the proposal. In most cases, those who disagreed are operators or manufacturers of three- and four-engine airplanes, or part 135 operators. Currently, these operators and manufacturers are not subject to any ETOPS safety provisions such as en-route alternate planning, time-critical systems analysis (e.g., cargo fire suppression), and the more rigorous ETOPS maintenance program. They expressed a strong opinion that 35 years of experience shows such rules are unnecessary, cost-prohibitive, and add nothing to aviation safety. The FAA also received detailed comments on satellite communications, certification standards, engine monitoring, fuel requirements, maintenance requirements and passenger recovery plans—all related ultimately to additional costs for operators. The FAA has mitigated many of these costs with extended compliance dates as shown in Table 2 of the appendix to this document. In addition, we have decided against adopting the ETOPS maintenance program for airplanes with more than two engines and have excluded all-cargo operations aboard airplanes with more than two engines from all aspects of the rule other than the minimal requirements for safe operation in the North and South polar areas for part 121 operations and the North polar area for part 135 operations. We justify the safety need for applying this rule to airplanes with more than two engines in section IV of this preamble. A more detailed discussion of the commenters' recommended changes, a number of which the FAA adopt today, is provided in the substantive discussion of this final rule.

In addition, some commenters provided extensive comments and suggestions on the risk of smoke and fire in ETOPS operations and asked the FAA to establish smoke detection standards. However, smoke in the cockpit issues are beyond the scope of this proposal. Since the issues raised by these commenters introduce new safety requirements, the FAA may consider them for future rulemaking, but will not discuss them further here.

Several commenters, including the JAA, National Air Carrier Association (NACA) and the Civil Aviation Authority of the United Kingdom (UK CAA), recommended use of the acronym ''LROPS''—meaning ''Long Range Operations''—for three- and four-engine ETOPS, to avoid confusion, particularly for those operations beyond 180-minutes diversion time. The FAA has decided to use the single term, ''extended operations,'' or ETOPS, for all affected operations regardless of the number of engines on the airplane. As discussed in the NPRM, the ARAC had determined that the use of a single term would be less confusing than two separate terms that govern the same types of operations. We agree with this assessment and believe any confusion created by expanding the term to three- and four-engine airplanes will be short-lived.

IV. Safety Need for the Final Rule

A. Safety Risks Associated With ETOPS

The FAA believes that operations of all long-range passenger-carrying airplanes, regardless of the number of engines, need a viable diversion airport in the case of an onboard fire, medical emergency, or loss of cabin pressure. Ensuring availability of diversion airports, adequate fire fighting coverage at these airports, passenger recovery plans, and fuel plans for the diversion

are sound operational practices for all airplanes. Likewise, all airplane time-critical systems should account for the maximum allowable diversion and worst-case scenarios. Many commenters to the NPRM disagreed with this fundamental premise and questioned why new regulations should be imposed on operations that have been safely flown without any regulatory restrictions.

In response to these comments, the FAA has reviewed the historic data for past long range operations and has come to several conclusions.

First, the operating environment for certain long-range operations has changed significantly in the past 35 years. In the past, most operations conducted under part 121 and part 135 have flown over routes that remain within a reasonable distance from adequate airports. As technology has increased the range and endurance of all airplanes, operators are increasingly flying over regions of the world that both are less likely to be served by sizable airports and present extreme weather conditions. Some of the airports that would support a diversion are over 180 minutes away from the airplane during some portion of the flight, the previous limit for two-engine ETOPS. While the frequency of long-range operations is increasing, the aviation infrastructure to support these operations in remote areas of the world is decreasing. The U.S. military has abandoned long-standing diversion airports in the Aleutians and Pacific such as Adak and Wake Islands. In addition, Canada no longer provides financial support for its airports. At the same time, opening up of North Polar routes has resulted in an increase in operations over a particularly harsh and remote environment. The aviation industry expects that with increased route authority for two-engine airplanes and increasing use of polar routes, by 2010 there will be 39,000 flights a year over the four current Polar routes alone. In 2004, U.S. operators conducted 1,600 flights over these routes. Conservative industry estimates are that the number of these flights by U.S. operators will double by 2010. In the Southern Pacific and Atlantic Oceans and the Antarctic area, only a few routes are being flown today, mostly by non-U.S. carriers. The industry estimates that by 2010 there will be 3,200 flights per year in these areas. Transport Canada stated that operations over the Canadian Arctic rose from 85,000 in 1999 to 142,000 in 2004 and predicts a 7% yearly increase in these operations.

Second, in-service data shows that all airplanes, regardless of the number of engines, occasionally divert for reasons unrelated to engine failure. Since most operations are conducted over areas of robust infrastructure where the crew usually has numerous choices in airports, most diversions are not problematic. The same cannot be said for diversions over remote areas of the world, particularly in light of operational infrastructure changes that have eroded the basic safety net upon which long-range operations of all types of airplanes have come to rely.

In its development of proposed new regulations for expanded part 121 two-engine operations, ARAC recommended extending the authority of these two-engine airplanes to operate on routes that are greater than 180 minutes from an airport. The additional operational challenges of these more remote routes are equally demanding of all airplanes, regardless of the number of engines, and include such issues as extremes in terrain and climate, as well as limited navigation and communications infrastructure. Support of a necessary diversion and subsequent recovery in such areas demand added training, expertise, and dedication from all operators. Therefore ARAC concluded that there is a need to address these issues for all airplanes flying in these areas. ARAC recommended that some of the same ETOPS guidance developed for part 121 two-engine airplanes be applied to common elements of all airplane operations, both part 121 and part 135. The FAA agrees that such issues are relevant to all operations but is unable to justify the cost of this rule for all-cargo operations in airplanes with more than two engines and has accepted this recommendation only for passenger carrying operations.

As a result, the same limited geographic areas that would cover greater than 180-minute two-engine ETOPS would also be applicable to part 121 and part 135 passenger-carrying operations in three- and four-engine airplanes and all part 135 two-engine airplanes under this rule. Operations in these very limited areas are the only ones the FAA intends to regulate for these airplanes. All long-range operations could benefit from an ETOPS program. However, we believe, as do some commenters, the increased systems redundancy of the three- and four-engine airplane operating less than 180 minutes is sufficient to maintain acceptable levels of risk associated with engine failure at a distance far from an adequate airport. We also believe imposing new regulatory guidance on part 135 two-engine airplanes below this threshold would impose costs on these operations that cannot be justified. However, for the limited case of operations beyond 180 minutes from an adequate airport, we are convinced these operations must meet the minimum requirements of this rule.

The whole premise of ETOPS has been to prevent a diversion and, if one were to occur, to have programs in place that protect the diversion. ETOPS demands that propulsion systems are designed and tested to ensure an acceptable level of in-flight shutdown risk, and it demands that other airplane systems are designed and tested to ensure their reliability. Maintenance practices must be adopted to monitor the condition of the engines and take aggressive steps to resolve problems with airplane systems and engines, thus minimizing the potential for procedural and human errors that could lead to a diversion.

However, despite the best design, testing, and maintenance practices, situations may occur which require an airplane to divert. Regardless of whether the diversion is for technical (airplane systems or engines related) or non-technical reasons, there must be a flight operations plan in place to protect both crew and passengers during that diversion. Such a plan may include ensuring pilots are knowledgeable about diversion airport alternatives and weather conditions at those airports; pilots have the ability to communicate with the airline's dispatch office and air traffic control; and airplanes have sufficient fuel to divert to the alternate airport. Under the ETOPS ''preclude and protect'' concept, various failure scenarios also need to be considered by the operator. The best available options are then provided to the pilot before and during the flight.

Unlike the ETOPS guidance provided for two-engine airplanes, there has been no regulatory framework governing the long-range operations airplanes with more than two engines. For example, in emergencies such as loss of cabin pressure, current regulations require adequate oxygen supplies but do not require the operator to consider the amount of extra fuel necessary to reach a diversion airport. An analysis by Boeing shows that between 1980 and 2000, 33 of the 73 cruise depressurization events occurred on airplanes with more than two engines. A study conducted by this manufacturer using a modern four-engine aircraft carrying normal route planning fuel reserves raises issues about the adequacy of the current fuel planning requirements in the event of a diversion. Accordingly, the FAA finds there is a need for all passenger-carrying operations beyond 180 minutes from an

adequate airport to adopt the same ''preclude and protect'' concept contained in the two-engine ETOPS rules for all types of operations.

Part 135 operations are subject to the same types of causal factors resulting in accidents as large transport operations are under part 121. Therefore, the FAA is applying the same safety provisions required for part 121 operators to part 135 operators in these limited operations.

The FAA also recognizes the need to respond to the ICAO Annex 6 requirement for states to establish ETOPS thresholds for all two-engine turbine powered airplanes, including on-demand operations. Unlike other ICAO member states, the U.S. recognizes several categories of air carrier operations and has never imposed ETOPS rules on operators that conduct non-scheduled flights with ''business jets.'' The FAA is adopting these amendments for part 135 two-engine operations and passenger operations using airplanes with more than two engines in recognition that these operations are very similar to part 121 operations in terms of both the types of airplane used and the particular long-range routings. The FAA believes the rule is a legitimate and necessary step to harmonize with international aviation standards.

B. Impact of ETOPS Requirements on Engine Reliability

ETOPS design and maintenance requirements have contributed greatly to the reliability of the engines used in two-engine airplanes and appear to have had some impact on engines used in three- and four-engine airplanes. Applying these requirements to all airplanes that fly long distances from airports would improve the reliability of all engines. However we agree with many commenters that the current level of engine reliability coupled with the engine and system redundancy on airplanes with more than two engines is sufficient to protect the operation from critical loss of thrust. Consequently there is no requirement for an ETOPS maintenance program for ETOPS on airplanes with more than two engines.

Operators and manufacturers of airplanes with more than two engines have benefited from improvements in engine safety resulting from ETOPS requirements for airplanes with two engines.[9] Prior to ETOPS, we considered a 0.02 IFSD rate the best rate the industry could achieve. Since ETOPS began in 1985, the IFSD rates have improved to 0.01 or lower, half of what we previously thought possible. This overall improvement in the IFSD rate for all airplanes was a result of design improvements and aggressive maintenance programs introduced by the engine and airplane manufacturers to correct in-service events to maintain the world fleet IFSD rate below the ETOPS maximum.

C. Fuel Exhaustion

In 1983, a U.S.-manufactured two-engine airplane (foreign operator) made a no power landing at an airport in North America that was caused by an inadequate amount of fuel being loaded on the airplane for the flight.

In August 2001, a foreign manufactured two-engine airplane (foreign operator) made a no-power landing at an airport in the Eastern Atlantic, due to the fact that the flight crew was unaware of a fuel leak that resulted in a critical amount of fuel being leaked overboard.

Both of these airplane types are used in long-range passenger service in U.S. operations. Due to the similarity of the operating environment, it is the FAA's view that these particular incidents could have occurred in U.S. operations and, therefore, we view them as viable data points. We were extremely lucky that both airplanes in these instances made safe landings. The low fuel alerting requirement in the ETOPS rule will prevent low fuel quantity problems from becoming accidents on ETOPS flights. The low fuel alert will tell the flight crew when the quantity of fuel available to the engines falls below the level required to fly to the destination airport. The alert must be given while there is still enough fuel remaining to safely complete a diversion.

D. Cargo or Baggage Compartment Fire Suppression Requirements

The historical rate of occurrence of in-flight cargo and baggage compartment fires is approximately 1×10^{-7} per flight hour.[10] This rate translates to about one cargo fire per 10 million flight hours. The FAA Seattle Aircraft Certification Office received five reports of cargo or baggage compartment fires for the period 1999 to 2004. In-flight fires can be particularly hazardous. The cargo and baggage compartment fire suppression system requirement will ensure all ETOPS airplanes whose cargo or baggage compartments require fire suppression systems will have systems capable of putting out fires and suppressing re-ignition for the longest duration diversion for which the airplane is approved.

E. Decompression Scenarios

Most estimates for the probability of decompression on a commercial airplane are on the order of 1×10^{-6} or 1×10^{-7} per flight hour. Airbus, in a recent exemption request for the A380 stated in comments to the docket that there have been nearly 3,000 depressurization events since 1959.[11] It notes the probability of decompression due to the pressurization system alone to be in the order of 3.5×10^{-6} per flight hour (3.5 decompression events per million flights). Boeing has provided a sample of depressurization events on Boeing airplanes from 1980 to 2000. Their sample shows 33 of 73 events occurred on three- and four-engine aircraft. Two-engine ETOPS requirements have always required those operations to flight plan their fuel requirements for a ''critical fuel scenario.'' This requirement has been codified into the new approval process in this rule.

Unlike ETOPS guidance for two-engine airplanes, there is no existing regulatory framework governing the long-range operations of airplanes with more than two engines other than the requirements of 14 CFR 121.193, which only governs the operation up to 90 minutes from an airport. The only rule governing decompression on a these airplanes addresses oxygen supplies and not fuel necessary for a successful diversion (14 CFR 121.329). The regulation does not require the operator of an airplane with more than two engines to check the conditions at possible diversion airports where the flight might terminate or check for fuel sufficiency.

Boeing conducted a study using a modern four-engine airplane carrying normal route planning fuel reserves. On any route that is 16 hours long, if a four-engine airplane has a major decompression anywhere in the cruise phase between approximately 7.25 hours to 12.5 hours, the airplane will not have sufficient fuel to descend and cruise at 10,000 ft and reach its point of origin or destination. A similar calculation for a 10-hour flight shows that between the 4.5 to 7.5 hours into the flight that same airplane would not have enough fuel to be able to continue

[9] Operators of three- and four-engine airplanes have benefited from the engine reliability improvements introduced into the same engine models that are also used on two-engine airplanes in ETOPS. Because of industry lease pool arrangements, there is a very strong industry incentive to maintain all engines to the ETOPS standard so that they can be swapped easily from non-ETOPS to ETOPS fleets.

[10] Boeing analysis drawing from Boeing and other industry sources. Boeing presented this analysis to the ARAC ETOPS Working Group.

[11] Docket No. 20139, January 21, 2005.

to its destination or turn back to its origination airport. Without a suitable airport at which to land, the results would be catastrophic. Under today's final rule, 14 CFR 121.646 now covers this omission and requires three- and four-engine operators flying more than 90 minutes to have enough fuel to fly to an adequate airport. The rule also extends ETOPS requirements on their operations that are greater than 180 minutes from an airport.

F. Satellite-Based Voice Communications

The use of SATCOM is a new requirement that applies only to ETOPS conducted beyond 180-minutes. Other available communication systems in use (VHF, HF voice, and datalink) all have significant limitations. The range of very high frequency (VHF) radio is limited to line-of-sight distances, typically less than 200 miles at high altitude. High frequency (HF) radio works at the longer distances from transmitting and receiving stations associated with ETOPS flights, but is subject to unreliable voice quality and loss of signal. This is particularly true during periods of intense solar flare activity.

Datalink capability (both HF and SATCOM) is limited by message length and ability to clearly state the issue or message. A bigger limitation on datalink is the full attention required by the flight crew to interact with a small and compactly designed keypad. The device is difficult to use without error during turbulence and airplane maneuvering. Its use also requires crew coordination and verification of message content. This is extremely distracting during a time that requires the pilot's focused attention on a problem at hand. In comparison, the use of SATCOM voice allows clear and immediate conversation that can quickly convey the situation and needs for the flight.

In March 2004 during a period of intense solar flare activity, a certification test flight was aborted because the crew could not communicate with air traffic using the HF radio. The purpose of this flight test was to simulate an airplane failure condition that made SATCOM unavailable and was conducted in a part of the world beyond the range of normal VHF radio signals. The test pilot decided the safety risk was too high to continue the flight test without his ability to communicate the airplane's position with air traffic control. This situation is similar to one an airline crew would face under similar solar conditions during a flight in areas outside the range of normal line-of-sight VHF radio in an airplane not equipped with SATCOM. The requirement for satellite-based voice communications adopted today will ensure that ETOPS flight crews will be able to communicate emergency situations with air traffic control or their airline during an ETOPS flight.

V. Applicability of the Final Rule

This final rule is applicable to all ''extended operations (ETOPS)'' as now defined. These are long-range operations beyond certain distances from adequate airports. Specifically they are: (1) Two-engine airplanes operated under part 121 when more than 60 minutes from an adequate airport; (2) passenger-carrying airplanes with more than two engines operated under part 121 when more than 180 minutes from an adequate airport; and (3) flight operations of all two-engine transport category turbine powered airplanes and all passenger-carrying transport category turbine powered airplanes with more than two engines under part 135 when more than 180 minutes from an adequate airport. Because of the harsh and remote environments of the Polar areas, portions of this rule are also applicable to all airplane operations in those areas, although these operations are not classified as ETOPS.

Today's rule imposes a requirement for a passenger recovery plan for certain operations of all U.S. flag and supplemental passenger operators. The rule also affects manufacturers of both airplanes and engines used in ETOPS by mandating certain certification standards for their manufacture. Should the manufacturers choose not to meet the new requirements of parts 25 and 33, their products could not be used for ETOPS operations.[12]

Current ETOPS guidance only covers part 121 two-engine operations between 60 and 180 minutes from adequate airports. This rule codifies current guidance up to 180 minutes and is expanded to include unlimited two-engine operations in certain parts of the world. We have responded to certain comments to the NPRM by enlarging the geographic area defined for the current 207-minute approval and the geographic area defined for the new 240-minute ETOPS approval.

In keeping with the ARAC recommendation, the rule applies certain elements of current part 121 two-engine ETOPS guidance to operations in remote and demanding areas of the world, defined by flights more than 180 minutes from an adequate airport, of part 121 passenger-carrying airplanes with more than two engines and to comparable part 135 operations using turbine-powered airplanes. Many commenters to the original NPRM expressed concern over the cost of the rule and the difficulty in its application. Where the FAA determined that no reduction in safety would occur, we made changes from the NPRM. For example, the passenger recovery plan requirements are applicable only to part 121 ETOPS operations beyond 180 minutes from an airport or in the Polar areas and are no longer applicable to cargo operations. Similarly, such plans are only applicable to part 135 passenger operations in the North Polar Region. Likewise, we have eliminated ETOPS requirements for part 121 operations using airplanes with more than two engines operating at less than 180 minutes from an adequate airport in the Polar Regions. We have also excluded all-cargo operations of airplanes with more than two engines in both part 121 and part 135 from the ETOPS requirements of the rule.

Many commenters were concerned that airplanes they were currently using in operations that would be covered under the ETOPS rule would have to be re-certified when the new rule becomes effective. That is not our intent. A new § 25.3 has been created specifying the applicability of the new airworthiness standards to airplanes with existing type certificates on the effective date of the rule, or to airplanes for which an application for an original type certificate was submitted before the effective date. A new § 121.162 has been created delineating the airworthiness standards required for airplanes to be used in part 121 ETOPS. Appendix G, paragraph G135.2.3, has been revised to make the requirements applicable to all airplanes operated under that part similar to the requirements in § 121.162 for airplanes with more than two engines. Table 4 in the appendix compares the applicability of both the NPRM and the final rule to current guidelines.

VI. Delayed Compliance Dates and Grandfather Provisions

In this final rule the FAA has adopted a compliance schedule that will ease the

[12] Because of the potential benefits associated with the superior design of airplane-engine combinations demonstrated under the existing ETOPS certification programs, the FAA has decided to extend those requirements to the airplanes with more than two engines should the manufacturer wish to market these airplanes as suitable for ETOPS operation. The FAA anticipates the cost associated with this requirement ultimately will result in greater engine reliability at a very low cost. This is because these requirements are optional and will not take effect for such airplanes within the next 8 years.

burden of compliance and make the rule less costly. Airplane-engine combinations that have been previously approved for ETOPS can continue to be used in those operations without re-certification. Manufacturers of two-engine airplanes who seek type design approval for ETOPS after the effective date of the rule must meet certain requirements based on whether they request approval for ETOPS up to and including 180 minutes, or beyond 180 minutes. For type design approvals of 180 minutes or less, two-engine airplanes with existing type certificates are exempted from the fuel system pressure and flow requirements, low fuel alerting, and oil engine tank design requirements. These three requirements are beyond what has been required under AC 120–42A.

For airplanes with more than two engines, the new airplane certification requirements found in part 25 applies only to airplane-engine combinations that are manufactured more than 8 years after the effective date of this rule.

Likewise, the operational requirements under part 121 have delayed compliance dates. Some requirements, such as dispatch, weather minimums and fuel supply, are already required by either regulation or ETOPS approvals and may require minimum adjustment to an operator's ETOPS program within 30 days of publication of today's rule. For requirements that take additional planning and implementation time—such as SATCOM, training and passenger recovery plans—the FAA established a 1-year extended compliance period. Cargo fire suppression may present a retrofit requirement for airplanes with more than two engines, and so the FAA is allowing 6 years to meet this requirement. Some requirements proposed in the NPRM have been eliminated. Passenger recovery plans are not required for part 121 ETOPS of 180 minutes or less or for all-cargo operations. For part 135 operations, passenger recovery plans are only required in the North Polar Region. An ETOPS maintenance program is not required for passenger airplanes with more than two engines operated in ETOPS, and the ETOPS requirements are not applicable to all-cargo operations in airplanes with more than two engines in either part 121 or part 135.

Because part 135 operators will have limited ETOPS operations, the FAA has decided to grandfather from today's rule all part 135 airplanes manufactured up to 8 years from the effective date of the rule. For purposes of airworthiness requirements, part 135 operators may use these airplanes in ETOPS without certification under § 25.1535. This is a change from the NPRM, which proposed grandfathering only those airplanes that were on an operator's operations specifications up to 8 years after the rule. Under the NPRM, they would then have had to remain on the operator's operations specifications to continue to operate ETOPS.

To meet the operational requirements, the FAA has allowed a delayed compliance date of 1 year for part 135 operators to meet the North Polar, passenger recovery, and training requirements of the final rule. For cargo fire suppression, the final rule allows 8 years for currently approved part 135 ETOPS operators to comply.

Tables 2 and 3 of the appendix present these delayed compliance dates.

VII. In-Flight Shutdown Rates

A 12-month rolling average IFSD rate is the primary measuring tool the FAA uses to determine if an airplane-engine combination has acceptable propulsion system reliability before approving it for ETOPS. It is also used to monitor the health of a fleet of existing ETOPS approved airplanes in service. A 12-month rolling average IFSD rate is calculated by dividing the number of in-flight shutdowns that occur in an airplane fleet by the total number of engine-hours [13] that accumulate in that fleet during the same 12-month period. Each month, the number of in-flight shutdowns and engine-hours from the same month 12 months earlier are dropped from the calculation and replaced by the number of IFSD's and engine-hours in the current month. In this way, the resulting IFSD rate ''rolls'' from one month to the next.

The manufacturer of an airplane approved for ETOPS and the manufacturer of the engines installed on that airplane monitor the IFSD rate of all airplanes and engines of that type, whether or not those airplanes and engines are operated on ETOPS routes. Today's rule refers to these airplanes as the ''world fleet.'' Operators of that airplane-engine combination monitor the IFSD rate of only the airplanes and engines in their fleet. In-flight shutdown rates are discussed in several parts of the rule. Section 1.1 defines ''in-flight shutdown,'' which an operator or manufacturer uses, for ETOPS purposes only, to determine which in-service occurrences count in the calculation of an IFSD rate.

Part 25, appendix K identifies the IFSD rate limits that a two-engine airplane must remain at or below in order to receive an ETOPS type design approval.

Paragraph 21.4(b)(2) identifies IFSD rate limits for airplanes approved for ETOPS in service. The manufacturer of an airplane approved for ETOPS and the manufacturer of the engines installed on that airplane must issue service information to the operators of that airplane-engine combination, as appropriate, to maintain the world-fleet IFSD rate at or below the regulatory limit. Operators may incorporate this service information as part of their reliability program to maintain the IFSD rate of their fleet at or below the world-fleet limits.

Paragraph 121.374(i)(1) identifies the IFSD rate limits that prompt an investigation into whether there are any common cause or systemic problems in an operator's ETOPS program that are contributing to the high IFSD rate. The operator must report the results of its investigation and any necessary corrective action it is taking to the FAA. The IFSD rates specified in this paragraph are higher than the world-fleet rates in recognition that this action is taken only after the operator's normal reliability program fails to maintain the operator's rate at or below the world-fleet IFSD rate objective.

Several factors may cause in-flight shutdowns that contribute to an operator's IFSD rate exceeding the world-fleet rate. First, there may be causes of in-flight shutdowns for which the manufacturer has not issued service information. There may be existing service information available to prevent causes of in-flight shutdowns that the operator has not yet incorporated into its fleet. An operator may have unique maintenance or operational procedures that unknowingly cause in-flight shutdowns. Finally, an operator may experience a higher IFSD rate for no known reason other than statistical chance.

Another factor affecting an operator's IFSD rate is the numerical effect that a single in-flight shutdown has on the rate of a small fleet of airplanes. An IFSD rate of 0.01 per 1,000 engine-hours results in an in-flight shutdown approximately once every 100,000 engine-hours. A fleet of 100 two-engine airplanes operating an average of 10 hours a day would accumulate 2,000 engine-hours per day or 730,000 engine-hours in 12 months. This fleet of airplanes could experience seven in-

[13] An engine-hour is an operating hour accumulated on each engine installed on an airplane. Similarly, an airplane-hour is an operating-hour accumulated on an airplane independent of the number of engines installed. For example, one airplane-hour on a four-engine airplane would correspond to four engine-hours (one engine-hour for each engine.)

flight shutdowns during that 12-month period and still have an IFSD rate below the 0.01 limit. A 10-airplane fleet of the same type operated in the same manner would accumulate only 73,000 engine-hours in a 12-month period. One in-flight shutdown on the 10-airplane fleet would result in an IFSD rate of 0.014, which is above the 0.01 limit. Thus, one in-flight shutdown on an operator of a small fleet of airplanes can place their fleet above the limit. To further compound the impact of fleet size, an in-flight shutdown that occurs in June of one year continues to count in the IFSD rate until the next June. A single in-flight shutdown would place the operator of the 10-airplane fleet above the 0.01 limit for an entire year.

This one factor showing the magnified effect an in-flight shutdown has on the IFSD rate of a small fleet has generated the most concern from both the manufacturers and operators since AC 120–42A introduced IFSD rates into the ETOPS standard. They are concerned the FAA, or other airworthiness authorities, will adopt an FAA ETOPS standard that improperly uses IFSD rates in the rule to revoke the ETOPS authority of an operator who experiences in-flight shutdowns due to causes beyond its control, simply because its rate exceeds the allowable limit. Many comments to the NPRM were in some way connected to reducing the number of occurrences that count toward the IFSD rate, or in lessening the regulatory effect of a rate that exceeds the limit.

The FAA will not revoke an existing ETOPS operational approval solely because of a high IFSD rate. The operating rules require the operator to investigate the cause of each in-flight shutdown and report to the FAA any corrective actions it is taking to prevent future occurrences. Only after additional in-flight shutdowns in the operator's fleet cause the FAA to believe the operator's corrective actions are insufficient to reduce the IFSD rate below the limit, will the FAA investigate taking further action. During this subsequent investigation, we will consider how a small fleet, even with successful corrective actions, may need up to a year to reduce the IFSD rate to below the required limit. However, if we determine that a series of in-flight shutdowns is caused by a common cause or systemic problem in the operator's ETOPS program, we may reduce the maximum allowable diversion time or revoke the ETOPS approval until we are satisfied that the operator has corrected the problem.

The FAA received several comments on the proposed IFSD rate requirements. Continental Airlines (Continental) and United Airlines (United) were concerned that the definition of in-flight shutdown, as proposed, would cause certain events to count against their IFSD rate even if the engine was not actually shut down by the flightcrew. Continental also stated that the proposed definition does not address modern engine auto-relight capability in which an engine flameout is detected by the engine control and an engine re-start is initiated automatically without any flightcrew action.

The FAA finds these concerns have merit. We have revised the NPRM definition of in-flight shutdown to clarify our intent and address these commenters' concerns. First, we have replaced ''in-flight'' with ''when an airplane is airborne'' which more clearly indicates that a condition for an in-flight shutdown is that the airplane is in the air (wheels not touching the ground). There has been some disagreement in the past about whether an engine failure that occurs during the takeoff roll should be considered an in-flight shutdown. This change clarifies our intent that the airplane must be in the air.

We have clarified that an in-flight shutdown includes a situation when a flight crew member cycles the engine start control, however briefly, even if the engine operates normally for the remainder of the flight. This clarification addresses confusion over events that have occurred in service where a pilot has cycled the engine start control switch to re-establish normal engine operation following a compressor stall that causes the engine to not respond to throttle changes. Some have argued that such events, even though the engine was temporarily shut down, should not be counted in the IFSD rate because normal engine operation was reestablished and the engine operated normally for the remainder of the flight.

We agree that an engine control system that performs this cycling as part of its normal design without any flight crew action should not be counted as an in-flight shutdown. The engine control system is performing a function that the engine was certified to perform. Accordingly, we have specifically excluded this type of ''auto-relight'' function from the revised definition.

We have also excluded from the revised definition the situation where an engine does not achieve desired thrust, but is not shutdown. There have been such events in service where some have argued that they should be counted as an in-flight shutdown because the engine does not produce usable thrust for the remainder of the flight. Historically, we have not counted these ''loss of thrust control'' events as in-flight shutdowns because the engines were not physically shutdown by the flight crew. All of these changes to the definition of in-flight shutdown are consistent with our past interpretations under AC 120–42A.

United, American Airlines (American), and Continental all said that the IFSD rates contained in various parts of the rule were inconsistent. United suspects that some of the rates are based on the individual operator's rates and others are based on the world fleet rates. American and Continental requested further clarification as to why the rates in § 121.374 were different from those in part 25, appendix K. American also said there is no guidance or timeline to establish when or if the 120-minute initial rate of 0.05 will be reduced down to 0.02.

The Air Line Pilots Association (ALPA) commented that since the IFSD rates are a benchmark by which a regulator must manage an operator's performance and measure its success, the critical issue is what number above this rate will the FAA use to manage in-flight shutdowns. ALPA asked what the consequence of such a process would be?

The FAA agrees that the NPRM created confusion with how IFSD rates are used for propulsion system reliability monitoring. We have revised the rule to clarify the differences in the various sections of the type design and operating rules that address IFSD rates.

Part 25, appendix K, K25.2, defines the world-fleet IFSD rates that a two-engine airplane would have to achieve before it could receive an ETOPS type design approval based on service experience. As noted by Boeing, calculation of this rate is not based solely on ETOPS operations. There are no comparable IFSD rate requirements for airplanes with more than two engines in K25.3 of appendix K. Because of the greater number of engines per airplane, the corresponding rates for these airplanes would be so high that we were concerned we may inadvertently encourage a lower standard than is already normally achieved without a specific IFSD rate requirement.

The NPRM proposed that IFSD rates for the purpose of obtaining type design approval for ETOPS would be approximate rates. This terminology came from AC 120–42A, which had been successfully applied to those airplanes currently used in ETOPS. However, for the purposes of a final rule, such terminology does not convey

that a candidate airplane-engine combination must be at or below these IFSD rates before the FAA would grant an ETOPS type design approval. We recognize that there are circumstances where a candidate airplane-engine combination may be slightly above the regulatory limit, but because of factors such as the small fleet size effect discussed earlier, we may determine that the rate meets the intent of the rule. Therefore, we have revised K25.2.1(b) of this final rule to say that the world-fleet must be at or below the limit unless otherwise approved by the FAA.[14]

K25.2.2(b)(2) of appendix K, requires an applicant for Early ETOPS approval to design an airplane's propulsion system to minimize failures and malfunctions so as to achieve the same IFSD rate objectives as apply to airplanes with service experience.

Paragraph 21.4(b)(2) defines IFSD rates for airplanes that have received ETOPS type design approval. These rates are requirements that apply to airplane and engine manufacturers, and they are used to monitor the reliability of the world fleet in service.

Additionally, the world-fleet IFSD rate applies to operators who must show the FAA that they have the ability to achieve and maintain these rates before the FAA will grant approval to conduct ETOPS. This requirement comes from AC 120–42A, paragraph 10(b) and is now codified in the final rule in part 121, Appendix P, section I, paragraph (a). (Note that the FAA proposed this appendix as Appendix O in the NPRM. Because an Appendix O was adopted in a separate final rule after the ETOPS NPRM was issued, the FAA is adopting proposed Appendix O as Appendix P in this final rule.)

The IFSD rates in § 121.374 are for an individual operator's propulsion system monitoring program. They were derived from AC 120–42A, Appendix 4, and were recommended by the ARAC. These rates are slightly higher than those for the world fleet required elsewhere in the rule. Although operators are required to investigate the cause of each in-flight shutdown in order to maintain their fleet IFSD rate at or below the level required for the world fleet, these higher rates provide a trigger for when the operator must do a comprehensive review of its operations to determine if there are any common cause or systemic errors contributing to the high rate.

The IFSD rate required to obtain type design approval for 120-minute ETOPS in part 25 is 0.05 per 1,000 engine-hours or less. However, unless the IFSD rate is 0.02 or less, the manufacturer must provide a list of corrective actions in the CMP document specified in K25.1.6 of Appendix K that, when taken, would result in a rate of 0.02 per 1,000 engine-hours or less.[15]

The Air Transport Association (ATA) concurs with the IFSD rate requirements for two-engine airplanes under the propulsion system monitoring requirements in § 121.374(i) as they simply codify the existing ETOPS policy and guidance. However, it objects to including IFSD rate standards for three- and four-engine airplanes. The ATA stated that the proposed rate threshold for these airplanes is significantly higher than the current IFSD rates of the industry. It also says that the existing reliability programs and reporting requirements of § 121.703 has provided a safe and reliable system for these airplanes.

The FAA agrees that the IFSD rates identified in § 121.374(i) are significantly higher for three- and four-engine airplanes than for airplanes with two-engines. These rates were the result of applying established risk models and an analysis of the probability of losing a critical number of engines on airplanes with three and four engines.

We also agree that the industry is achieving IFSD rates that are significantly lower than the threshold rates in § 121.374(i). However, if an operator of a three- or four-engine airplane were to actually have a rate higher than the threshold, this provision will aid the FAA and the operator in determining if there are any common cause or systemic errors contributing to the high IFSD rate.

JAA and the UK CAA believe that the 0.01 IFSD rate standard for greater than 180-minute ETOPS should apply to 207-minute approval in the North Pacific as well. Airbus makes a similar comment, but they also suggest that for the 207-minute exception-based operation, the 0.01 rate should be applied in a similar manner to 120-minute ETOPS: That is, start out with an initial rate of 0.02 with a CMP standard that results in a rate of 0.01.

The FAA disagrees that the 0.01 per 1,000 engine-hours IFSD rate requirement should be applied to the specific exception based 207-minute ETOPS approval. This operation is fundamentally a 180-minute operation. The 207-minute allowance is only permitted when the alternate airports normally available within 180 minutes diversion time are not available for a particular flight in the North Pacific area of operations. The baseline airplane requirement for 207-minute ETOPS is a 180-minute type design approval.

The JAA and UK CAA comment that the IFSD rate targets should not be specified in part 21 as it creates an immediate non-compliance in case of an excessive rate, particularly early in the life of an airplane. As discussed earlier, this rule only requires a type certificate holder to issue service information, as appropriate, to maintain the world-fleet IFSD rate at or below the limit. Paragraph 21.4(b)(2) does not apply to an Early ETOPS airplane until the world fleet has accumulated a minimum of 250,000 engine-hours. Accordingly, these commenters' concern about an immediate non-compliance in the early life of an airplane is unwarranted.

The JAA and UK CAA also comment the FAA proposal for diversion times greater than 180 minutes has a fixed IFSD rate requirement unrelated to the maximum approved diversion time, whereas the JAA criteria provide a curve of IFSD rate target from 0.014 to 0.01 per 1000 flight hours for diversion times ranging from 3 to 10 hours.

The FAA requirements are intended to eliminate propulsion system reliability as a consideration from the maximum diversion time capability of the airplane. Only the most time-limiting airplane system capability will determine the maximum diversion time capability for a two-engine airplane under the new requirements for airplanes certified for ETOPS greater than 180 minutes in part 25. The FAA's risk model, discussed in detail in the NPRM, established that the probability of complete loss of thrust due to independent failures with an IFSD rate for two-engine airplanes of 0.01 per 1000 engine-hours would be sufficiently low that the main focus of long-range operational safety should be on reducing the possibility of other risk factors. This approach eliminates the need to re-evaluate an airplane-engine combination's propulsion system reliability each time the applicant seeks to increase the airplane's approved maximum diversion time.

Dassault comments that there are no IFSD rate requirements for airplanes that will be operated under part 135. Thus, they posited that appendix K should be revised to say that the minimum IFSD rates only apply to

[14] Boeing had suggested the FAA merely specify the IFSD rate as approximate. Such a qualifier results in an ambiguous regulation. The FAA believes that it can retain the desired flexibility by approving, on a case-by-case basis, those IFSD rates that exceed the regulatory cap because of unique circumstances.

[15] The NPRM did not clearly state in proposed paragraph 21.4(b)(2) that a reduction in the IFSD rate from 0.05 to 0.02 for 120-minute ETOPS was linked to compliance with a CMP document that was required as a condition for an airplane's ETOPS approval. We have revised the language of this paragraph to clarify this intent.

airplanes that will be used in part 121 operations. Dassault's comment was made with respect to the Early ETOPS method of approval of Appendix K. However, this comment has equal applicability for airplanes certified for ETOPS using the service experience or combined service experience and Early ETOPS methods.

We disagree with Dassault's position. At the time an airplane receives a type certificate, the FAA cannot determine what rules an airplane will be operated under throughout its service life. Part 25 airworthiness standards apply equally to all airplanes receiving part 25 type certificates regardless of the operating part they will be flown under.

Boeing commented that the term ''IFSD'' in the rate implies that only ''flight'' hours should be used as the denominator for the statistic. Boeing recommends changing how the rate is based from ''engine-hours'' to ''engine *flight* hours.'' To do as Boeing suggests would constitute a change in the way IFSD rates have been calculated since ETOPS began in 1985. The FAA discussed whether to calculate the IFSD rate calculations using engine flight-hours when the IFSD rate definition was established in 1985. At that time, the industry had already established methods for tracking engine-hours, and the FAA did not want to create an additional burden on the industry by requiring it to track engine-flight hours for the purpose of calculating an IFSD rate for ETOPS. Given the historical method of calculation is well understood, we have decided against adopting Boeing's suggestion.

Boeing also recommended replacing the word ''operations'' with ''type design approval'' for each IFSD rate listed in K25.2.1(b) of Appendix K. Boeing stated that part 25 pertains to type design approval and using the word ''operations'' could create unnecessary confusion with the operational approvals granted under parts 121 and 135. We agree and have made this change as Boeing recommended.

The NPRM proposed a new paragraph 21.4(c), which defined what actions the FAA would take if the world-fleet IFSD rate were exceeded. General Electric (GE) stated that section 21.4(c) is inconsistent with AC 39–8, which stated that any IFSD rate less than 2×10^{-4} per cycle is not an unsafe condition. We disagree with GE. AC 39–8 provides general policy the FAA Engine and Propeller Directorate uses as a guideline for determining whether an unsafe condition exists for engines used in all types of airplane operations. Since it is advisory in nature, this policy is subject to change.

Proposed paragraph 21.4(c) stated the FAA will review the IFSD rate to determine if an unsafe condition exists. The FAA will review all in-service problems to determine if an unsafe condition exists and may issue ADs as necessary to correct each unsafe condition found. If each individual cause for an in-flight shutdown does not constitute an unsafe condition, the FAA has the discretion to determine that a high IFSD rate by itself constitutes an unsafe condition and may issue an AD mandating a revised CMP document containing several corrective actions that collectively will bring the IFSD rate back down to a safe level. Because the FAA already has this discretionary authority, proposed paragraph 21.4(c) is unnecessary and has been withdrawn from this final rule.

VIII. Definition of ETOPS Significant System

Boeing, Airbus, and ALPA had comments on the proposed definitions of ETOPS significant systems, ETOPS Group 1 systems, and ETOPS Group 2 systems.

Boeing stated that the definition of ETOPS significant systems should be revised to add ''extended'' before ''diversion'' at the end of the first sentence to clarify that ETOPS significant systems relate to extended diversions of ETOPS flights, not any length diversion. ALPA recommended deleting the last part of the definition of ETOPS significant systems ''based on the relationship to the number of engines, or to continued safe engine operation'' since the definition of ETOPS significant systems make this redundant. Boeing recommended deleting the parenthetical examples from the definition of ETOPS Group 1 systems. They felt that the examples could be confusing or misinterpreted for designs where these systems may not be associated with the number of engines. Airbus commented that the NPRM introduced definitions for ETOPS Group 1 and ETOPS Group 2 systems, but did not use them anywhere in the proposed rule. It recommended the FAA withdraw these two definitions.

The FAA agrees that the definition of ETOPS significant systems needs clarification. We agree with the recommended changes from Boeing and ALPA for the reasons they cited. We have made these changes in the final rule.

Airbus is correct that nowhere in the NPRM was ETOPS Group 2 significant systems used. However, the term ''ETOPS group 1 significant systems'' was used in several places in the NPRM, including the problem reporting requirements for Early ETOPS airplanes in paragraph 21.4(a) and the relevant experience assessment required for Early ETOPS two-engine airplanes in K25.2.2(a) of Appendix K. The generic term ''ETOPS significant systems'' is also used in several places, including paragraph 21.4(a) and the time limited systems requirement of K25.1.3(c).

We looked at whether we could eliminate the group 2 definition and combine the group 1 definition with the basic ETOPS significant system definition. However, there is a sufficient difference between the group 1 systems, whose design depends on the number of engines on the airplane, and the other ETOPS significant systems, such as a cargo fire suppression system, whose design does not depend on the number of engines, but whose failure or malfunctioning could adversely affect the safety of extended operations. We could not eliminate this broader class of ETOPS significant systems from the rule, nor could we include these systems in those requirements that only apply to the group 1 systems without increasing the burden of those requirements. Even though ''ETOPS group 2 significant systems'' is not used in the rule, we have decided to keep this term for completeness. We have revised the definition to clarify that an ETOPS group 2 system is any ETOPS significant system that is not a group 1 system.

IX. Airplane and Engine Certification Requirements

A. Transport Category Airplanes Airworthiness Standards (Part 25)

As proposed in the NPRM, we are adding a new § 25.1535 to part 25 as a general requirement for manufacturers seeking ETOPS type design approval. The FAA decided against adopting a new subpart into part 25 because ETOPS approval is an optional certification for manufacturers. The NPRM contained three provisions under this section. These included showing compliance with part 25 requirements considering the maximum mission time and longest diversion time, considering crew workload and operational implications and the flight crew's and passengers' physiological needs following system failures, and complying with the requirements of a new part 25 appendix. The specific airworthiness requirements applicable to ETOPS type design approval are contained in that appendix.[16]

[16] The first two provisions, contained in subparagraphs (a) and (b) of § 25.1535 in the NPRM, are also specific airworthiness requirements that are

1. General

Today's rule adopts a regulatory scheme that airplane manufacturers must follow to receive ETOPS type design approval. Airplanes with existing type certificates at the time this rule becomes effective are exempted from some or all of the new part 25 requirements (see § 25.3).[17] The inclusion of type design requirements and reliability validation methods in the rule has been objected to by the JAA and the UK CAA. They state a regulatory approach is too prescriptive and does not allow any flexibility for alternative reliability methods. These commenters add that the design materials are already included as objective requirements in Title 14 of the Code of Federal Regulations. Further, they state that the reliability validation process should be included as interpretive material to be agreed upon at the time of application.

The FAA understands that the European Aviation Safety Agency (EASA) may be taking a different approach in overseeing ETOPS design criteria. We believe JAA's and UK CAA's comments reflect this philosophy. The type design requirements and reliability validation methods adopted today are the result of nearly 20 years of successful experience in certifying airplanes for ETOPS. However, most of this experience comes from the two major transport airplane manufacturers in the world today. As ETOPS has grown, and now with the new operating requirements expanding ETOPS to part 135 airplanes, we expect many more manufacturers to apply for ETOPS type design approval.

The type design requirements contained in this rule provide a consistent standard of proven ETOPS type design approval methods for the new applicants. This will ensure that all manufacturers use the same methods as used successfully in previous ETOPS approvals the FAA granted under AC 120–42A and the Boeing Model 777 ETOPS special conditions.

We also disagree that the airworthiness standard contained in appendix K does not allow any flexibility for alternative reliability methods. If an applicant chooses to pursue validation methods different from those in appendix K, the applicant may do so under § 21.21(b)(1).

Dassault stated that parts of the proposal, such as the requirement for an independent electrical power source for fuel boost pumps and cross-feed valve actuation, would impose a system architecture. Dassault notes that the goal of a requirement should be to set safety objectives rather than drive airplane systems design.

We agree with Dassault's basic premise that the goal of a requirement should be objective rather than prescriptive. We have made every effort to define objective requirements whenever possible except where existing experience dictates that a specific design requirement is necessary to provide an acceptable level of safety.[18]

Dassault also stated that the NPRM lacked information that normally would be part of an advisory circular. It recommended the FAA publish the advisory circular and then reopen the comment period. We have decided against delaying this rule until after publication of an advisory circular on the proposed rule. Since the advisory circular defines an acceptable method of compliance, but not the only method, it is not a necessary element of the rule. Dassault will have an opportunity to comment on the associated advisory circular under a separate notice of availability.

2. Additional Airworthiness Requirements for Approval of an Airplane-Engine Combination for ETOPS (Part 25, Appendix K)

The NPRM proposed adding a new appendix K, which defines specific airworthiness requirements for type certification of an airplane for ETOPS. The appendix is divided into three parts. Section K25.1 is applicable to all airplanes, K25.2 is applicable to airplanes with two engines, and K25.3 is applicable to airplanes with more than two engines.

The NPRM divided the appendix into three sections I, II, and III. Paragraphs of each section were labeled sequentially as (a), (b), (c), and so on. This numbering system led to confusion on how to refer to paragraphs from different sections with the same number. In this final rule, we have reorganized the paragraph numbering to include the applicable section in the paragraph number. This renumbering more clearly identifies which section of the appendix a particular paragraph is in.

Appendix K—Design Requirements (K25.1)

We moved paragraphs (a) and (b) from proposed § 25.1535 in the NPRM to K25.1 as these are design requirements that an applicant must comply with for all airplane-engine combinations proposed for ETOPS type design approval. The following discussion of comments refers to the designation of these paragraphs in the final rule.

Boeing stated that the ARAC proposal did not discuss how system safety assessments are conducted for ETOPS. Boeing points out that the JAA's draft Notice of Proposed Amendment (NPA) addresses how to conduct system safety assessments for group 1 versus group 2 systems and recommends the FAA include similar information in its guidance material. Boeing recommends the FAA acknowledge in the preamble that the system safety assessments are different for group 1 and group 2 systems and reference the JAA's draft NPA.

Boeing is correct that ARAC did not discuss how airplane system safety assessments are to be conducted for ETOPS. However, we disagree with Boeing that there should be a difference between Group 1 and Group 2 systems. Section K25.1 simply requires an applicant to comply with the requirements of part 25 considering the maximum flight time and the longest diversion time for which the applicant seeks approval. Airplane safety assessments would be covered under the specific objectives of §§ 25.901(c) and 25.1309 considering these additional factors.

The FAA has already established a body of policy for showing compliance with these sections. These policies do not differentiate between systems whose design depends on the number of engines from those that do not. Boeing did not provide any justification for treating relevant system failure conditions for ETOPS assessment differently just because they are associated with Group 2 systems. The main impact that ETOPS will have on airplane safety assessments is a potential increased hazard when considering the long range and diversion distances associated with an ETOPS flight. The purpose of conducting the airplane safety

more appropriately located in new appendix K. In this final rule, we have re-identified these subparagraphs as paragraphs K25.1 and K25.1.2.

[17] The FAA believes the accommodation to existing type certificate designs should relieve the concerns raised by NACA regarding the economic impracticability of the new requirements for existing airplane designs, a concern shared by the FAA.

[18] The particular section mentioned in Dassault's comment codifies a provision of the 207-minute ETOPS policy letter EPL 20–1. As stated in the preamble to the NPRM, loss of normal electrical power to the boost pumps is the primary cause of the loss of fuel system boost pressure. The FAA finds it necessary to include this requirement in order to address this specific cause of loss of fuel boost pressure on airplanes being certified for greater than 180 minute ETOPS. Paragraph K25.1.4(a) defines the basic objective for the fuel system design. Changes to this rule in response to Boeing comments on that provision provide a less restrictive requirement while maintaining the basic objective.

assessments required by §§ 25.901(c) and 25.1309 are to evaluate the airplane for potentially hazardous safety conditions that are not specifically addressed elsewhere in the rule.

Boeing also provides suggested language for system safety assessments to be included in the ETOPS advisory circular. That language is not relevant to the specific safety objective of paragraph K25.1.1. However, Boeing will have an opportunity to comment on the part 25 ETOPS AC under a separate notice of availability.

Although paragraph K25.1.1 would require an applicant to consider the flight crew's and passengers' physiological needs following failures during a maximum length diversion, Transport Canada is concerned about the introduction of new technologies such as onboard oxygen generating systems. These systems would allow flight with a depressurized cabin at altitudes in excess of 15,000 feet, which would require less fuel for diversions on ETOPS flights because airplanes do not use as much fuel at higher altitudes.

Transport Canada stated that the NPRM does not adequately address the potential physiological problems for crewmembers or passengers associated with continued exposure to higher altitudes even if breathing 100 percent oxygen. Therefore, Transport Canada recommends the FAA revise the appendix to include a maximum decompression profile altitude, such as 18,000 feet.

We agree that Transport Canada's comment has merit, but is beyond the scope of this rulemaking project, which was to codify existing ETOPS standards and certain ARAC recommendations. The FAA is investigating specific policy or future regulations for the certification of onboard oxygen generating systems. When we receive an application for approval of such a system, we will apply this policy as interpretation of existing regulations or introduce special conditions if appropriate.

Appendix K—Operation in icing conditions (K25.1.3(a))

The NPRM proposed that an ETOPS airplane must be certified for flight in icing conditions in accordance with § 25.1419, which is otherwise optional. In addition, the NPRM proposed that the ice protection systems must be capable of continued safe flight and landing at engine inoperative and decompression altitudes in icing conditions, and the applicant show the unprotected areas of the airplane would not collect a load of ice that would make the airplane uncontrollable or create too much drag to safely complete a diversion in icing conditions.

Only ALPA supported the proposed requirements for operation in icing conditions without change. New World Jet stated the manufacturer already demonstrates that its airplanes can operate in icing conditions and questions why the proposal would be different from normal requirements.

Although airplanes are regularly certified for flight into known icing conditions under § 25.1419, part 25 does not require that certification in order to be granted a type certificate. Paragraph K25.1.3(a)(1) of today's rule makes certified flight into known icing conditions a prerequisite for ETOPS approval. The other part of paragraph K25.1.3(a)(2) addresses the unique aspects of operation in icing conditions during an ETOPS flight not now covered in a basic part 25 evaluation of flight into icing conditions.

Boeing agrees the FAA needs to codify the icing criteria in AC 120–42A, paragraph 8(b)(11). However, Boeing is concerned the proposed requirement could create confusion with respect to compliance with § 25.1419 and the operational fuel planning requirements in parts 121 and 135. Boeing recommends the rule be rewritten to a single requirement stating, ''The airplane must be able to safely conduct an ETOPS diversion in icing conditions.''

The FAA does not believe paragraph K25.1.3(a) will create confusion with respect to compliance with the basic § 25.1419 icing regulation and the operational fuel planning requirements in parts 121 and 135. In addition to applying to airplane manufacturers under part 25, rather than operators under parts 121 or 135, the objectives of paragraph K25.1.3.(a), including § 25.1419, are different from the fuel planning requirements of parts 121 and 135. The part 25 requirements establish that an airplane can operate safely in icing conditions that could be encountered during an ETOPS flight. The operational requirements ensure enough fuel is onboard to safely complete a flight along a route with known icing conditions. In order to establish safe operation, the manufacturer must define the most critical ice accumulation that may occur on the airplane. This accumulation usually also results in the highest fuel usage. Thus, it is likely the airplane manufacturer will use the testing and analysis performed for compliance with paragraph K25.1.3(a) to develop the performance data an operator will need for compliance with the fuel planning requirements of parts 121 and 135.

The JAA and UK CAA state the terms ''load of ice'' and ''too much drag'' in the proposed appendix are not appropriate language for regulatory material because they lack precision. Airbus recommends the FAA withdraw the proposed requirement because this issue is not unique to ETOPS and would be more appropriately addressed under a general rulemaking action.

We agree the proposed paragraphs lacked normal regulatory precision. We also agree with Boeing that the intent of AC 120–42A was to ensure the airplane would continue to be airworthy, considering the exposure to potential icing conditions during an ETOPS diversion at engine-inoperative or decompression altitudes.

The NPRM proposed requirements to meet this objective, but did not clearly state that continued safe flight and landing at engine inoperative and decompression altitudes in icing conditions applies to all of the flight phases during an ETOPS diversion, including a 15-minute hold. The NPRM also did not define the icing conditions to consider during each of these flight phases.

In § 25.1419, safe operations with ice accretions on the protected and unprotected areas are considered, but not specifically mentioned. The FAA has revised this final rule to more clearly state which flight phases and associated icing conditions must be considered during an ETOPS diversion. Paragraph K25.1.3(a)(2), requires that the airplane must be able to safely conduct an ETOPS diversion with the most critical ice accretion resulting from:

(A) Icing conditions encountered at an altitude that the airplane would have to fly following an engine failure or cabin decompression; and

(B) A 15-minute hold in the continuous maximum icing conditions of Appendix C with a liquid water content factor of 1.0.

(C) Ice accumulated during approach and landing in Appendix C icing conditions.

This new paragraph makes the rule language similar to § 25.1419 while adding the icing conditions encountered during an altitude-limited diversion to those factors currently evaluated under § 25.1419.

Boeing, Dassault, and Airbus all state additional guidance for this rule is needed in an associated advisory circular. Dassault and Airbus stated the NPRM would require analytical and flight testing to assess the impact of ice accumulation. The commenters add that without guidance material describing the assessment, they cannot comment

properly on this section. Airbus also adds that it is inappropriate for the FAA to define a critical test parameter in an advisory circular.

As discussed above, the FAA has revised this final rule to clarify the flight phases and associated icing conditions to consider during an ETOPS diversion. The FAA disagrees that the associated guidance material is necessary to properly comment on the proposal. Airbus rightfully notes that it is inappropriate for the FAA to define a critical test parameter in an advisory circular, and the FAA is not doing that. Rather, the advisory circular merely will describe an acceptable method for showing compliance with the new rule.

The rule as revised stands on its own merit. The second and third provisions of the revised paragraph K25.1.3(a)(2) are based on Appendix C icing conditions that are currently evaluated for compliance with § 25.1419. There is currently no accepted industry standard for icing conditions that may be encountered during an altitude-limited diversion due to an engine failure or cabin decompression. Until such an industry standard is developed and accepted by the FAA, each applicant will have to propose an acceptable method for showing compliance with this requirement.

Airbus stated that the preamble does not indicate why the FAA increased the severity of the certification standards and does not relate the increase to a clearly documented service event or safety problem that has occurred. Nor does the economic impact assessment compare the cost of the proposed type design assessment to the expanded safety benefit. Airbus stated the FAA proposed to reduce the contribution of icing in the ETOPS fuel reserve calculations compared with the reserves required by current ETOPS criteria as a result of the CASP II [19] icing research program that ARAC extensively used to show that prolonged substantial icing was virtually impossible during a diversion. On the other hand, Airbus pointed out that the type design rule seems to assume that extremely severe icing beyond the level covered by normal certification criteria may be encountered during engine inoperative diversions at decompression altitudes. Thus, Airbus posited that the proposed type design rule appears to contradict the operating rule, which excludes significant prolonged icing.

We have not increased the severity of part 25 certification standards as indicated by Airbus' comments. ETOPS approvals accomplished in accordance with AC 120–42A have included conditions that were not previously considered during a part 25 certification program. This rule codifies the existing ETOPS policies and practices. Consequently, the part 25 regulations address the ETOPS-related issues that were addressed in previous ETOPS approvals. The FAA has determined that the current policies applied to approve airplanes for ETOPS have provided an acceptable level of safety. This rule simply codifies these policies.

The FAA does not agree that the type certification and operating rules are contradictory. Previous ETOPS type design approvals have included an evaluation of the drag effects of conservative ice accumulations on airplane surfaces. The FAA determined that this conservatism, combined with the operational fuel reserves resulting from the original ETOPS icing fuel planning requirements, has been excessive. The NPRM proposed to reduce the fuel reserves required for ETOPS operational dispatch on the assumption that the fuel consumption used for fuel planning would be based upon the conservative ice shapes used during the type certification of the airplane.

The Final Regulatory Evaluation includes the overall cost to comply with the proposed rulemaking and the overall benefit of the rule. The ETOPS icing requirements define additional conditions that an applicant must consider when showing compliance with § 25.1419 to certify an airplane for flight in icing. The maximum ice accretion on an airplane during an ETOPS diversion will be compared to the maximum accretion from other icing conditions used for icing certification to determine the most critical ice shapes to demonstrate during certification flight testing. The applicant will also likely use these ice shapes to define fuel consumption in icing conditions that the operators will use for ETOPS fuel planning.

Airbus indicates that the rule seems to assume the airplane will encounter ''extreme severe icing'' during a diversion. This interpretation of the proposed amendment is incorrect. The rule requires an applicant consider icing conditions expected to occur at the altitudes an airplane would fly during a maximum length diversion with an inoperative engine or depressurized cabin. The rule merely requires the consideration that the airplane may be at altitudes conducive to icing for extended distances. The FAA does not consider this to be extremely severe icing, although the resulting ice accumulations may be greater than that resulting from traditional compliance with § 25.1419.

We acknowledge the CASP II icing research that Airbus cites showing that prolonged substantial icing is virtually impossible during a diversion. However, the CASP II data only covers a limited part of the globe in the North Atlantic region. Since a significant future growth is forecast for ETOPS in the Arctic, Antarctic and Southern oceanic areas, we are concerned about the ice accumulation that may occur during altitude-limited diversions in those areas.

As we indicated above, each applicant will have to propose an acceptable method for showing compliance with the icing requirements. The applicant may use whatever data at its disposal to justify the icing conditions used to determine the most critical ice accretion during an altitude limited diversion.

Dassault recommends the FAA not go beyond already established certification standards, in particular the maximum three inches of ice in the JAA's proposed Advisory Circular Joint (ACJ) 25.1419. Dassault's proposal would impose a specific design requirement in this rule. In keeping with our overall objective of basing regulations on the safety objectives, instead of driving airplane design, we are not adopting Dassault's recommendation. Each applicant will have to propose an acceptable method for determining the ice thickness to be evaluated in order to meet the overall objectives of the requirement.

The British Air Line Pilots Association (BALPA) notes that an auxiliary power unit could be susceptible to icing during prolonged exposure to icing conditions while on the ground. BALPA is concerned that running the APU in flight during prolonged icing conditions may result in surging or failure and loss while the APU is being used as a critical power source. As a result, BALPA recommends the FAA amend the rule to require an APU to continue to function in icing conditions.

The FAA agrees with BALPA that an APU could be susceptible to icing during prolonged exposure to icing conditions. The FAA evaluates APU

[19] The Atmospheric Environment Service (AES) of Canada with support from the National Research Council (NRC) of Canada conducted the Second Canadian Atlantic Storms Program (CASP II) out of St. John's, Newfoundland during the period of January 16 through March 16, 1992. The objective of this program was to study the icing climatology off the east coast of Canada to provide better short term, severe weather forecasting for the area around the Hibernia Oil Fields and the cod fishing ground in the Grand Banks. ARAC used the data from this research to evaluate the severity and extent of icing conditions that may be encountered during an ETOPS diversion.

exposure to icing conditions during basic certification of the airplane for compliance with § 25.1093(b). This evaluation includes the ground operating condition, which historically has been the most severe operating environment for an APU in icing conditions. This finding correlates with the commenter's own experience. However, the FAA does not believe that a change to the rule is necessary. New section K25.1 will require an applicant to consider the ETOPS mission in showing compliance with the requirements of part 25. For an APU, this would include operation in icing conditions for compliance with the applicable part 25 APU icing requirements.

Airbus stated that three- and four-engine airplane service experience indicates that depressurization events almost never occur in cruise or during the ETOPS portion of the flight. It goes on to state that engine failures do not put three- and four-engine airplanes at icing altitudes. Airbus contends that there is no support for applying the type design rule to three- and four-engine airplanes.

Though uncommon, decompression events have occurred at cruise altitudes. Furthermore, most decompression events are independent of the number of engines on the airplane. Following decompression, it is common practice to descend to and maintain an altitude where supplemental oxygen is not required. This would result in operation of the airplane at altitudes where icing can occur.

The FAA agrees that the engine inoperative altitudes for three- and four-engine airplanes may place them above altitudes conducive to icing. This would mean that the engine inoperative diversion would not contribute to the most critical ice accretion that the applicant must consider for compliance with the rule. However, the applicant would still have to consider the ice accretion during a 15-minute hold, approach and landing as those phases of flight are relevant to all airplanes regardless of the number of engines.

Appendix K—Electrical power supply (paragraph K25.1.3(b))

The NPRM proposed requirements for airplane electrical system reliability, including a requirement that airplanes certified for ETOPS greater than 180 minutes must be equipped with at least three independent electrical generation sources.

The JAA and the UK CAA state that the second and third electrical system requirements proposed in the NPRM are objective requirements already covered in part 25 and JAR 25. The FAA agrees. These proposed paragraphs are essentially restatements of § 25.1309(b)(1) and (2), which are already required for ETOPS airplanes by new paragraph K25.1.1. These paragraphs are deleted from the final rule.

ALPA expressed concern that the proposal did not conform to the current standard of requiring three independent electrical power sources for all two-engine airplanes approved for ETOPS, including for diversion times less than 180 minutes. ALPA stated that ARAC was tasked with codifying current design and MMEL relief provisions for two-engine airplanes. ALPA expressed discomfort with the lack of justification in the NPRM for ignoring current requirements. ALPA also suggested that future three- and four-engine airplanes could be developed with fewer than three electrical power sources. ALPA proposed changes to the rule to ensure that all ETOPS airplanes covered by part 121 and two-engine airplanes covered by part 135 would comply with the three-generator requirement.

The FAA acknowledged in the NPRM that the three-generator requirement would apply only to airplanes being certified for greater than 180-minute ETOPS. AC 120–42A specifies three generators for any airplane approved for ETOPS under this guidance. However, the FAA also stated in the NPRM that the proposed requirement represented a compromise position that allowed ARAC consensus on the proposal. ALPA is the only organization to comment that the rule should apply to ETOPS approval of any two-engine airplane intended for part 121 operations, indicating general support for this compromise.

However, after further consideration, and in order to establish a consistent industry minimum standard for ETOPS, the FAA has revised paragraph K25.1.3(b) to require a minimum of three independent sources of electrical power for all airplanes being approved for ETOPS without regard to maximum diversion time. Manufacturers already have to comply with § 25.1309. The FAA has determined from service experience that a minimum of three electrical power sources is necessary to comply with the objectives of § 25.1309 when considering long ETOPS diversions. Paragraph K25.1.3(b) codifies the ''three-generator'' criteria of paragraph 8.(b)(8) of AC 120–42A.[20]

New World Jet commented that levels of risk are defined based upon systems design and failure rate and then compared to a determined level of acceptable risk for the operation to be conducted. If the risk is within an acceptable level, the aircraft should be allowed to operate at the specified number of minutes from an airport. The probability of an event associated with aircraft system failures, rather than the number of generators, should determine if an aircraft is qualified for a route.

The FAA agrees that the level of risk of a system failure should be commensurate with its effect on the safety of the airplane. The airplane system assessments required by § 25.1309 do exactly as New World Jet suggested. New section K25.1 would require an applicant to show compliance with this section considering the effects of a system failure during an ETOPS flight. The three generator requirement of paragraph K25.1.3(b) is an acknowledgement that electrical generator technology has not yet achieved a level of reliability that would allow an electrical system design with fewer than three generator sources and still meet the system safety objectives of § 25.1309 for ETOPS approval.

The JAA and the UK CAA stated that the JAA specifies what loads each electrical power source should be capable of powering in an Advisory Circular Joint. Since each new airplane may have unique electrically powered functions that are critical to continued safe flight and landing, the FAA is reluctant to specify a list of functions. The safety assessments required under § 25.1309 will determine what system functions must be powered by the three required electrical power sources. These assessments should consider the cumulative effect on airplane safety from the loss of seemingly unrelated airplane system functions resulting from the same loss of power.

The JAA and UK CAA add that for beyond 180-minute ETOPS, a fourth stand-by power source is needed, because it is unlikely that three power sources would meet the safety objectives associated with the total loss of electrical power. The FAA does not have any data to confirm a fourth stand-by electrical power source would be required to meet the safety objectives associated with the total loss of electrical power for diversion times

[20] Four commenters remarked that the three-generator requirement was too prescriptive. These commenters believe that the rule should allow the safety analyses to dictate the number of electrical power sources rather than specifying a number in the rule. We disagree that the rule is too prescriptive. This paragraph establishes a consistent industry minimum standard for ETOPS in keeping with the original objective of paragraph 8(b)(8) of AC 120–42A.

greater than 180 minutes. Accordingly, the FAA is comfortable in letting the safety analyses of § 25.1309 determine if additional power sources are required.

American Airlines asks whether a ram air turbine generator would be considered an alternative source of electrical generation for compliance with the rule or whether the APU is the only acceptable third independent source of power for a ''legacy'' aircraft like the Boeing Model 777. It further queries whether the determination of the three independent electrical generation sources is left to the discretion of the individual operators or the aircraft manufacturer.

The airplane manufacturer will decide what power sources constitute the three independent electrical power sources for compliance with paragraph K25.1.3(b). Any electrical power source that provides those airplane functions for continued safe flight and landing during an ETOPS diversion would qualify as one of the three independent sources of electrical power. Electrical power sources the FAA has accepted for meeting this requirement include generators powered by a ram air turbine (RAT), APU generators, or dedicated back-up generators driven by the main engines. Future airplanes may have other arrangements to meet this requirement.

Appendix K—Time-limited systems (K25.1.3(c)) and Airplane flight manual (K25.1.7(d))

The NPRM proposed to add a new requirement to existing § 25.857(c)(2) that would require an applicant to provide the certified time capability of a Class C cargo compartment fire suppression system in the airplane flight manual for ETOPS approval. One paragraph in the proposed appendix would have required an applicant to define each ETOPS significant system that is time-limited while a separate paragraph in that appendix would have required the airplane flight manual to contain the maximum diversion time capability of the airplane.

The JAA and the UK CAA commented that it is not clear whether the certified time capability of the cargo fire extinguishing system under the proposed § 25.857(c)(2) would be considered as a particular case or if it would be treated separately as additional time limited information under the proposed appendix. They also commented that the rule should indicate how to translate the maximum system capability into maximum diversion time.

The FAA agrees that the NPRM was unclear how proposed § 25.857(c)(2) and the two paragraphs of the proposed appendix are related to each other. We also agree that it was not clear how cargo and baggage compartment fire suppression system information and other limiting airplane systems' time-capability should be defined in the airplane flight manual. We have revised this final rule to state that the applicant must define the system time-capability of each ETOPS Significant System that is time-limited under appendix K (K25.1.3(c)). A time-limited cargo fire suppression system for any cargo or baggage compartments would be included under this requirement.

We have also revised the airplane flight manual requirement in paragraph K25.1.7(d) to require the operator to identify in the airplane flight manual the system time-capability for both the most limiting fire suppression system for any cargo or baggage compartment and the most limiting ETOPS Significant System other than fire suppression for cargo and baggage compartments. It is necessary to specify both times in the airplane flight manual because of how they are used in the operating rules to determine the maximum diversion time that an airplane may fly. We are withdrawing the proposed change to § 25.857(c)(2), because we have determined it is no longer needed and is potentially confusing.

The FAA likewise recognizes that the proposed paragraph on maximum diversion time capability for the flight manual was confusing. We did not intend to require the maximum diversion time capability be stated in the airplane flight manual. The maximum diversion time that an airplane may operate is controlled by the operating rules in parts 121 and 135. Our changes to this requirement in paragraph K25.1.7(d) described above clarify our original intent.

Boeing stated the FAA needs to issue advisory material to clarify the compliance methods for obtaining ETOPS approval of cargo compartments. Boeing recommended the FAA allow certification of any required changes using the policies and certification methodology in place at the time of original type certification of the airplane. Boeing also stated that compliance with the flight test requirements in § 25.855(h)(3) should be allowed based on data from the original certification flight tests of the airplane model being modified. Boeing added that additional flight testing should be required only if novel systems designs are used.

In its comment, Boeing seemed to be concerned about the certification of increased capacity cargo or baggage compartment fire suppression systems on currently certified airplanes. The requirements of the Changed Product Rule, § 21.101, will apply to the modification of currently certificated airplanes. The certification of time-limited cargo or baggage compartment fire suppression systems will be done in accordance with the applicable certification requirements, methods, and policy as determined through compliance with § 21.101.

Appendix K—Fuel system design (K25.1.4(a))

The NPRM proposed three requirements for an airplane fuel system design. The first would require that the system supply fuel to the engines at a pressure required by the engine type certificate for any failure condition not shown to be extremely improbable. The second would require one fuel boost pump in each tank and at least one crossfeed valve to be powered by a back-up electrical generation source other than the primary engine or APU driven generators. The third fuel system provision would require alerts to be displayed to the flight crew when the quantity of fuel falls below the level required to complete a flight.

Boeing stated the FAA has unintentionally proposed an increase to the safety requirements for existing ETOPS approvals. This section presented objective requirements but does not take into consideration the practical impact on fuel system design. Boeing noted the FAA's explanation in the NPRM suggests that there must always be a method for boosting the fuel pressure delivered to the engine beyond what is available from head pressure or fuel tank ram air rise. Boeing pointed out that with today's fuel boost pumps and their associated reliability, the standard design configuration of two fuel boost pumps per tank would not meet the intent of this section.

Boeing agreed it is important that fuel be available to the operating engine or engines at the pressure and flow required for safe operation. Boeing pointed out that the ARAC and the JAA working groups extensively discussed this issue and the intent of this requirement was to ensure the fuel boost pumps would function following all power supply failures not shown to be extremely improbable. Boeing stated ARAC found the two fuel boost pumps per tank configuration was satisfactory for any length ETOPS operation and determined adding boost pumps to a fuel tank would be detrimental and introduce additional complexity to the fuel system without any benefit. Boeing

stated the JAA's draft Notice of Proposed Amendment allows engine operation at negative fuel pressures (suction feed) provided appropriate criteria are met. Boeing disagreed with the NPRM and stated that not allowing suction feed is overly restrictive. Boeing also suggested rule language changes consistent with their comments including provisions for demonstrating suction feed operation.

We disagree with Boeing's proposal to limit consideration of loss of fuel boost pressure to only fuel pump power supply failures. The proposed rule stated a clear objective that the airplane fuel system must deliver fuel to the engines at the pressure and flow they require for any intended operation following airplane failure conditions that are not extremely improbable. These may include failures to more than just the fuel pump power supply.

This rule intentionally increases the safety standard from that applied to airplanes approved under the previous guidance. The FAA went to great lengths in the NPRM to explain the safety justification for this requirement. Section 25.1351(d) requires an applicant to show that an airplane can operate safely in visual flight rule weather conditions for at least 5 minutes with normal electrical power inoperative using the type fuel most likely to cause an engine flameout with the airplane initially at its maximum altitude. Airplane manufacturers show compliance with this requirement by demonstrating that an engine will start on suction feed following an expected engine flameout at this altitude. The reason this demonstration is required for a minimum of five-minutes is to give time for the flight crew to restore normal electrical power to the fuel boost pumps after engine restart.

Current regulations do not require applicants to demonstrate the engines will operate at negative pump inlet pressures (suction feed) for extended periods of time. The types of engine failure conditions that could result from suction feed operation fall into two categories, engine operating problems and mechanical failures. Engine operating problems could mean engine instability, permanent loss of thrust, or flameout. Mechanical failures to the engine pump would result in flameout and permanent loss of the engine for the remainder of the flight.

The FAA is aware of at least one engine pump failure that occurred on a test stand during a non-required demonstration of suction feed operation. A loss of fuel boost pressure to more than one engine during an ETOPS diversion on an airplane with engines with this kind of vulnerability could potentially result in the failure of multiple engines from the same cause. However, contrary to Boeing's comments, certifying an engine for extended suction feed operation is an acceptable option for complying with paragraph K25.1.4(a). In this case, the airplane manufacturer must design a fuel feed system to deliver fuel to the engine above a certified suction feed pump inlet pressure limit established for the engine under § 33.7. The engine manufacturer must demonstrate acceptable engine operation and integrity under part 33 in order to establish this suction feed limit.

The effect of today's rule is to ensure that the engines will always have fuel delivered at normal pump inlet pressure, or that the engines are certified to operate for the longest diversion time for which the airplane manufacturer is requesting approval at the lowest engine pump inlet pressure expected to occur during operation with the normal airplane fuel boost pumps inoperative. If an applicant chooses to use suction feed as a means to comply with this rule, it must demonstrate safe operation of the airplane in that configuration.[21]

When using suction feed to comply with this requirement, the Instructions for Continued Airworthiness developed in accordance with § 25.1529 must include procedures for maintaining the integrity of the fuel system plumbing. The purpose of these procedures is to prevent the introduction of air into the fuel feed lines during suction feed operation. Any air in the fuel feed lines can lead to flameout of a turbine engine.

Boeing recommends revising the proposed requirement for an alternative fuel boost pump power source to not limit it to a back-up electrical generator. Boeing stated that an acceptable design could be a four-generator system, all with equal capability. We agree with the intent of Boeing's comment that the back-up generator source required in proposed requirement could include a fourth main electrical generator instead of a back-up generator system. We have broadened the requirement of K25.1.4(a)(2) to state that for two-engine airplanes to be certified for ETOPS beyond 180 minutes, one fuel boost pump in each main tank and the actuation capability of at least one crossfeed valve must be capable of being powered by an independent electrical generation source other than the three required to comply with K25.1.3(b). This requirement does not apply if the required fuel boost pressure or crossfeed valve actuation is not provided by electrical power.

Dassault commented that it understands the FAA's intent for an automatic warning to clearly indicate to the flight crew what's wrong with the fuel system, but believes this is not the only way to achieve this goal. Dassault stated that pilot training and fully developed flightcrew procedures are another efficient way to achieve the same goal. Dassault pointed out that automatic fuel alerts would require flightcrew initialization before the flight. Dassault noted that the human error during this procedure is of the same order of magnitude as the application of procedures. Therefore, Dassault stated that adequate pilot training and procedures provide an equivalent means of compliance.

UPS stated that an automatic warning is not necessary for three- and four-engine ETOPS airplanes because of their demonstrated safety and reliability. UPS pointed out that the rule seems to assume a two-crew airplane and does not take airplanes with three crewmembers into account. UPS added that compliance with this section would require extensive modifications to three- and four-engine airplanes to add flight management computers to provide the required alerts. It argued this burden is unjustified because there is no need for the automatic warning.

The FAA does not believe crew training and fuel management procedures are a long-term solution for the types of fuel exhaustion events the FAA is addressing with this requirement. Dassault's proposal in effect would not require anything not already done operationally. The low fuel alerting system will provide a safety net for major fuel loss events or fuel loading errors perhaps too difficult to detect by operational procedures alone, such as occurred in 2001 when an Air Transat A330 was forced to land in the Azores following an all engine flameout from fuel exhaustion.

However, we recognize some existing airplanes may have difficulty in complying with this requirement without substantial airplane system modifications. Also, older three-crew airplanes have a flight engineer who monitors fuel quantity throughout a long flight. The FAA considers this additional crewmember to be an

[21] Boeing recommended rule changes that add certain conditions that an applicant must consider if suction feed is to be a means to comply with the rule. We agree that these conditions further clarify the meaning of the rule and have added them to the final rule as paragraph (1), (1)(i) and (1)(ii) with editorial changes to state the requirement in proper regulatory language. The following paragraphs proposed in the NPRM have been re-numbered sequentially.

acceptable alternative to the automatic low fuel alerting for those airplanes.

In recognition of these concerns and the compensation that a flight engineer provides, the FAA has modified the rule to exempt existing airplanes from this requirement. However, all new two-crew airplanes, and two-crew airplanes with existing type certificates manufactured 8 years after the effective date of the rule must comply with this requirement.

Appendix K—APU design (K25.1.4(b))

When APUs are necessary for an airplane to comply with the ETOPS requirements, the NPRM proposed that these APUs have adequate reliability and be capable of starting and providing their required functions up to the maximum operating altitude of the airplane, but no higher than 45,000 feet.

Dassault, Air New Zealand, New World Jet, the JAA, and UK CAA questioned the proposed requirement to substantiate that the APU in-flight start envelope extends up to the maximum altitude of the airplane, but need not exceed 45,000 feet. Dassault, Air New Zealand, and New World Jet indicated that 45,000 feet was too high. The JAA and UK CAA commented the demonstration of APU starting should cover all altitudes for which the airplane is approved.

The ARAC ETOPS Working Group discussed whether required APUs on ETOPS airplanes should be capable of starting throughout the entire flight envelope. The FAA was concerned that an electrical generator failure should not force an ETOPS flight to a lower altitude in order to successfully start an APU. Doing so could create problems with other traffic on the same track in areas with limited communications capability. Also, the additional fuel consumed during a descent to start an APU and climb back to the assigned altitude could itself lead to a diversion later on in the flight if the remaining fuel reserves become too low. However, certain members of the working group stated that some part 25 airplanes were certified for altitudes above 50,000 feet and that it may not be possible to design an APU to start at those altitudes. The 45,000 foot minimum altitude start capability requirement is an acknowledgement of this possibility while still mandating a minimum start envelope that would keep any necessary altitude changes above the more densely traveled altitudes along these routes.

New World Jet commented that a need to start an APU at the maximum operating altitude is unlikely. Dassault stated that the need to start an APU in flight is likely to occur following an engine failure, which would result in an altitude substantially less than maximum certificated altitude. Dassault recommended changing the requirement to the one-engine inoperative maximum altitude. New World Jet commented that the 45,000-foot start requirement assumes that an airplane experiences a dual generator failure, is then unable to receive a clearance to descend and has to declare an emergency. They say that this scenario seems unlikely.

We disagree with these commenters. Dassault implies an APU would only be started in flight following an engine failure. More commonly, the APU is started following a main engine-driven generator failure. Generator failures may occur at any altitude that the airplane is certified to fly. Typical mean time between failures of main engine-driven generators is approximately 10,000 hours while the mean time between failures for engines on ETOPS airplanes operating under the existing 180-minute standard is 50,000 hours. For ETOPS approval on a two-engine airplane for greater than 180 minutes, the required engine reliability will be 100,000 hours between engine shutdowns. Therefore, an electrical generator will fail 5 to 10 times more frequently than an engine on the same ETOPS airplane. Additionally, the loss of two electrical generators in flight is not uncommon. Dassault's proposal would lower the existing level of safety compared to airplanes approved under the criteria of AC 120–42A, which have had APU start and run capability up to the maximum certificated altitude of the airplane.

Air New Zealand stated the APU on the Boeing 767, which is currently approved for ETOPS, is certified to start up to 35,000 feet, while the airplane maximum altitude is 43,100 feet. Air New Zealand's statement is in error. We required design changes to the 767 APU so that it would start up to 43,100 feet when we approved that airplane for 180-minute ETOPS. These design changes are required by the Boeing 767 ETOPS CMP document before that airplane may be flown on 180-minute ETOPS routes.

United expressed concern that an APU should only be required on airplanes with more than two engines to meet the design requirements if the APU is one of the three sources for back-up in-flight electrical power. The final rule does address United's concern. We have revised paragraph K25.1.4(b) to clarify that the APU reliability and starting requirements apply only if an APU is needed to comply with that appendix K.

Appendix K—Engine condition monitoring (K25.1.5)

The NPRM proposed that an applicant must develop procedures for engine condition monitoring in accordance with part 33, appendix A.

Transport Canada recommended the FAA eliminate the term ''condition monitoring'' because its use was discontinued in reliability centered maintenance and Maintenance Steering Group MSG–3, and contends there is an inherent safety risk associated with mixing terminologies and maintenance program development processes. Transport Canada recommended a harmonized and standardized approach for setting terminology and maintenance program requirements.

Transport Canada recommended substantial changes to the proposal to permit manufacturers, operators, and regulatory authorities to participate in a structured maintenance review board process for the development of an airplane ETOPS maintenance program and engine health assessment program.

Transport Canada made some interesting points, but they involve concepts that are beyond the scope of the proposed ETOPS rule, which was to codify the existing ETOPS standard contained in AC 120–42A. This advisory circular used the term ''engine condition monitoring'' which has been successfully applied since its inception. Transport Canada's other suggested changes would involve a level of integration that has never been used before. Although such an integrated approach is in the FAA's long term goals of improving safety, we do not want to compromise those future long-term goals by introducing such concepts into this rule without a much larger review in the context of that effort.

Appendix K—Configuration, maintenance, and procedures (CMP) (K25.1.6)

The NPRM proposed that any configuration, maintenance, and operational standards necessary to maintain appropriate reliability for ETOPS must be contained in a CMP document.

Transport Canada proposed eliminating the CMP document requirement and placing the information that would be contained in the CMP document into the illustrated parts catalog, the Instructions for Continued Airworthiness required by § 25.1529, or the airplane flight manual. It states a separate CMP document is duplicative for a new airplane being evaluated for ETOPS as part of a basic type certificate program.

The CMP document is an extension of the airplane type design definition described in § 21.31 as a prerequisite for the airplane being eligible for extended operations. FAA airworthiness inspectors use compliance with the CMP requirements to determine if an airplane may be added to a carrier's operations specifications.

Since the CMP requirements are a condition for the ETOPS approval, they have to be in an FAA approved document. The Instructions for Continued Airworthiness required by § 25.1529 must be accepted by the FAA, but are not approved. The illustrated parts catalog is a manufacturer document and is not even reviewed by the FAA. The airplane flight manual may contain ETOPS procedures since it is approved for issuance of the type certificate. However, the airplane flight manual would not contain the other information that would be included in a CMP document. Therefore, we are adopting paragraph K25.1.6 as proposed with editorial changes to make the rule easier to understand.

Appendix K—Two-engine airplanes (K25.2)

Section K25.2 defines the ETOPS design requirements applicable to two-engine airplanes. Three methods are provided for ETOPS certification. An applicant may assess a candidate airplane-engine combination already in service by a review of service experience gained on that airplane. If an airplane-engine combination has not yet been certified, an applicant may use the Early ETOPS method, which takes a systems approach to the design, testing, and monitoring of a new airplane-engine combination as a substitute for service experience. This method establishes more rigorous analysis and test requirements than for an airplane with existing service experience. If the candidate airplane-engine combination has some service experience, but not enough to use the service experience method, the applicant may substitute 15,000 engine-hours of world-fleet service experience in place of the rigorous airplane demonstration test required by the Early ETOPS method. All of the other Early ETOPS requirements would apply in this case.

Appendix K—Service experience method (K25.2.1)

After obtaining a minimum of 250,000 engine-hours of service experience, an applicant using the service experience method would conduct airplane and propulsion system assessments to evaluate the safety and reliability of those systems for ETOPS. A two-engine airplane must also meet minimum IFSD rate requirements and demonstrate by a flight test that it has the capability to safely conduct ETOPS flights for the maximum diversion time being assessed.

Boeing and GE commented that the proposed requirement to have corrective actions for all causes or potential causes of engine in-flight shutdowns or loss of thrust control occurring in service does not recognize that even engines with IFSD rates well below the rate required for ETOPS approval occasionally fail in service. While they agreed with the philosophy of the rule to correct causes of engine in-flight shutdowns or loss of thrust control, there are situations in service where no cause is identified or no technology is currently available to prevent future failures. They posited the FAA has accepted situations where industry did not have corrective actions for some causes if the IFSD rate was at an acceptable level without these corrective actions. They go on to state the intent of the ARAC proposal was to ensure an acceptable IFSD rate for the ETOPS approval being sought.

These commenters propose similar changes to address these concerns. Boeing proposes the causes of in-flight shutdowns and loss of thrust control be assessed and appropriate corrective actions be taken to ensure an appropriate IFSD rate will be maintained. GE proposes all causes or potential causes of engine IFSD or loss of thrust control must have corrective actions, unless it can be shown the rate of the causes or potential causes will not result in IFSD rates exceeding the requirement.

The FAA agrees the proposed rule needs clarification. Sometimes a corrective action is either not technologically feasible or cannot be determined because the root cause of the failure is unknown. We also agree we have accepted situations where industry did not have corrective actions for some causes or potential causes of in-flight shutdowns if the rate was at an acceptable level without these corrective actions. However, we disagree with commenters' proposed changes.

The commenters' proposed changes suggest that for an airplane with an existing IFSD rate above the maximum allowable for approval, the identification or development of corrective actions could stop at a point when the applicant predicts the IFSD rate would just meet the maximum allowable with incorporation of those corrective actions already identified or developed. The FAA found from airplanes approved using the guidance of AC 120–42A, Appendix 1, the basis for the proposed rule, that it is necessary to correct as many causes of in-flight shutdowns or loss of thrust control as possible at the time the applicant conducts the propulsion system assessment in order to offset unforeseen problems that would cause a higher IFSD rate in the future.

However, we want to be consistent with how we have required corrective actions for causes of engine in-flight shutdowns and loss of thrust control in past airplane ETOPS approvals. Therefore, we have revised paragraph K25.2.1(c)(2) to say that corrective actions are not required for events where the manufacturer is unable to determine a cause or potential cause, for events where it is technologically unfeasible to develop corrective actions, or where the world fleet IFSD rate already complies with the final IFSD rate required by paragraph K25.2.1(b) for the level of ETOPS approval being sought. However, the FAA emphasizes that we will respond to any cause of an engine in-flight shutdown or loss of thrust control that we determine to be an unsafe condition even if the IFSD rate meets the required rate. In such a case, we will issue an airworthiness directive (AD) requiring corrective action on all airplanes that may fail from the same cause. If the FAA determines an unsafe condition would exist only during the ETOPS portion of a flight, we would require the corrective action be specified in the CMP document as a condition for ETOPS approval of the airplane under the provisions of § 21.21(b)(2). That paragraph requires an airplane to have no feature or characteristic that makes it unsafe for the issuance of a type certificate. In addition, the FAA reiterates that an operator must comply with the provisions of the CMP document as a condition for ETOPS operational approval under part 121.

Boeing stated that the NPRM unintentionally requires a more comprehensive airplane systems assessment under the proposed service experience approval method than it does for the proposed Early ETOPS method. Boeing stated that assessing, providing corrective action for, and showing effectiveness of the corrective action as proposed in the NPRM creates an extraordinary amount of work if it includes all ETOPS significant systems, including Group 1 and Group 2 systems. Boeing recommends changing the requirement to apply the airplane systems assessment only to ETOPS group 1 significant systems.

The FAA acknowledges that the NPRM would have required a more

comprehensive airplane systems assessment under the service experience method than the comparable relevant experience assessment under the Early ETOPS method. The proposed service experience method would have required corrective actions for ''all'' causes or potential causes of ETOPS significant system failures while the Early ETOPS method would have required the applicant to identify specific corrective actions for ''relevant'' design, manufacturing, operational and maintenance problems. Also, the proposed Early ETOPS method relevant experience assessment would not require corrective actions if the nature of the problem is such that it would not significantly impact the safety or reliability of the system. This proposed requirement also defines what types of problems are ''relevant'' for this assessment.

Boeing is correct the FAA did not intend to create this inconsistency. The requirements for conducting assessments of the airplane systems for ETOPS should be similar when using either the service experience or the Early ETOPS method. The only difference between the two methods is that the data used under the service experience method would come from the candidate airplane-engine combination; whereas for the Early ETOPS method, the data would come from previously certified part 25 airplanes manufactured by the applicant. The FAA has changed the requirements for these two assessments to be similar in paragraphs K25.2.1(d) and K25.2.2(a) in this final rule.

Boeing comments that it may not be clear from the proposal that the flight test requirements are related specifically to ETOPS operations. Boeing stated that it is not necessary for every conceivable failure condition to be demonstrated. It says that the intent of the rule is to codify AC 120–42A, paragraph 8.d.(3), which was meant to focus on failures of ETOPS significant systems, primarily group 1 systems, or group 2 systems whose failure would be more hazardous during an ETOPS diversion. To clarify this intent, Boeing proposes changing the rule to state a flight test must be conducted to validate the adequacy of the airplane's flying qualities, performance, and the flight crew's ability to safely conduct an ETOPS diversion with engine inoperative and non-normal worst case ETOPS significant system failure conditions that are expected to occur in service.

The FAA agrees that the required flight test evaluation is related to safely conducting an ETOPS diversion. We also agree the intent of the flight test is to evaluate ETOPS significant systems. Any airplane system whose failure would be worse the farther an airplane is from a place to land would make the associated system an ETOPS significant system by definition. We have changed K25.2.1(e) as Boeing recommends. We have also revised the similar requirement for airplanes with more than two engines in paragraph K25.3.1(c) for consistency.

Appendix K—Early ETOPS method (K25.2.2)

The NPRM proposed an Early ETOPS approval method that takes a systems approach to the design, testing, and monitoring of a new airplane-engine combination. This method contains several elements designed to minimize the number of design, maintenance or operational problems that could result in engine in-flight shutdowns or diversions. This method also includes elements to demonstrate that the airplane systems have the capability to meet the operational requirements for ETOPS. An applicant using this method must evaluate problems that occurred on previous airplanes it has manufactured and describe how it will prevent these same problems from occurring on the new airplane. The applicant must design the propulsion system to preclude failures or malfunctions that could result in an in-flight shutdown. The applicant must validate all maintenance and operational procedures for ETOPS significant systems. There are ground and flight test requirements and a problem-tracking and resolution system requirement the FAA will use to evaluate the airplane prior to ETOPS approval. This problem-tracking and resolution system continues in accordance with new § 21.4(a) after an airplane receiving ETOPS approval under this method enters service. Finally, the rule defines reliability demonstration acceptance criteria used to compare the type and frequency of failures that occur on a candidate airplane-engine combination with those that we expect could occur on airplanes with existing ETOPS approvals.

ALPA commented that the objective for the propulsion system design in the proposed appendix did not match the explanation in the preamble of the NPRM. The rates should have been specified as 0.02 or less for 180-minute ETOPS and 0.01 or less for ETOPS beyond 180 minutes. We agree with ALPA's comment. We had intended the rule specify that the IFSD rate objective for the propulsion system design would be the target rate or less. This was an inadvertent omission from the rule text in the NPRM that we have corrected in the final rule.

Dassault stated that the proposed rule requires that new technology be demonstrated through testing. Dassault points out that it is not able to identify the exact criteria the FAA will use to determine if such technology is defined as a new technology. Dassault recommends the FAA better define the scope of this requirement to require testing only for systems defined as ''time limited systems,'' and those for which the occurrence of any failure condition is probable, that is, greater than 1×10^{-5} per flight hour.

The FAA believes the proposed rule was clear in stating that the requirement is applicable to technology new to the ''applicant,'' and has adopted the requirement as proposed. The applicant will determine which technology is new to it when the airplane is designed. The purpose for requiring testing of new technology is to provide a process to evaluate airplane components designed or manufactured using technology with which the applicant has had no previous experience. In an Early ETOPS program, this testing substitutes for the service experience that we would otherwise require before approving an airplane for ETOPS.

Boeing recommends limiting the demonstration of non-normal failures during the airplane demonstration flight testing under the Early ETOPS method to ETOPS significant systems, the same as they recommend for the flight test required under paragraph K25.2.1(e) of this service experience method. We agree with Boeing's recommendation for the same reasons as we gave for the flight testing required under the service experience method. However, for an Early ETOPS airplane, we want to make sure that an applicant considers all relevant failures early in an airplane development program to determine what systems are ''ETOPS significant.'' It may not be obvious during the airplane design phase what failure conditions may potentially affect the safety of an ETOPS diversion. We also want to leave open the possibility that unforeseen failure effects may be identified during other flight testing that changes the list of ETOPS significant systems and the failure conditions that must be demonstrated during the ETOPS airplane demonstration. We have revised the similar requirement for airplanes with more than two engines in K25.3.2(d)(1)(iv) for consistency.

Dassault comments that the non-normal failure conditions demonstrated during the airplane demonstration test should come from the system failure analyses, taking into account the

specific airplane design. We agree the system failure analyses would be a good method for identifying failure conditions that could occur in service. However, in using this method, Dassault is proposing a particular method of compliance that may not fit all situations. Each applicant will have to propose a list of failure conditions the FAA accepts for the airplane demonstration. In coming up with this list, an applicant must consider the effects that failures in one system may have on other airplane systems. An example is the loss of multiple systems following the loss of all normal electrical power. Individual system failure analyses alone may not be sufficient to determine the worst case failure conditions. In this instance, an airplane-level failure analysis that considers the combined effect of multiple system failures would be the best guide for determining what failure conditions to demonstrate.

Dassault comments that the requirement to demonstrate airplane diversions into representative operational diversionary airports is typically an operational requirement. Dassault recommends moving this requirement from the proposed appendix to parts 121 and 135. We disagree with Dassault's recommendation. The overall objective of the airplane demonstration flight testing during type certification is to simulate the operational environment that an operator of the airplane may expect in service. We require such a demonstration to verify the candidate airplane has the capability to operate in extended operations. With this objective in mind, it is appropriate that the applicant conduct diversions into airports that represent airports normally used for ETOPS diversions.

Boeing acknowledges that the wording of the proposed airplane demonstration test requirement for repeated exposure to humid and inclement weather on the ground followed by long-range operations at normal cruise altitude, is identical to what ARAC proposed and what appears in the 777–300ER ETOPS Special Conditions. However, Boeing contends that the intent of this rule is to expose the airplane and engines to moisture that could potentially become trapped and freeze at altitude. This freezing could cause a system to malfunction causing an in-flight shutdown or loss of thrust control.

Boeing stated the use of the word ''inclement'' may be misinterpreted to imply that an airplane must be exposed to all types of inclement weather, including snow, hail, sleet, hurricanes, and typhoons. Boeing stated that as demonstrated during the 777–300ER ETOPS flight test program, cycling the airplane in and out of high humidity airports sufficiently demonstrates the intent of the rule. Boeing recommends the FAA replace ''humid and inclement weather'' with ''high humidity.''

The FAA never intended the test requirement in the 777 ETOPS special conditions to be limited to high humidity, and we do not intend such a limitation in today's rule. Rather, the inclement weather requirement should be interpreted exactly as Boeing has indicated in their comment. Inclement weather is not solely limited to high humidity conditions, but may include such meteorological conditions as heavy rain, high winds, snow, and extreme cold. We want to expose an airplane to the types of conditions on the ground that may be encountered in service to demonstrate that there are no unexpected design problems associated with such exposures.

We agree that a major source of engine problems on long duration flights typical of ETOPS has been moisture becoming trapped in engine control pressure sense lines and freezing at altitude, causing engine operating problems. Heavy precipitation on the ground and high humidity intensify the amount of moisture available to create this type of failure mode.

This rule does not require specific types of inclement weather for the airplane demonstration, except for high humidity, in recognition of the chance nature of encountering such conditions. We expect, however, an applicant would take advantage of any available inclement weather conditions during the required airplane demonstration test.

Dassault comments that the inclement weather requirements are not specifically relevant to ETOPS operations. Dassault recommends the FAA remove these two paragraphs from the final rule. While none of the environmental conditions we are requiring for the airplane demonstration would be unique to ETOPS, the potential consequences of system failures resulting from these conditions could be worse the farther an airplane is from a suitable place to land. Accordingly, we have decided against dropping the requirement.

Boeing, ALPA, and BALPA commented on the post-airplane demonstration inspection requirement. The NPRM proposed that an applicant conduct on-wing inspections or tests of ETOPS significant systems installed on the test airplane or airplanes used for the airplane demonstration in accordance with the tasks defined in the proposed Instruction for Continued Airworthiness to establish their condition for continued safe operation. These inspections or tests must be conducted in a manner to identify abnormal conditions that could result in an in-flight shutdown or diversion.

Boeing stated it considers an external inspection of the engine and an internal inspection of the airflow path of the fan, compressor, combustor and turbine sections of the engine to provide the most valuable information for ETOPS. Boeing noted the ETOPS flight test demonstrates an airplane's capability. It is not an endurance test. Boeing recommended changing the rule to require only a complete external on-wing inspection of the engines and engine-mounted equipment.

The FAA agrees with Boeing that the ETOPS airplane demonstration is not an endurance test, such as the 3000-cycle propulsion system validation test. This flight test is a demonstration of an airplane's ability to safely operate in ETOPS. We did not intend that it be a test of durability. However, the FAA does not agree with Boeing that a complete on-wing external inspection of the engines and engine-mounted equipment alone would be adequate for a completely new airplane being evaluated under the Early ETOPS approval method. Many of the airplane ETOPS significant systems that need to be evaluated are located inside the engine compartment or airplane fuselage, and such wording could be confusing.

ALPA does not believe that a cursory ''visual inspection'' such as those performed on routine overnight or even weekly or monthly checks would meet the intent of this requirement. ALPA commented that the requirement should include the types of airplane inspections performed in conjunction with major, heavy, or ''D'' checks. ALPA proposed that a robust inspection process similar to that required at the conclusion of the 3000 cycle propulsion system validation test could uncover potential future failure modes.

The FAA does not believe that a robust post-test inspection requirement applied to the airplane demonstration test would uncover any significant information. Unlike the 3000-cycle test (which is designed to identify potential failures resulting from high stresses caused by repeatedly starting the engine, running it to high power then shutting it down), the airplane demonstration test would not accumulate a large enough number of these ''cycles'' to inflict noticeable damage. Similarly, the few hundred

hours accumulated during the airplane demonstration would not be enough to create a significant amount of wear on moving parts.

BALPA said that a visual inspection is inadequate for some ETOPS significant systems. BALPA recommended a change in this section to state there must be an assessment of the ability of essential components or systems to function within their specified performance and tolerance limits by appropriate test methods.

We agree with BALPA that a visual inspection is not adequate for some ETOPS significant systems. The instructions for continued airworthiness required by § 25.1529 define appropriate inspections or tests to establish that a system or component is in a condition for safe operation. However, these are not necessarily ''visual'' inspections. As such, we have changed paragraph K25.2.2(g)(4), and the same requirement for airplanes with more than two engines under paragraph K25.3.2(d)(4), to require that each ETOPS significant system must undergo an on-wing inspection or test in accordance with the tasks defined in the proposed Instructions for Continued Airworthiness to establish their condition for continued safe operation. We have included the qualifier ''on-wing'' to clarify that we are not requiring any equipment be removed from the airplane for these inspections. These inspections are of the type that an airline would do to establish the airworthiness of the airplane in service, with the exception that the inspections must be conducted in a manner to identify abnormal conditions that could result in in-flight shutdowns or diversions.

ALPA and BALPA commented the FAA has proposed deleting wording recommended by ARAC for the use of non-ETOPS fleets in the reliability demonstration acceptance criteria for two-engine airplanes, but retained this provision in the corresponding requirement for airplanes with more than two engines. ALPA and BALPA want the ARAC wording in both locations. BALPA avers that the non-ETOPS fleet may provide a significant ''heads up'' on cyclic related failures. ALPA contends that the wording is meant to ensure consideration of similar airplanes and engine types, which may be certified and flown in both ETOPS and non-ETOPS environments.

We are not including non-ETOPS airplanes in the reliability acceptance criteria of paragraph K25.2.2(i). It appears these two commenters are confusing the reliability benchmark that we judge a new airplane against under this requirement with the relevant experience assessment of K25.2.2(a). For the relevant experience assessment, we expect that a manufacturer of a new airplane to consider any relevant failures from ETOPS and non-ETOPS airplanes that may be applicable to the new design. The objective of the reliability acceptance criteria requirement is to demonstrate a level of reliability similar to that of airplanes currently approved for ETOPS. Including non-ETOPS airplanes in the reliability comparison would result in a lower safety standard because the types and frequency of failures that would be expected to occur on non-ETOPS derivative models may be more severe than would be expected on a currently approved ETOPS fleet that has established a high level of reliability.

We explained in the NPRM our rationale for allowing non-ETOPS airplanes to be used in the reliability comparison of airplanes with more than two engines. We said previous ETOPS experience might not exist on airplanes with more than two engines at the time this proposed rule becomes effective. However, the rule as proposed would limit the use of non-ETOPS airplanes to derivative models of the same airplane and engine. Under this provision, an applicant for a new type certificate would have no derivative models of the airplane to use in place of existing ETOPS approved airplanes. For the same reason, we outlined above for two-engine airplanes, derivative models of a candidate airplane and engine may not have a service history that is consistent with our expectations for an airplane approved for ETOPS. After further consideration, we find a comparison with any non-ETOPS fleet of airplanes would not be consistent with the objectives of this rule. An applicant can predict the type and frequency of the failures and malfunctions expected to occur in service on airplanes with more than two engines based on whatever data the FAA accepts to meet this requirement.

Only airplanes with more than two engines manufactured 8 years after the effective date of this rule will have to be approved for ETOPS under the grandfathering provisions of new § 25.3. Airplanes manufactured before that date may be operated under the new operating requirements from the effective date of the rule. For the initial type design approvals of airplanes with more than two engines under § 25.1535, world-fleets of newer, more reliable airplanes with previous experience in extended operations would provide the best source for the comparison specified in paragraph K25.3.2(f). As a larger number of airplanes with more than two engines receive ETOPS type design approval and are operated under the new part 121 ETOPS operational requirements, the comparison database for compliance with this provision will grow.

We inadvertently included the use of non-ETOPS fleets from the original ARAC proposal in the corresponding engine certification requirement under proposed § 33.200(e)(iii). For the reasons noted here, the FAA is changing § 33.201(e)(4) to be consistent with appendix K.

Appendix K—Combined service experience and Early ETOPS method (K25.2.3)

The NPRM proposed an alternative to either the service experience or Early ETOPS methods for airplane approval. This combined method would use all of the design, analyses, and tests required by the Early ETOPS method except for the airplane demonstration test. In place of the airplane demonstration test, this method would allow the much less rigorous flight test of the service experience approval method, providing the candidate airplane-engine combination had obtained at least 15,000 engine-hours of service experience. The NPRM also contained a provision for a reduction of service experience below 15,000 engine-hours as long as the applicant had compensating factors that provide an equivalent level of safety.

ALPA commented it understands how the combined service experience and Early ETOPS method can be used to reduce the service experience required for type design approval of an airplane for ETOPS. However, it expressed concern that the equivalent level of safety provision as proposed might unintentionally allow an applicant to use a method resulting in a lower level of safety than provided of the other defined approval methods. Without listing specific additional requirements in a manner similar to that contained in the first paragraph of the combined method, ALPA stated that an applicant could attempt to completely bypass the requirements of any of these methods.

ALPA recommended the FAA amend this paragraph to say that the in-service experience requirements may be reduced to some other level, provided the applicant defines compensating factors that provide an equivalent level of safety as the provisions of paragraph K25.2.3 (a).

The FAA agrees with ALPA's concern that without further definition the proposed wording of the equivalent safety provision in the combined

approval method might unintentionally lead to a level of validation substantially less than provided by the other provisions of section K25.2. After further review, we have determined that this proposal and the related paragraph for airplanes with more than two engines are just a restatement of existing authority under § 21.21(b)(1) and are not necessary. Therefore, we have deleted these sections in the final rule.

Appendix K—Airplanes with more than two engines (Section K25.3)

The requirements for airplanes with more than two engines are organized similarly to section K25.2 for two-engine airplanes. We created this separate section, K25.3, so that an applicant for airplanes of this configuration would not be confused about which requirements applied to it.

Many commenters made the same comments on paragraphs in section K25.3 for airplanes with more than two engines than they did for the corresponding paragraphs in section K25.2. Our responses for those comments in section K25.2 also apply to this section. We are only discussing those comments on section K25.3 here that are unique to airplanes with more than two engines.

ALPA expressed concern that under the NPRM an applicant could apply for ETOPS approval of an airplane with more than two engines that has a high IFSD rate (such as those experienced during introduction of the B–747, DC–10, and L–1011 airplanes almost 30 years ago). ALPA stated the original ARAC draft proposal required a ''review * * * utilizing reliability data for all airplane, propulsion and ETOPS significant systems.'' ALPA noted the ARAC proposal would apply equally to all airplane types regardless of the number of engines. ALPA commented this level of ''benign'' review would provide the FAA with satisfactory regulatory guidance to prevent the certification of a design otherwise unsatisfactory for the challenging ETOPS environment.

The FAA does not believe a propulsion system assessment is necessary for airplanes with more than two engines to get a type design approval for ETOPS. We do not envision any modern propulsion system experiencing the kinds of high IFSD rates experienced by the airplanes in their examples. The IFSD rates required for three- and four-engine airplanes to reach an unsafe level are so high that the normal FAA engine safety management program and the propulsion system monitoring requirements of § 121.374 would correct any major causes of engine in-flight shutdowns before that level could be reached.

The JAA and the UK CAA stated that the required 250,000 engine-hours of service experience seems excessive for three- and four-engine airplanes considering the lower in-flight shutdown objectives for these types of airplanes and the built-in systems redundancy.

The FAA disagrees with this comment. Since there are no IFSD rate requirements for three- and four-engine airplanes in the proposed rule, the service experience requirement is primarily focused on obtaining a significant experience base to properly evaluate the airplane systems.

The 250,000 engine-hours service experience requirement came from AC 120–42A. Taken in the context of the actual exposure of the airplane systems under this requirement, those airplane systems on a two-engine airplane would accumulate a total of 125,000 airplane hours during this period while the same systems on a four-engine airplane would only accumulate a total of 62,500 airplane hours. This is a significant reduction in the total amount of required service experience compared to the same systems on a two-engine airplane. This constitutes a natural compensation for the added redundancy of systems on airplanes with more than two engines.

Dassault commented that the flight test requirements of paragraph K25.3.1(c) should not require an applicant for an airplane with more than two engines to demonstrate the loss of all normal electrical power. This proposed requirement would require an applicant to conduct a flight test to evaluate non-normal worst case system failure conditions expected to occur in service. Dassault posited this requirement would be unfair to airplanes with more than two engines, which it claims should not be treated at the same level as two-engine airplanes. Dassault recommended the FAA withdraw the loss of all normal electrical power from the required flight testing for airplanes with more than two engines.

The FAA disagrees with Dassault. Although the electrical systems on airplanes with more than two engines may have additional redundancy that would make loss of normal electrical power less likely than on a two-engine airplane, we cannot assume that this would not occur. Most occurrences of the loss of normal electrical power in service are the result of multiple generator or electrical bus failures from a common source. Airplanes with more than two engines are not immune to these types of failures. An example from service experience of a common cause failure mode would be spilled fluids from galleys that leak through floor panels onto electrical equipment.

Also, we cannot assume that an airplane manufacturer would always design an electrical system to take full advantage of the inherent isolation and redundancy that the additional engines provide. For example, an electrical system architecture consisting of four engine-driven generators supplying two main electrical busses would not provide any more isolation from bus failures than for a two-engine airplane.

ALPA commented that the reliability acceptance criteria for airplanes with more than two engines should include airplane and propulsion systems, not just ETOPS significant systems. They said that the ARAC proposal did not limit the reliability acceptance criteria to ETOPS significant systems only.

We are not making the suggested change. The only systems that would be relevant in assessing an airplane's readiness for ETOPS would be those whose failure could impact the safety of ETOPS. By definition, an ETOPS significant system means an airplane system, including the propulsion system, the failure or malfunctioning of which could adversely affect the safety of an ETOPS flight, or the continued safe flight and landing of an airplane during an ETOPS diversion. The propulsion system is covered already by the proposed reliability acceptance criteria because it is an ETOPS significant system. Airplane systems of interest are also ETOPS significant systems. Thus, ALPA's concern is already addressed by the existing language of paragraph K25.3.2(f). For consistency, we have revised the corresponding paragraph K25.2.2(i) for two-engine airplanes to be the same as this requirement for airplanes with more than two engines.

B. Engine Certification (Part 33)

For certain ''early ETOPS'' applications, the part 33 amendments require engine manufacturers to address all ETOPS relevant malfunctions (e.g., lost of thrust control or in-flight shutdown) and design-related maintenance errors that have occurred in the manufacturer's current FAA-certified engine models. The part 33 amendments also include a test requirement for these ''early ETOPS'' applications, and certain, specific type design requirements for all ETOPS applications.

1. Engine Design and Test Requirements for ETOPS Eligibility

The JAA and UK CAA stated the introduction of precise and detailed testing requirements in the rule (proposed § 33.200; hereafter § 33.201) is too prescriptive and prevents tailoring of the testing program to the different intermediate cases that may be encountered between the completely new design and the derivatives. The commenters recommend the FAA make reference to an approved testing program and transfer the detailed content into an advisory circular, such as the JAA has done.

The FAA does not concur with deleting the specific test requirements from § 33.201 and placing them in an advisory circular. This requirement is for Early ETOPS eligibility for two-engine applications without any service experience. These requirements have been carefully developed to address this specific case, and successful completion of this test should provide a suitably reliable engine for the purpose of Early ETOPS approval at the airplane level. To place these test requirements in an advisory circular as an option, would likely result in instances of non-standard testing that is not the equivalent to the contemplated safety standard, and potentially not suitable to support the Early ETOPS concept. Also, § 33.201 would not generally be required for an existing engine design that has the requisite service experience, and therefore this section's applicability to ''intermediate cases'' should be relatively uncommon. However in the event such a situation occurs, the test requirements of § 33.201 can be modified using a part 21 Equivalent Level of Safety approach to optimize a test for a specific ''intermediate case'' situation.

Pratt and Whitney stated that it is not clear when the rule must be completed with regard to the overall part 33 type certification and asks if part 33 certification will be held until all the requirements of § 33.201 are complete. The FAA clarifies that compliance with § 33.201 is only required when an applicant desires Early ETOPS eligibility for a two-engine-engine application under § 25.1535 authority. Compliance with § 33.201 is not required for basic engine type certification. The lead-in sentence of § 33.201 is clear on this.

ALPA fully supported the guidance presented for part 33. Because various part 33 regulatory design and testing requirements would establish a ''limit'' of ETOPS engine suitability, ALPA suggested that an engine type certificate data sheet note be required stating the specific diversion time limit. NACA recommended the FAA clarify that the text simply codifies current engine certification procedures for two-engine airplanes and apply any new requirements to new engine designs in the future (that is, ''grandfather'' current designs).

The FAA does not agree the engine Type Certificate Data Sheet should specifically note ETOPS diversion time limitations nor does it believe a ''grandfather'' provision is appropriate. Approved ETOPS diversion times are controlled through the operating standards (*i.e.*, parts 121 and 135) and airplane type design (§ 25.1535) certification. The part 33 requirements do not establish an independent maximum diversion time limitation for ETOPS. ETOPS diversion times are dependent upon many factors, most of which are beyond basic engine certification. However, for Early ETOPS eligibility for two-engine applications where compliance with § 33.201 is required, FAA will include a discussion in advisory material for the use of a Type Certificate Data Sheet Note to state that § 33.201 has been complied with (*i.e.*, ETOPS eligibility granted), along with the applicants demonstrated diversion time from that test.

The JAA and UK CAA agreed with the proposal that each oil cap provide an oil-tight seal. Along with Federal Express (FedEx), International Air Transport Association (IATA), and Royal Dutch Airlines (KLM), they commented that the design requirements for oil tank cap installation errors causing hazardous oil loss should apply to all types of operations, and the FAA should not limit them to ETOPS. The commenters added that an in-flight engine shutdown due to massive oil loss after an incorrect oil tank cap installation will most likely occur early in the flight and probably well outside any ETOPS segment. These commenters recommended the FAA word the rule as a generic requirement applicable to all new engine models. ALPA fully supported the requirement for engine oil tank filler cap design, as proposed.

The FAA has decided against expanding applicability of this new regulation to all new engine models at this time. While it is true that oil tank cap installation errors can, and have, occurred in all types of operations, this proposal was only evaluated for ETOPS operations where suitable alternate landing sites are limited, especially when considering the multi-engine nature of many of these types of events. Also, the FAA does not agree that hazardous oil loss due to such errors would only occur early in a flight, as it is impossible to predict the exact error (*e.g.*, cap loose vs. cap off) or how a given design may be affected by that particular error. A range of outcomes is possible, including hazardous oil loss near the maximum diversion time point in an ETOPS operation. The FAA will continue to monitor related service experience, and will consider expanding the applicability of this requirement by future rulemaking if service data so dictates.

2. Engine Instructions for Continued Airworthiness

Appendix A to part 33 proposed an engine condition monitoring program to ensure continuing engine reliability.

Transport Canada recommended the FAA delete the rule, or replace the term ''condition monitoring'' with ''engine health assessment programs'' which is a more descriptive term. It added that a power assurance check methodology should not be required in the Instructions for Continued Airworthiness and validated at the part 33 design certification stage when the engine would not as yet be installed on an ETOPS type certificated airplane; these requirements should more appropriately be required as part of the part 25 design certification process. Transport Canada stated the operational requirements determine a viable health assessment program for a particular airframe-engine installation. Thus, the most effective time for developing an engine health assessment program would be when the engine is installed in an identified airplane and when the operational role of that airplane has been defined. Transport Canada concluded the development of ETOPS maintenance and health assessment programs would be most effectively managed when the airplane's total maintenance program is being developed.

The FAA does not agree with eliminating the term ''condition monitoring'' from the rule to be replaced with the term ''engine health assessment''. The agency believes either term is adequate, but will retain the currently used and proposed term ''condition monitoring''. Compliance with this section is only required when an applicant desires ETOPS eligibility under § 25.1535. Compliance with this section is not required for basic engine type certification. The lead-in sentence of Appendix A to part 33, paragraph A33.3(c) makes this clear. However, conversely, an engine applicant could choose to obtain ETOPS eligibility without identifying a specific airplane

installation identified. The engine manufacturer would define generic Instructions for Continued Airworthiness to comply with part 33 Appendix A, which in turn may be modified once the engine is installed on a particular airplane model. The FAA does not want to preclude an engine manufacturer from the option of obtaining engine ETOPS eligibility without a defined airplane application.

GE expressed a concern with repairs to and parts installed on engines from sources other than the engine Type Certificate (TC) holder. These would include engine parts approved by the FAA under a Parts Manufacturing Approval (PMA) or engine repairs approved by a Designated Engineering Representative, which are not reported to the holder of the TC. GE expressed concern that common cause multiple failures may be masked by calculating the reliability of an entire fleet, while a certain segment may be afflicted by unreliable parts from a supplier other than the engine TC holder. This should not be acceptable for the types of operations conducted under ETOPS where high reliability is necessary. The commenter also stated the results of the 3,000-cycle test could also be affected if other than GE parts are installed in the field. GE asks the FAA for either supplemental rulemaking or a safety determination on other engine parts.

The FAA does not agree that additional rulemaking is necessary to specifically address PMA or repaired parts usage in ETOPS operations. PMA parts comply with the applicable airworthiness standards and are approved as replacements for corresponding TC holder parts. Repairs approved by the FAA or a Designated Engineering Representative must also meet the applicable airworthiness standards. Likewise, follow-on TC holder parts and repairs meet those same standards whether processed as major or minor type design changes. Note that major design changes by a non-TC holder can only be processed as a Supplemental Type Certificate (STC), which must also meet the applicable airworthiness standards. With respect to service difficulty reporting, the FAA monitors service data to identify unsafe conditions and other situations affecting ETOPS operations. This data is collected from TC holders, operators, repair stations, PMA holders, and other sources as applicable. The FAA will take appropriate corrective action to eliminate identified unsafe conditions or other situations negatively affecting ETOPS operations.

C. ETOPS Reporting Requirements for Manufacturers (Part 21)

To support the FAA's safety monitoring program for airplanes in service, the NPRM proposed a new § 21.4 for reporting, tracking and resolving problems on ETOPS approved airplanes. These requirements apply to the type certificate holder of an airplane approved for ETOPS, and the type certificate holder of an engine installed on an airplane approved for ETOPS. These requirements are separate from the ETOPS reporting that an airline must do under parts 121 and 135.

Section 21.4 is organized into two parts. The first part defines requirements for reporting, tracking, and resolving problems on an airplane-engine combination approved using the Early ETOPS approval method in part 25. The second part defines general reporting requirements for all airplanes approved for ETOPS, including the reporting of engine IFSD rates the FAA uses to monitor propulsion system reliability.

1. Early ETOPS: Reporting, Tracking, and Resolving Problems

ALPA recommended revising proposed paragraph 21.4(a)(1) to reflect the original ARAC philosophy that the tracking requirements were not limited to ETOPS significant systems. ALPA recommended that the rule be revised to require the prompt identification of ETOPS significant problems.

The list of occurrences that must be reported and resolved under § 21.4(a) are defined in paragraph (a)(6). The type certificate holder must report these occurrences and propose solutions to the FAA to resolve the cause of each occurrence regardless of which airplane or propulsion system caused the event. The significance of these occurrences to ETOPS is implicit by their inclusion in the list. Therefore, it is not necessary to change the rule as ALPA recommended. However, we have revised this paragraph to delete reference to ''ETOPS significant systems'' to clarify that the type certificate holder of an Early ETOPS airplane-engine combination must use a system for reporting, tracking, and resolving each problem resulting in one of the occurrences specified in paragraph (a)(6) of this section. For consistency, we have made a similar change to the related sections in part 25 appendix K (K25.2.2(h)(1)(i) and K25.3.2(e)(1)(i)) for the problem tracking and resolution system required for the Early ETOPS type design approval method.

The JAA and the UK CAA recommended removing the words ''Early ETOPS'' from the heading of § 21.4(a) and ''without service experience'' from the first sentence because they imply that the requirements would only apply to new type-certificated airplanes. The commenters asserted that the ETOPS reporting should apply to all manufacturers holding an ETOPS approval. Paragraph (a) only applies to airplanes approved for ETOPS without service experience. This paragraph codifies the special conditions applied to the Boeing Model 777 airplane for Early ETOPS certification. Paragraph (b) of § 21.4 defines the reporting requirements for all two-engine airplanes approved for ETOPS.

Boeing recommended the FAA insert ''significantly'' after ''systems that have changed'' in § 21.4(a)(3) to give the FAA authority to allow an applicant to exclude reporting on systems with only minor changes that do not affect system reliability on derivative airplanes or engines. We disagree with Boeing's comment. This rule already allows an applicant to not report on unchanged areas of a derivative airplane as agreed to by the FAA. Adding the word ''significantly'' as Boeing suggests adds nothing to the proposed language that would help an applicant or the FAA differentiate what specific changes would not require reporting under the rule from those that would. However, we have clarified what is meant by a derivative airplane or engine in the rule. A derivative airplane or engine is one where the changes are not so significant as to require an application for a new type certificate in accordance with § 21.19. We have added a table in § 21.4(a)(3), and in part 25, appendix K, to clarify the applicability of the problem reporting, tracking, and resolution system for derivative airplanes and engines.

Boeing recommended § 21.4(a)(4) should make it clear that the type certificate holder, not the operator, is responsible for tracking the data. We agree and have revised this section to refer to the type certificate holder throughout. Since § 21.4 applies to airplanes that have already received a type certificate, the airplane or engine manufacturer is no longer an ''applicant'' but a type certificate holder.

The JAA and UK CAA stated that the list of reportable occurrences in § 21.4(a)(6) implies in-flight shutdown events do not include the inability to control the engine or obtain desired thrust or precautionary thrust reductions. They contended this contradicts the definition of in-flight shutdown in part 1 and recommended the FAA revise the rule to make it clear

that these events are also in-flight shutdowns. These commenters are correctly interpreting our intent that the inability to control the engine or obtain desired thrust or precautionary thrust reductions are separate from in-flight shutdowns. The revised part 1 definition of ''in-flight shutdown'' clarifies our intent that this reporting requirement does not contradict the definition.

The NPRM included a parenthetical exception to the proposed requirement to report precautionary thrust reductions, which would exclude precautionary thrust reductions for normal troubleshooting as allowed in the aircraft manual. The ARAC provided no justification for this exception in its recommended rule, upon which the NPRM was based. We believe ARAC intended that this exception cover special flights conducted for maintenance purposes to evaluate airplane problems that occurred on a previous flight. Such a flight may include a thrust reduction. However, we do not see how an intentional thrust reduction for maintenance troubleshooting purposes could be confused with the intent of this requirement in § 21.4(a)(6), which would be a thrust reduction in direct response to a problem in flight in order to mitigate that problem. Also, the exception is so broadly written that some parties may infer that any precautionary thrust reduction is for normal troubleshooting purposes so as to avoid reporting an occurrence. After further consideration, we have decided to delete this exception from the final rule.

GE stated that the majority of in-flight shutdowns are not restartable and the requirement to report degraded ability to start an engine in flight appears to address a situation where there is an in-flight shutdown of an engine that is restartable, but with degraded start capability and a need to restart that engine. GE contended that ETOPS does not rest on the engine being restartable, it rests on the engine being reliable so there is no need to restart that engine. GE stated that this requirement diverts resources from higher priority safety issues. The FAA disagrees with GE. Many engines are shutdown for indications that later turn out to be false. If there is a subsequent problem with another engine, the ability to restart an engine improves safety by giving the flight crew more landing options. If an engine flames out during cruise, but is otherwise operational, restarting the engine may allow the flight to continue without a diversion. Thus, it is critical to know about and correct problems that degrade an engine's capability to restart in flight.

Boeing recommended combining the requirement to report failures of a backup system with reporting of a complete loss of any electrical power generating system or hydraulic power system. Boeing said there is no clear definition of ''primary'' and ''backup'' systems and that the backup function could be provided by another equivalent primary system. We agree with Boeing that these sections may not clearly state the intended requirement. We also agree that they may be combined into one. In order to clarify the rule, we have replaced the two NPRM sections with the following wording:

''Loss of any power source for an ETOPS group 1 significant system, including any power source designed to provide backup-power for that system.''

2. Reliability of Two-Engine Airplanes

We rearranged § 21.4(b)(1) and (b)(2) to clarify the intent of the rule. We have moved the requirement for FAA approved corrective actions for causes of in-flight shutdowns from paragraph (b)(1) to (b)(2). We also clarified that the requirement on the type certificate holder under this paragraph is to issue appropriate service information to the operators. The implementation of such service information would be conducted under the operating certificate for the operator.

X. Operator Maintenance Requirements

A. Continuous Airworthiness Maintenance Program (CAMP)

The premise of an ETOPS maintenance program is to continually provide airworthy airplanes that will prevent mechanically related diversions. Under this concept, engines are designed and tested to assure an acceptable level of in-flight shutdowns in the worldwide fleet. Similarly, other key airplane systems are designed and tested for enhanced airplane reliability. ETOPS maintenance practices reduce diversions through disciplined procedures like engine condition monitoring, oil consumption monitoring, aggressive resolution of any identified reliability issues, and procedures that avoid human error during the maintenance of airplane systems and engines.

Maintenance issues are addressed in § 121.374 of the final rule. Before flying ETOPS, a certificate holder operating two engine airplanes must develop an ETOPS ''continuous airworthiness maintenance program'' (CAMP) and provide the necessary training to ensure those airplanes are maintained at the highest level of safety. The elements of an ETOPS-approved CAMP begin with a basic CAMP that is approved for use in non ETOPS operation, which is then supplemented for ETOPS with: (1) A system to ensure compliance with the minimum requirements set forth in the CMP document or the type design document for each airplane and engine combination; (2) an ETOPS pre-departure service check; (3) procedures limiting dual maintenance; (4) procedures verifying corrective action to ETOPS significant systems; (5) ETOPS task identification; (6) centralized maintenance control procedures; (7) an ETOPS parts control program; (8) a reliability or enhanced continuing analysis and surveillance system (CASS); (9) propulsion system monitoring; (10) an engine condition monitoring program; (11) an oil consumption monitoring program; (12) an APU in-flight start program; (13) maintenance training for ETOPS; (14) an ETOPS maintenance document; and (15) procedures to have the initial program and subsequent revisions approved by the FAA's certificate holding district office (CHDO).

The requirement is to ''develop and follow a continuous airworthiness maintenance program based on the manufacturer's maintenance program or one currently approved for the operator and be supplemented for ETOPS for each airframe and engine combination.'' Each operator's current maintenance program must be approved by its principal maintenance inspector via operations specifications. Continental and United commented that it was the understanding of the ARAC that each operator's approved ETOPS maintenance program would, by in-service demonstration, be accepted. If the currently approved program contains all maintenance elements necessary for ETOPS, then it will be adequate without change. However, after evaluating its current program, an operator may have to supplement its program to incorporate any missing ETOPS elements prior to operating ETOPS.

There were comments by the aviation industry supporting incorporation of the ETOPS supplemental requirements for two-engine airplanes. However, Airbus, UK CAA, JAA, Singapore Airlines and others commented negatively regarding the same requirements for three- and four-engine airplanes. Some comments suggested that because long range operations with three- and four-engine airplanes for the past 30 to 50 years has been so successful, there is no justification for incorporation of the ETOPS supplements. Qantas agreed

with the approval requirements for ETOPS and notes that the robust maintenance programs have contributed to the success of ETOPS. It found, however, that this success has brought on increased operational restrictions for political reasons that are not based on safety.

The FAA strongly believes that all operators would benefit from an ETOPS maintenance program. However, the FAA agrees with many of the commenters that the cost of implementing this new requirement for airplanes with more than two engines would be significant. The FAA has determined that this cost cannot be justified based on the current level of safety achieved by the combination of engine reliability and the engine redundancy of this fleet of airplanes.

Airbus and UK CAA cited confusion regarding when ETOPS maintenance requirements apply. The elimination of ETOPS maintenance program requirements for all part 121 operations for airplanes with more than two-engines eliminates most of the confusion. Part 121, Appendix P has also been amended to provide any remaining clarification necessary. An operator's maintenance program for all two-engine ETOPS airplanes, regardless of diversion time, must comply with § 121.374.

B. Limitations on Dual Maintenance

The FAA has included provisions in today's rule to prevent dual maintenance on two-engine ETOPS significant systems during the same routine or non-routine visit. This requirement is a codification of existing policy and is necessary to recognize and preclude common cause human failure modes without proper verification processes or operational test prior to conducting ETOPS.

Many ETOPS maintenance requirements focus on preventing human error from threatening flight safety. Of these, common cause failures, where the same mistakes are made more than once during maintenance, are the greatest threat to long-range operational safety in these airplanes. Since 1982, the FAA has recorded ten multiple engine failure events resulting from maintenance errors.

FedEx, KLM, and IATA commented that additional ETOPS dual maintenance limitations are unnecessary since requirements are found in existing maintenance programs such as those identified in the manufacturers Maintenance Planning Document (MPD).

The FAA disagrees that dual maintenance limitations for all ETOPS operations are unnecessary. We also disagree that dual maintenance limitations for ETOPS already exist and are identified in an airplane's MPD. The FAA agrees an MPD appendix provides a critical systems list. However, the tasks identified in that list do not necessarily include all ETOPS significant systems.

It is not the intent of the rule to specifically require a certain number of mechanics per airplane. It is incumbent on the operator to have processes in place to avoid common cause failure modes. Section 121.374(c)(ii) addresses those situations where dual maintenance cannot be avoided, providing specific requirements under those circumstances. Operators need to identify their ETOPS significant systems with the assistance of the manufacturers in order to adequately address dual maintenance requirements that may arise during scheduled and unscheduled maintenance.

FedEx noted part 121 operators already have a Required Inspection Item (RII) program to eliminate maintenance errors and believes this program will discover any problems arising from dual maintenance. Although the FAA agrees an operator's current RII procedures may be used as one method to ensure proper maintenance of ETOPS significant systems, it is not necessarily sufficient by itself to avoid dual maintenance risks. Furthermore, the FAA does not believe ETOPS certificate holders would want to include all their ETOPS significant system items into their RII program, nor is the FAA advocating it. Verification of ETOPS dual maintenance, when unavoidable, can include an RII visual inspection as one method of verification, but additional methods may need to be employed to meet ETOPS dual maintenance ground verification requirements.

ATA, United, Continental and others suggested we change the NPRM's proposed dual maintenance provisions. The FAA agrees and has revised the final rule language. The FAA's intent is for operators to package routine maintenance tasks so dual maintenance is never scheduled on the same maintenance visit.

Obviously, it is best never to perform dual maintenance since a major cause of airplane diversions and turnbacks due to mechanical failures is common-cause human factors. However, the FAA understands unforeseen situations may arise necessitating unscheduled dual maintenance on an airplane. The FAA expects operators to have in place procedures that prevent identical mistakes being made on two systems when dual maintenance is accomplished. These procedures must be included in the operator's ETOPS Maintenance Document.

C. Maintenance Actions

1. ETOPS Pre-Departure Service Check

ATA stated the pre-departure check is specifically designed for a two-engine airplane and to extend this check to the three- and four-engine airplane is confusing and may contribute to human error. FedEx, KLM and IATA commented that this check would add man-hours and costs due to the new oil consumption, verification, and dual maintenance requirements associated with the pre-departure service check.

The FAA, as stated previously, has removed this requirement along with all ETOPS maintenance program elements for airplanes with more than two engines. For two-engine ETOPS the FAA believes the pre-departure service check is a significant factor in ETOPS' past success. The specific content of the check is developed by each ETOPS operator and based on ETOPS significant systems verification and historical operational data. Accordingly, the check's content varies significantly among operators.

The operator's ETOPS maintenance program should include necessary training requirements and work form task identification to eliminate confusion. This is one reason for having each operator develop a pre-departure check tailored to its own operation based upon the equipment and performance history of the operator's fleet.

2. Engine Condition Monitoring Program

ATA commented it is unnecessary for three- and four-engine airplanes to have an engine condition monitoring program since current practices have served the part 121 operators adequately for the last 30 years. Many certificate holders currently use engine condition monitoring programs for their three- and four-engine airplanes as an economic tool to detect engine deterioration and to reduce full thrust take off requirements. The ETOPS engine condition monitoring program is required to ensure engine inoperative flight can be safely conducted in the event of long diversions.

The FAA acknowledges these comments and has removed this requirement along with all ETOPS maintenance program elements for airplanes with more than two engines.

3. Oil Consumption Monitoring Program

ATA, FedEx, KLM and IATA commented that it is unnecessary for airplanes with more than two engines to have an oil consumption monitoring program since current practices have served the part 121 operators adequately for the last 30 years. Additionally, commenters said that with the current IFSD rate there is no justification for requiring such a program.

The FAA agrees with these comments and has removed this requirement along with all ETOPS maintenance program elements for airplanes with more than two engines.

4. Verification Procedures

ATA stated the FAA provided no justification for its proposed verification program and additionally stated that any safety issue that arises in the future can be specifically dealt with through the AD process. It appears the commenter may be confusing the AD process with routine maintenance procedures. This type of verification is in no way related to an AD.

ATA and others commented that there is no justification for having a verification program for airplanes with more than two engines that goes beyond what is already required by a CASS.

The FAA agrees with these comments and has removed this requirement along with all ETOPS maintenance program elements for airplanes with more than two engines

5. Task Identification

Commenters said recommended ETOPS-specific tasks should be clearly defined for two-engine airplanes, but not for three- and four-engine airplanes. The FAA agrees with these comments and has removed this requirement along with all ETOPS maintenance program elements for airplanes with more than two engines

6. Configuration Maintenance and Procedures (CMP) Document

IATA, FedEx, KLM and others directed comments toward the certificate holder's requirement to have a ''system to ensure compliance with CMP.'' We believe that many of the comments stemmed from a misunderstanding of the requirement. The CMP document is a type certification document that some manufactures have produced to establish a specific standard for a particular make and model airplane-engine combination intended for ETOPS operations. A certificate holder must evaluate the CMP documents, if applicable, and incorporate the CMP requirements. This requirement has been applicable to two-engine operations throughout the history of ETOPS.

However, an existing three-or four-engine airplane may not have a CMP document. Accordingly, there is no requirement to comply with a CMP. For airplanes with more than two engines, this CMP requirement is included in the event that manufacturers develop a CMP document for existing three- and four-engine airplanes and for new airplanes being type certificated for ETOPS operations that may have a CMP document. The FAA does not intend for operators to develop their own CMP, which would be tantamount to re-certification Compliance with a CMP is comparable to compliance with a manufacturer's Instructions for Continued Airworthiness (ICA), which the FAA already requires all operators to comply with. Accordingly, the FAA has decided to require compliance with the CMP for any airplane used in ETOPS when a CMP is available.

FedEx, KLM and IATA recommended that an ETOPS minimum system/subsystem list be provided by the manufacturer, approved by the FAA, and made part of the CMP. The FAA believes that an ETOPS minimum system/subsystem list, otherwise referred to as an ETOPS significant systems list, may be developed by the manufacturers, and approved by the FAA as part of future aircraft certifications. It is impractical to develop such a list at this time. The final rule requires that each certificate holder, in coordination with the manufacturers and their CHDO, develop a list tailored to the certificate holder's operation. The FAA believes the list should not be part of a CMP because not all ETOPS airplanes will have a CMP. Rather, the list should be contained in the certificate holder's ETOPS Maintenance Document.

IATA, Boeing, FedEx and KLM commented that since there are no CMP documents for three- and four-engine aircraft, there is no parts control program. The FAA agrees that with no CMP, there is no issue of ETOPS parts control for airplanes that do not have a CMP. However, Continental went further and suggested that once all aircraft are modified with the new time duration parts, there is no need for a parts control program. The FAA disagrees. All ETOPS operators must have an ongoing parts control program to ensure an ETOPS airplane is maintained and to account for all sources of supply, including parts borrowing and parts pooling.

7. Training and Documentation

ATA did not support additional training requirements for three- and four-engine airplanes, stating that the existing training has served the industry well. ATA had the same comment for procedural changes. The FAA agrees with these comments and has removed this requirement along with all ETOPS maintenance program elements for airplanes with more than two engines

D. Operator Reporting Requirements

The final rule includes certain proactive safety requirements to prevent the occurrence of unsafe conditions that may occur in ETOPS service instead of reacting to unsafe conditions after they occur.

For example, the FAA uses a world fleet IFSD rate, as defined in part 25, to monitor airplane propulsion system reliability. This final rule contains IFSD rates in § 121.374, above which an operator must submit a report to the CHDO, reporting the operator's investigation and any necessary correction action taken.

Various comments were made relative to the need for an ETOPS reliability program for three- and four-engine airplanes, the structure of the program, and the reporting requirements of the program. Because the FAA has decided that the additional engines establish a sufficient level of redundancy to merit not imposing additional engine-related requirements on operators of airplanes with more than two engines, we have removed the reliability program requirement, including IFSD rate reporting, along with all ETOPS maintenance program elements for airplanes with more than two engines.

United and Continental discussed the maintenance reporting requirements in § 121.374 with American requesting withdrawal of the requirements, believing it is redundant to § 121.703. During ARAC meetings, there was considerable discussion about these reporting requirements. Since § 121.703 does not already contain all the requirements found in current ETOPS policy, the final rule codifies current policy, creating a new section for a reporting program that has successfully served the industry for many years without ambiguity. In particular, the reporting requirements for ''problems with systems critical to ETOPS'' and ''any other event detrimental to ETOPS'' were taken directly from AC 120–42A and the ARAC proposal. The FAA needs to be aware of significant mechanical failures that could affect the safety of an ETOPS flight, regardless of whether it occurs in the air or on the ground. Since

we have decided against imposing maintenance requirements on operators using airplanes with more than two engines, this reporting requirement does not apply to those operations.

Responding to requests by ATA, Continental and United, the agency has revised several reporting requirements in the final rule involving airplane diversions or turnbacks due to mechanical reasons and their effect on future ETOPS operations.

In addition, the final rule adopts the term ''ETOPS significant systems'' to address the ambiguities found by many commenters including Fed Ex, Boeing, Singapore Airlines, ALPA and IATA. The key intent of the program is to discover mechanical failures on ETOPS airplanes so they can be appropriately addressed in the operator's maintenance program.

United and Continental disputed the 72-hour reporting requirement, asserting that it does not allow enough time for an operator to determine the cause of the occurrence, take corrective action, and report that action to the FAA. This requirement is solely to report the event, not determine its root cause and take action within a certain time limit. This initial reporting requirement is not intended to include the final solution but to notify the CHDO of all problems associated with ETOPS. The FAA understands many ETOPS diversions are for reasons other than mechanical failures. The certificate holder needs to identify in its ETOPS maintenance document, how these flights will continue after a diversion for non-mechanical reasons, such as a medical emergency.

XI. Operational Requirements (Part 121)

A. Route Limitations

The FAA proposed to define ''ETOPS area of operation'' to mean, for turbine-engine-powered-airplanes with two engines, an area beyond 60 minutes from an adequate airport, or for turbine-engine-powered-airplanes with more than two engines, an area beyond 180 minutes from an adequate airport. These areas are further defined as within the authorized ETOPS maximum diversion time approved for the operation being conducted and are the basis for FAA approval of ETOPS authorities for operators. Finally, ETOPS area of operation was to include the North Polar and South Polar areas. An ETOPS area of operation is calculated at an approved one-engine inoperative cruise speed under standard conditions in still air. The FAA further proposed that operations in these areas must be approved by the Administrator and would be authorized in the certificate holder's operations specifications based on the criteria defined in part 121, appendix P.

KLM commented the ARAC did not complete its task assignment, which was to revise the 60-minute requirement because modern aircraft are much more reliable. They further stated that modern aircraft should be allowed to operate at least 90 minutes without the ETOPS burden. These subjects were not part of the ARAC tasking statement and were not included in their proposal to the FAA. Since we did not consider any changes to the current ETOPS authorizations in the NPRM beyond those recommended by the ARAC, KLM's suggestions are beyond the scope of the final rule.

JAA and UK CAA did not support the application of ETOPS by area. These commenters posited it is preferable to set a safety standard for ETOPS operations in general, without specifying specific geographic areas of applicability. ALPA suggested that the wording in the definition be changed to ''areas of ETOPS applicability''.

The ETOPS authority granted an air carrier since 1985 has always been based on an airplane/engine combination, a specific diversion time, and the area of operation for which the approval is valid. The ''area of ETOPS applicability'' concept was developed and recommended by the ETOPS ARAC. Although we have maintained the relationship between ETOPS approvals and specific geographic areas in most ETOPS authorities, we have modified the definition of ''ETOPS area of operation'' to exclude the North and South Polar areas and have removed the specific definition of ''ETOPS Area of Applicability.'' Operations in the polar areas now have certain requirements in this rule based on the codification of current polar policy guidance but are not subject to other ETOPS requirements unless they meet the ''distance from adequate airports'' criteria of 121.161.[22]

Airbus and IATA supported clear and concise requirements for ETOPS approvals. However, these commenters and others, stated there is no safety justification for applying the requirements for two-engine airplanes to three- and four-engine airplanes that have built-in redundancies. We do not agree with the commenters that ETOPS should not be applied under any conditions to airplanes with more than two engines. The basic concept of ETOPS is to prevent a diversion but, if a diversion is required, to protect that diversion. As discussed earlier, the diversion rate for all airplane-related and non-airplane-related causes are comparable between two-engine airplanes and airplanes with more than two engines. Therefore, the concept of precluding and protecting the diversion has equal validity, regardless of the number of engines. In addition, the ETOPS requirements for three- and four-engine aircraft apply only to passenger operations and then only when these operations are greater than 180 minutes from an alternate airport. Applied to current technology aircraft and engines, such operations encompass only a very few, distinct areas of the world. More importantly, these areas, which comprise the South Pacific between the west coast of the United States and Australia, the South Atlantic and South Polar region, are indicative of demanding operations over remote areas with minimal operational infrastructure. In the case of the Poles, the areas also include harsh operating conditions.

B. ETOPS Alternate Airports

1. Determination of ETOPS Alternate Airports

The FAA proposed to codify the definition of ''adequate airport'' found in AC 120.42A. Although the term is used elsewhere in part 121, its use is not unique to ETOPS. It has not been defined previously in part 121.

Airbus is concerned with the inclusion of military airports in the definition. It questions the ability of a military airport to support a recovery plan and recommends that the rule be amended to indicate that the operator must obtain written permission from the responsible military authority to use a military airport for an en-route ETOPS alternate airport, for safety audit and training, and for implementing a recovery plan. JAA and JAL made similar comments. UK CAA makes a similar comment but adds that a military airport should meet the public protection requirements of § 121.97. Other commenters such as FedEx, Singapore Airlines and IATA professed confusion over the definition and request clarification.

The FAA believes much of the confusion relates to the criteria required

[22] NACA also commented that the definition of ''ETOPS area of operation'' includes the entire NOPAC and the North Pacific. This commenter objected to any new requirements for three- and four-engine airplanes that previously had approved operations specifications. NACA did not see the correction made to this section that was published in the **Federal Register** 11/18/2003. NOPAC and North Pacific are not designated as applicable for ETOPS. ETOPS in these areas is defined as a function of distance from adequate alternates and not the simple transiting of these areas.

for an ETOPS alternate airport and those required for the more general ''adequate airport.'' An adequate airport may not be appropriate for an ETOPS diversion because it cannot support a recovery plan, cannot provide sufficient rescue and firefighting support, or is experiencing inclement weather conditions. ''Adequate airport'' should not be defined in terms specific to ETOPS because this new definition is intended to cover the term wherever it is used in part 121, not just in meeting ETOPS requirements. The criteria for the designation and use of ETOPS alternate airports are contained in § 121.624. The requirements of § 121.624 apply to all ''adequate airports'' (including those that are military airports) and must be met before a military airport may be designated as an ETOPS alternate for that flight. The FAA agrees that the proposed definition was unclear and has amended it to state that an alternate airport must meet the requirements of § 121.97. A certificate holder must comply with § 121.97 for each airport it uses, including military airports, and so it is unnecessary to repeat this limitation on the use of military airports in the definition of an adequate airport.

The FAA proposed that an airplane could not be dispatched for an ETOPS flight unless the ETOPS alternate airports could be reached within the maximum diversion time under which the flight is to be dispatched. Each required ETOPS alternate airport must be listed in the dispatch or flight release and meet the specified criteria, including passenger protection, and weather minima.

The FAA proposed that an airport listed as an ETOPS alternate airport must have weather forecasts that are at or above the minimums specified in the operator's operations specifications. Both JAA and UK CAA supported this aspect of the proposal. Airbus and JAA commented that this section would require an operator to consider all adequate airports within the diversion limits of that operator and some airports may not support a recovery plan without the investment of considerable resources with no safety benefits. ATA also suggests clarification of what a carrier must do in considering whether an adequate airport can be an ETOPS alternate airport for the purpose of a particular flight. Airbus suggests that either the definition of ''adequate airport'' be amended to include a passenger recovery plan, or § 121.624 be amended to require operators to consider all adequate airports capable of supporting a passenger recovery plan. JAA also recommends the FAA revise the definition of an adequate airport to require that such an airport should have the necessary infrastructure to support a passenger recovery plan.

The requirement for the operator to consider all adequate airports within the diversion limits of the operation will likely be accomplished when route planning is conducted for a proposed departure and destination airport. It is not the intent of this rule that an operator make a determination that all adequate airports within a diversion limit fulfill the requirements of an ETOPS alternate airport. It is only necessary that every adequate airport in an operator's operations specification be used in determining those that, in fact, qualify for designation as ETOPS alternate airports during dispatch. This information will then be used at the dispatch or flight planning stage for the given flight to determine which airport meeting the alternate weather criteria will be designated as the ETOPS alternate airport. Accordingly, the FAA does not agree that the definition of ''adequate'' airport needs to be changed.

ATA, IATA and several carriers requested the FAA include suggestions from the ARAC that alternate weather criteria provide guidance for relief from most conditional elements of an airport's weather forecast. ATA, IATA, and United commented that the ARAC also included a revised method of determining alternate minima, based on applying Category II and III approaches.

The ETOPS ARAC developed a weather criteria table for use by operators to determine appropriate weather criteria needed in order to designate airports as ETOPS alternate airports. The FAA has adopted this table, and it will be contained in the advisory material. The FAA intends to formulate operator operations specifications for ETOPS alternate weather criteria based on this standard. The table includes a provision on how to handle conditional (PROB40 and TEMPO)[23] forecasts, and permits the use of weather visibility minimums of 700m rather than 800m to allow for variations in the international metric weather forecasting standard. This flexibility has been maintained. The ETOPS alternate weather criteria table contains the provision for Category II and III approaches, as well as single or separate runway criteria.

ATA and Fed Ex also commented that the ARAC recommended the consideration of the use of GPS/RNAV. Singapore, IATA, and United recommended that GPS/RNAV be considered at airports where other navigational aids are not available. ARAC did not include such approaches in its final proposal, and we believe that the request to allow GPS/RNAV approaches is beyond the scope of this regulatory change. Operators may request to receive this authorization through the FAA, which would be reflected in the operator's operations specifications.

JAA recommended the extension of diversion time when necessary to allow operators to reach an adequate airport or when necessary to allow applicants to disregard airports that present unacceptable standards that may impose passenger safety risks.

The FAA cannot agree with the recommendation. The ETOPS rules are predicated on the ability of the airplane and its systems to support a possible diversion during the particular operation. Arbitrary extension of diversion times is contrary to the entire premise behind ETOPS, i.e., management of risk by an operator that is controlled through an approved ETOPS program. In addition, the pilot-in-command can exercise his command authority to proceed to another airport if he decides that proceeding on is as safe or safer than landing sooner. However, airports should not be designated as ETOPS alternate airports by the operator if they do not meet the required minimum standards for use.

Japan Airlines commented that some airports may not report as open when dispatching is taking place but may be quite normal and usable en route. This commenter suggested the language should reflect an operator looking at ''expected field conditions'' instead of ''filed condition reports.'' The FAA does not agree, and the final rule keeps the NPRM language. The agency's intent is to direct the operator to use specific field condition reports to determine actual conditions at an airport. It is not the FAA's intent to preclude an operator from using an airport assumed to be open at time of use, ''from the earliest to the latest possible landing time'' as stated in the rule language.

Qantas disagrees with the proposed weather requirements, stating that the older a weather forecast, the more inaccurate it is likely to be. Qantas also notes omissions from the NPRM. For example, the NPRM does not mention Safety Height Planning to account for some areas of the world where special tracking procedures are required due to terrain. Also, the NPRM requires a descent to 10,000 feet when many aircraft have passenger oxygen systems that allow extended operations at 14,000 feet.

[23] PROB40 is the probability of 40%. TEMPO is a temporary condition.

The FAA does not understand the comment on special tracking procedures. The en-route fuel supply requirement of § 121.646 (b) requires a descent following a rapid decompression to a safe altitude in compliance with the oxygen supply requirements of § 121.333. This would accommodate an altitude higher than 10,000 feet if the operator were equipped with an augmented passenger oxygen system.

2. Passenger Recovery Plans

The FAA proposed in the NPRM that all U.S. flag and supplemental operations include a passenger recovery plan applicable to each approved en-route alternate airport listed in the air carrier's operations specifications. This proposal was not limited to ETOPS operations. Airbus commented the FAA has defined neither the purpose nor scope of such plans nor the approval process. Along with several other commenters, it also stated that it finds it difficult to comment on details yet to be defined for a recovery plan. Airbus, JAA, KLM and other commenters also posited that such plans should only pertain to airports in harsh environments or to airports located in areas where a diversion conducted without specific advance planning might result in a hazard to passengers. They believe that there is no safety justification for any other plans and to include all airports creates an administrative burden with no safety justification. UK CAA makes similar comments. Airbus further stated there is no justification for requiring a plan for airports other than ETOPS alternate airports, and does not support any other application. Airbus further stated that the costs of this rule would be prohibitive and the FAA should include all costs of developing passenger recovery plans in the rule. Air New Zealand supported the concept of the need for a plan that addresses the shelter, well-being, and recovery of passengers.

The FAA agrees in principle with the concept that such plans need to particularly address only those airports that would present a challenge to protecting passengers in the event of a diversion. The FAA accepts the premise that the general application of this philosophy is satisfied for the majority of airports by generic contingency planning by operators. Consequently we have limited the requirement for recovery plans in this rulemaking A specific recovery plan is only required for ETOPS alternate airports used in ETOPS greater than 180 minutes and for diversion airports that support operations in the North Polar and South Polar areas. The FAA does not agree that this requirement should apply only to ETOPS alternates. Current FAA policy for Polar flying requires that ''a sufficient set of alternate airports'' must be able to ''provide for the physiological needs of the passengers and crew for the duration until safe evacuation''. No safety justification has been given for the elimination of this requirement during the ARAC process or by the commenters, and it is retained in this rulemaking for all airplanes not engaged in all-cargo operations. The regulatory evaluation supporting this final rule includes the estimated costs of providing these specific passenger recovery plans. Airbus, IATA, and several operators believe that cargo operators should be exempted from the requirement for passenger recovery plans. We agree that passenger recovery plans are not necessary for all-cargo operators. The language in § 121.135 has been changed to specify only ''passenger'' flag and supplemental operations.

ALPA noted that some operations may have only one choice for diversion and therefore it is critical that alternate airports have the capabilities, services, and facilities to safely support the diversion. The FAA agrees. The rule stated this requirement for all alternate airports in the North Polar and South Polar areas and for ETOPS greater than 180 minutes.

ATA commented that with its limited operations, any rigid requirements would add significant costs. Therefore, this operator requested a compliance period of 18 months. The FAA agrees that a delayed compliance period is appropriate but considers 18 months excessive. The FAA has changed the rule to allow U.S. flag and supplemental air carriers a 12-month implementation period to develop airport specific passenger recovery plans.

FedEx and IATA commented the FAA should accept regional plans rather than require airport specific plans and that facilities on site that protect passengers from the elements for 48 hours should be acceptable.

The FAA does not believe the designation and use of certain airports in extreme climatic areas can be covered adequately by a ''regional'' type plan. The FAA agrees that current contingency planning is sufficient to eliminate the need for regional plans for most operations but agrees with most commenters that specific plans are appropriate for airports in harsh environments or to airports located in areas where advanced planning could be hazardous to passengers. For this reason the requirement for a regional plan has been eliminated from this rulemaking. The ARAC considered the possible costs and logistics for recovery plans and recommended that 48 hours is sufficient time to effect passenger recovery. The FAA agrees with this premise.

IATA commented that limiting the airports to those that offer sufficient shelter and can satisfy the physiological needs of passengers may reduce the number of airports that can be considered. This commenter believes the capabilities of the aircraft (blankets, dinghies, etc.) should be considered.

There is no question that onboard equipment such as blankets can be used for the safety and comfort of passengers for a short period of time. However, in a diversion, advanced planning should dictate there would be sufficient availability of facilities for the protection of passengers and crew. A plan depending on long-term use of the airplane hull to protect passengers and crew from the elements is not considered acceptable.

The FAA proposed to clarify the ''public protection'' requirement of § 121.97 to include data showing the availability of facilities at each airport or in the immediate area sufficient to protect the passengers and crew from the elements and to see to their welfare.

FedEx commented the FAA is demanding data that is not available in such detail at all airports around the world. JAA seeks clarification as to the detail of such required information.

That is, what is ''adequate'' in areas of severe climate? Several commenters suggested an enhanced definition of ''adequate'', to include severe climate area, and typical weather and seasonal variations. The JAA maintained that a more enhanced definition could then be used to define an operation as ETOPS or non-ETOPS.

Providing ''public protection'' data is a current regulatory requirement. However, in response to this concern, the FAA is limiting this expanded requirement only to airports used by passenger-carrying airplanes for ETOPS beyond 180 minutes and for operations in the North Polar and South Polar areas. By definition, airports used in these operations are either in remote or demanding areas of the world. By their nature such airports will require extra attention to the safety of passengers in a diversion scenario. It is incumbent on all passenger-carrying operators to have contingencies for such an event. It is expected that more than one carrier will serve such routes and the data will be shared and readily available. We agree in principle with the JAA's comment,

but do not agree that it is necessary to change the definition of ''adequate airport''. The ''public protection'' requirements of this rule have always applied to all airports used by an operator. The expanded definition of this rulemaking likewise does not differentiate with regard to weather extremes.

3. Rescue and Firefighting Services (RFFS)

The FAA proposed in the NPRM to codify current two-engine ETOPS RFFS criteria for all ETOPS alternate airports. ICAO Category 4 RFFS at alternate airports would be required for ETOPS operations up to 180-minute diversion length. For all ETOPS beyond 180 minutes ICAO Category 7 services would be required.[24]

Current RFFS standards for airports are contained in part 139. These requirements are indexed to a formula based on aircraft width and length and the number of operations of a particular type of airplane at the airport. Section 121.590 specifies the conditions U.S. domestic, flag and supplemental carriers must use in their operations at part 139 certified airports and imposes these requirements on destination airports but not on alternate airports. AC 120–42A placed RFFS requirements on alternate airports used in ETOPS.

KLM noted that in the case of a fire in the cargo hold, the plane will divert to the nearest airport, which may not be the designated category 7. Qantas claims that since the introduction of ETOPS there has never been an ETOPS related incident where RFFS were required. ATA and many operators did not support the NPRM requirement for Category 7 for ETOPS greater than 180 minutes and recommend that the less stringent criteria for current two-engine 207-minute ETOPS apply. IATA and FedEx commented that there is no scientific reason to connect RFFS to the length of the diversion. KLM made a similar comment. IATA noted that if an operator needed to rely on airports with a greater than category 4 RFFS, the proposed rule might result in forcing the selection of an alternate airport further from the planned route than necessary. ALPA, however, supported an ICAO category 7 capability for all ETOPS alternate airports.

The requirement for RFFS levels for ETOPS below 180 minutes and for 207 minutes are well known and set the precedent for these rules. It is the FAA's position that such requirements are applicable for all long range operations defined by this rule. The captain (pilot in command) of any flight, ETOPS included, is allowed by regulation to land the plane safely wherever necessary in an emergency. The purpose of this rule is to ensure that all alternate airports supporting these demanding operations have a reasonable minimum capability. The FAA does not believe it can justify the requirement to have an increased RFFS level of ICAO category 7 at each designated ETOPS alternate airport for ETOPS beyond 180 minutes. Although the recommendation for a category 7 RFFS capability in the ARAC report was accepted by the FAA, several commenters have pointed out the restrictions and limitations that such a requirement presents to the planning and conduct of ETOPS beyond 180 minutes. There is, however, overall support for the requirement to have RFFS capability at ETOPS alternate airports, and there is general acceptance that the ICAO category 4 represents the minimum acceptable level.

The proposed RFFS requirement was developed as a logical extension of the standard establishment for the 207-minute ETOPS policy. The FAA continues to believe that it is important that there be at least one airport available with sufficient RFFS capability to deal with a significant safety hazard. Accordingly, the FAA has amended § 121.106 to be consistent with the RFFS requirements established for the 207-minute ETOPS policy. For ETOPS beyond 180 minutes, ICAO category 4 would be required with at least one adequate airport within the authorized diversion time having a RFFS category 7 capability. This change will allow for optimum route planning as well as providing the flight crew with available alternate airport options in the event a situation requires a higher RFFS capability.

Omni commented that the majority of ETOPS diversions are for medical emergencies, yet there are no requirements for adequate medical care on the ground. This commenter also found an airport may downgrade its declared fire fighting capabilities at some point without the knowledge of the operator, or that an airport may be unable to inform operators of downgrades because of lack of authority from the State Civil Aviation Authority. Qantas noted GPS or Required Navigation Performance (RNP) approaches would make landing much safer, yet no requirements for these approaches appear in the NPRM.

There is no regulated plan for a medical emergency because the FAA cannot assess the relative risk associated with medical emergencies. These are events that defy risk analysis. Certain guidelines have been codified for passenger recovery and public protection in today's rule the FAA considers adequate. Regulating the standards for airport approaches as urged by Qantas is beyond the scope of this regulation.

C. Crewmember and Dispatcher Training

Today's rule requires training for crewmembers and dispatchers in their roles and responsibilities in the certificate holder's passenger recovery plan.

JAA, UK CAA, and United supported such a requirement. FedEx and IATA concur with additional training for pilots and dispatchers, but note that training for pilots of three- and four-engine airplanes may result in a tradeoff with other training. Therefore, they requested training only in fields where there is an obvious justification or safety benefit. American Trans Air concurred with the training requirement but requests a compliance period of 18 months.

The FAA agrees that air carriers need a reasonable compliance period to make necessary adjustments as a result of a new rule. However we do not agree with the proposed 18-month period, and instead will allow a 12-month compliance period from the effective date of the rule. We also understand that an air carrier may need to adjust the pilot training syllabus in order to accommodate the new training unit for three- and four-engine flight crews. This should not be a significant change. Therefore, it should not be a significant cost to operators.

Northwest assumed that its experience on trans-oceanic flights is sufficient, but if additional training is required by the certificate management office, then it would like to do so through bulletins and written procedures to minimize costs. It is the FAA's position that the training syllabus as well as the means to provide that training is within the air carrier's discretion. It can and should be tailored to fit within the existing training and operational experience of the carrier.

Qantas commented that the NPRM did not consider the simplified ETOPS training rules that have been in place in Australia for 18 years that require little or no training. These rules have resulted in no ETOPS-related incidents. Qantas

[24] Although not completely equivalent to part 139, ICAO RFFS categories are applied in a similar manner. ICAO category 4 is generally equivalent to part 139 Index A and is defined as suitable for the needs of an ATR–42 or equivalent airplane. It can consist of 1 truck and 500 lbs. of halon and 100 gallons of AFFF (fire fighting foam). ICAO category 7 is generally equivalent to Index C, suitable for a B–757 and can consist of two trucks and 3000 gallons of AFFF.

further noted that the pilot and dispatcher are only a small component of the diversion process.

The FAA agrees with the commenter that straightforward and understandable rules establishing minimum acceptable standards are needed. We believe today's rule establishes those standards. We do not agree, however, that established standards, no matter how ''simplified'' they may be, need not be part of pilot and dispatcher training. The FAA is well aware that for ETOPS, and in particular with an ETOPS flight that encounters the need to divert, it is the entire company that mobilizes to support that diversion. Both the pilot and the dispatcher are a critical part of the diversion and need to be trained accordingly.

D. Communications Requirements

The FAA proposed that a certificate holder conducting U.S. flag operations provide voice communications for ETOPS flights. For ETOPS beyond 180 minutes the certificate holder must have a second communication system that provides immediate SATCOM with ''landline telephone-fidelity''. Section 121.122 extends this ETOPS beyond 180 minutes requirement to supplemental passenger-carrying operations and to two-engine all-cargo operations.

Continental and other commenters objected to the prescriptive requirement for SATCOM. They suggested a more flexible requirement for voice-based systems. ATA, Airbus, and other commenters urged the FAA to coordinate any new ETOPS communication requirements with the Terminal Area Operations Aviation Rulemaking Committee (TAOARC) recommended language.

The FAA has coordinated the amendment to §§ 121.99 and 121.122 with the parallel activity by the TAOARC and Area Navigation (RNAV) rulemaking initiative (Docket No. FAA–2002–1–4002). As of this writing, the RNAV final communications rule (§ 121.99) has not been finalized. The FAA has determined that there is a significant safety benefit associated with an ETOPS flight having the ability to communicate via a satellite based voice system, especially for those situations that occur while on long, remote ETOPS routes. The need for safety is best served through information and technical assistance that is clearly and rapidly transmitted to the flight crew in a way that requires the least amount of distraction to piloting duties best serves the need for safety. The FAA has determined that the best way to assure clear and timely communication in general is via voice communication. Other than the area north of 82 degrees latitude, satellite communications provides the best means to provide that capability because it is not limited by distance.

FedEx, IATA, United, and Continental and others noted that SATCOM may not be useable beyond 82 degrees North latitude, and is thus ineffective for operations in Polar areas. The FAA recognizes the limitations of SATCOM in the North Polar Area above this latitude, and in such an area an alternate communication system such as HF voice or data link is to be used. The relatively short period of time that the flight is above latitude 82 degrees North in relation to the total planned flight time is a small fraction of the total flight. The ability to use SATCOM for all other portions of the flight, which for some routes could be longer than 15 hours duration, is advantageous to the flight. For flights above 82 degrees latitude the operator must also ensure that communications requirements can be met by the most reliable means available, taking into account the potential communication disruption due to solar flare activity.

Several commenters noted that the proposed communication requirements are more restrictive than the current 207-minute policy letter. Continental asserted that ARAC recognized that SATCOM was costly and arbitrary and chose to recommend it because it was first specified in the 207-minute operations letter. In its development of the 207-minute policy, the FAA and industry agreed that the areas of the world defined by ETOPS greater than 180 minutes were remote areas where the safety benefits of SATCOM would be significant. There is considerable difference in the level of operational authority allowed with the 207-minute North Pacific area of operation (NOPAC) authority, which is a limited extension of the 180-minute ETOPS authority and an infrequent operation and that of the proposed approval for beyond 180-minute operations. ETOPS authorizations in Appendix P to part 121 for greater than 180 minutes allows operations on a continuous basis up to the certified time-limited system capability of the airplane.

IATA and FedEx proposed that operators of three- and four-engine airplanes be allowed to continue ETOPS without SATCOM for a period not to exceed 6 years. JAL proposed a similar exemption consistent with the 6 months allowed in § 121.633 for system planning. We agree with the commenters that a period of time should be allowed for the air carrier to install the required satellite communication system on airplanes not currently subject to ETOPS authorization restrictions but believe 6 years is too long a period of time. We have amended §§ 121.99 and 121.122 to allow for a 12-month installation period for airplanes with more than two engines used for ETOPS.

ATA commented that HF voice and HF data link communication are sufficient for the safety of ETOPS. We agree that the use of data link for communications is a very effective tool especially when used to transfer blocks of data such as revised flight plans or updated winds aloft data or to downlink airplane performance data. It is also very effective when used for controller pilot data link communication to transmit air traffic service clearances and flight crew responses using pre-stored messages. However, data link becomes more cumbersome when used in free text message form. The use of data link (both HF and SATCOM) is limited by message length and ability to clearly state the issue or message, and tasks the flight crew more than voice communication by requiring full attention to the task of interacting with a small and compact keypad. Turbulence and airplane maneuvering compounds the difficulty in using the device without error. Its use also necessitates crew coordination/verification of message content prior to sending the message. This is extremely distracting during a time of flight that requires the pilot's focused attention to the problem at hand. In comparison, the use of voice SATCOM allows clear and immediate conversation that can quickly convey the situation and needs for the flight.

Omni commented that the proposal does not meet its intended safety purpose: it requires an operator to structure its operations around the availability of SATCOM rather than more sophisticated communications systems. Moreover, this commenter and Airbus found the FAA did not clearly define ''landline fidelity'' in quantifiable terms. Several commenters stated that flight watch [25] can be adequately conducted with HF voice communication, and that in most regions of the globe there are adequate ground and communication facilities available.

The use of SATCOM is a new requirement that applies only to ETOPS conducted beyond 180 minutes. The other available communication systems

[25] Flight watch is a shortened term for use in air-ground contacts to identify a flight service station providing ''En-route Flight Advisory Service (Weather)''.

in use (VHF and HF voice and data link) all have significant limitations. VHF has poor range capability. HF two-way voice communications are routinely degraded by voice distortion, background noise, static, and can be unclear and unintelligible due to atmospheric conditions and frequency clutter. Voice SATCOM allows for immediate clarification by use of questions and dialogue that will result in important and relevant information being clearly transmitted. This occurs with minimum workload and distraction to the flight crew from their piloting duties. It is by many factors over, a quantum leap improvement in communications that can greatly benefit the safety of a flight; particularly an ETOPS flight that could be 4 or more hours from a landing site. The capabilities of SATCOM to connect with the communications satellite are not hindered by the altitude of the airplane, and are useable on the ground following a diversion. The communication benefits are clear.

The words selected in the rule ''of landline telephone-fidelity'' are to convey to the average person in the United States the communication qualities expected. A person knowledgeable of the communication qualities of SATCOM understands the equivalent relationship in comparison to landline telephone fidelity. The quantifiable term ''landline telephone-fidelity'' is in reference to the experience one would have using the telephone system in the United States. The FAA disagrees with the comment that the rule would require operators to structure its operations around the availability of SATCOM before considering alternatives. The rule language does not restrict operations based on the availability of satellite based voice communication.

Airbus, IATA and FedEx commented that although operators may initially ensure communication infrastructures, demonstrating the reliability and response time to local air traffic personnel on a continuing basis may be an impossible task. The FAA does not understand the commenters' objection to § 121.122(a). The requirement for the air carrier to identify the ground- or satellite-based communication installations to ensure reliable and rapid communications with air traffic services has been a long-standing requirement for U.S. flag air carriers (§ 121.99(a)).

Boeing recommended deleting the word ''additional'' to dispel any interpretation of needing a second satellite-based communication system.

It is not possible for an air carrier to have a SATCOM system installed in place of the communication system required by § 121.99(a) because SATCOM does not have broadcast capability. If, however, an air carrier has already installed SATCOM as an additional communications system, as Boeing suggests, to meet the requirement of § 121.99(c), then there would not be a requirement for a second ''additional'' system to satisfy § 121.99(d). The air carrier is not required to install two ''additional'' satellite-based communication systems to meet the regulatory requirement. The FAA requires the additional voice communication system to be a satellite-based system.

Airbus also noted that operators may have to bear expenses charged by owners of satellite systems, particularly in Polar areas, a cost not included in the FAA's economic evaluation. JAA also urged the FAA to consider these prescriptive requirements in its cost/benefit analysis. The FAA agrees, and the Final Regulatory Evaluation includes the costs for installation and use of SATCOM.

ATA objected to a requirement for SATCOM for supplemental operators, while ALPA supports such a requirement. As stated earlier, the FAA has agreed that for the particular case of all-cargo, supplemental operations on airplanes with more than two engines the cost of the ETOPS requirements such as SATCOM cannot be justified. This communication requirement has been withdrawn from this rule

E. Time-Limited System Planning and the Critical Fuel Scenario

The FAA proposed that planned ETOPS diversion times not exceed the time limit specified in the airplane's most time limited system minus 15 minutes. In the case of cargo fire-suppression systems for airplanes with more than two engines, the proposal allowed 6 years for compliance. The FAA anticipates that the most time-limited system would typically be either the cargo fire suppression system if required, or the en-route fuel supply. Current two-engine ETOPS guidance codified in this rule for operations up to 180 minutes bases diversion times on a one-engine inoperative cruise speed (under standard conditions in still air). Required system capabilities are then based on this calculation. The rule requires wind to be considered for ETOPS beyond 180 minutes to ensure that system time limits are not exceeded. Since data has shown the likelihood of a simultaneous engine failure and cargo fire to be extremely remote, for ETOPS beyond 180 minutes, the cargo fire suppression system requirement is based on an all engine operating speed calculating the effect of wind.

The FAA proposed to define ''one engine inoperative cruise speed'' for ETOPS as a speed within the certified operating limits of the airplane, selected by the certificate holder and approved by the FAA, that is used for calculating fuel reserve requirements and the still air distance associated with the maximum approved one-engine-inoperative diversion distance for the flight.

FedEx, Singapore Airlines, JAL, and IATA recommended the FAA develop more detailed information for determining one-engine inoperative cruise speeds to increase operational flexibility. These commenters also recommended the FAA establish conditions or scenarios for calculating the maximum approved distances (using still air) associated with one-engine inoperative operations.

The definition is already flexible in that the certificate holder selects the speed as long as that speed is within the certified operating limits for the airplane. This gives operational flexibility for different areas of operation where the engine inoperative net level-off altitude may require consideration of terrain and other factors. The certificate holder must also get FAA approval to use that speed. This selected and approved speed is also the speed used to determine the critical fuel reserves required for ETOPS by § 121.646(b). While this approval gives the certificate holder flexibility, it would not be acceptable to the FAA for a certificate holder to designate the fastest possible speed in order to achieve the largest ETOPS area of operation, and then use a slower speed in determining critical fuel reserves to reduce the amount of fuel reserves. The speed used by the certificate holder to determine the critical fuel reserves must be the same speed used to determine the ETOPS area of operation in that geographical area.

Air New Zealand commented that the proposed requirement for ETOPS flights beyond 180 minutes for cargo suppression time to be adjusted for wind and temperature is unreasonable. FedEx and United echo this objection.

The ETOPS ARAC Working Group deliberated extensively over the concept of applying wind and temperature values in calculating ETOPS distances. The conclusion reached was that for ETOPS up to and including 180 minutes, the present standard of calculating the distance in still air was adequate and should continue. However with the diversion times increasing to 240 minutes and beyond, it was deemed

appropriate to require diversion time computations for longer ETOPS distances to account for winds and temperature, because the total effect on long flights could be considerable. The FAA has accepted the ARAC recommendation. The FAA does not agree with the commenter that calculations with actual and forecast wind and temperature are unreasonable. All fuel planning and critical fuel reserves needs are already computed based on forecast wind data.

The FAA also agrees that the planning for an ETOPS flight beyond 180 minutes is more complex in that wind and temperature are factored into determining an all engine speed distance as well as an engine-inoperative speed distance. The FAA expects that an airline would first conduct a route planning exercise for each planned city pairing to determine the diversion authority needed in still air conditions. If the route or segments of the route exceed 180 minutes based on one engine inoperative speed and still air, then a secondary planning exercise (that may be required seasonally) should be conducted that factors in expected winds and temperatures on that route. The distance between adequate alternate airports on the route is converted into time (minutes) computed for an all engine cruise speed, as well as an engine inoperative speed. The number of minutes cannot exceed the time-limited system (cargo fire suppression and the other most limiting system) that is identified in the airplane flight manual less the 15-minute pad. The operator needs to determine how much system capability is required for the planned route and equip its airplane to have sufficient margins. The FAA expects that manufacturers will provide system capability with a margin greater than the 15 minutes required by the rule so that the operator has more flexibility when unforecast adverse winds are encountered. Thus, the operator, in coordination with the manufacturer, needs to determine how much extra margin should be allocated to provide greater flexibility when encountering the unexpected on the planned routes. Finally for the actual flight, the operator's flight planning must be within the airplane systems capability for the selected ETOPS alternate airports on the planned route based on diversion times that are calculated using known or forecast winds and temperature conditions. Airplane flight manual system limits must be adhered to. Any segment planning that provides only a minimum of excess time-limited system capability compared to the maximum distance from an airport on the route should be backed up with an alternate course of action.

ALPA, FedEx, Singapore, and IATA commented that there is no fire suppression limit for ETOPS up to and including 180 minutes. Because of this, FedEx and United suggested a fire suppression time guideline beyond 180 minutes rather than final limit. ALPA, on the other hand, stated this limit should be applied to operations up to 180 minutes as well as those over 180 minutes. United requested clarification that this requirement is an amendment to part 25.

The FAA acknowledges the apparent disparity created by applying time-limited systems capability, such as cargo fire suppression capability, only to those three- and four-engine airplanes conducting ETOPS and not to those airplanes operating 180 minutes or less. Since the overwhelming number of airplanes with three or four engines will not be used in ETOPS, the FAA recognizes that the costs to retrofit the cargo fire suppression system for all of the other airplanes would be significant, and simply overwhelm the benefit that would be derived.

In response to FedEx and United's comment, the principle of requiring system capabilities that are sufficient to support the operation and to protect the operation from occurrences that are not extremely improbable is a basic tenet of all previous ETOPS guidelines. These have been instrumental in the success of current ETOPS in the absence of rulemaking. Now tasked with developing regulatory language for such operations, the FAA finds it prudent to define them as rules and not guidelines. This is a part 121 limitation on the operation. The only part 25 requirement is to place this time capability into the airplane flight manual.

ATA recommends that the cargo suppression requirements be revised to apply only to airplanes that do not incorporate procedures for fire suppression through oxygen starvation. This section should clearly state that its provisions apply only to Class C cargo compartments. Boeing, IATA, and many operators make similar comments. Northwest comments that since the majority of all-cargo operations have only Class E compartments, they should be excluded from this requirement. The FAA agrees that the intent of ARAC and the final rule would only apply to those cargo and baggage compartments that have an ''active'' fire suppression system installed, i.e., systems that incorporate fire-suppressing agents in containers that limit the length of time that these agents can suppress a fire. Most airplanes used in part 121 passenger-carrying service have only Class C cargo or baggage compartments, or Class D compartments retrofitted with time-limited fire suppression systems. Some all-cargo two-engine airplanes may have Class C compartments or retrofitted Class D compartments, although most have only Class E compartments. Class E compartments may only be installed in all-cargo airplanes. The rule announced today requires that carriers determine—in terms of time—the most limiting fire suppression system capability. This rule does not apply to Class E compartments, whose method of extinguishing a fire is not time-limited.

Boeing suggested adding ''or CMP'' to paragraphs (a), (b), and (c) to permit ETOPS operators to continue their operations without potential disruption. Boeing also suggested the proposed rule should allow the all engine speed for determining allowable ETOPS time to an alternate airport for time-limited systems other than the cargo fire suppression system. Their premise is that there may be other non-engine related time-limited systems that would be appropriate to consider as all-engine operations for calculating the ETOPS time to an alternate airport.

The FAA agrees that the time-limited system capability may be included in the CMP document, and has amended the rule accordingly. The FAA does not agree that § 121.633(c) should be changed as suggested. Diversion lengths have always been limited by the most time-limited system, which has historically been the cargo fire suppression system. During ETOPS ARAC discussions material was presented to show that the probability of an engine failure and a simultaneous cargo fire both occurring at the most critical point in flight was extremely improbable. This analysis supported the decision to separate diversion lengths for cargo fire suppression system capability from other time-limited systems capability. This was accomplished by allowing the use of all-engine speed calculation for the cargo fire suppression limit, and the one-engine inoperative speed calculation for the other most limiting systems. There has not been any other time-limited system identified by anyone that would justify a similar procedure as is allowed for the cargo fire suppression system.

FedEx, KLM, and IATA commented that the proposed cargo fire suppression system might be technically and/or economically difficult to accomplish. These commenters suggested an 8-year compliance period. Boeing

recommended ''grandfathering'' three- and four-engine airplanes for paragraph (c) of § 121.633 because the installation of such systems would essentially require recertification of airplanes manufactured over 30 years ago.

The FAA agrees that older and current three- and four-engine airplanes should be given consideration in application of this rule. However, the commenters have not submitted any data to support their position and the FAA cannot independently justify extending this exemption to 8 years based on the data it has. The 6-year period was a recommendation from industry following extensive discussion and debate.

FedEx, United, and IATA also suggested that the manufacturer should provide a list of time-limited systems to enable a consistent industry application of this rule.

The rule requires that the manufacturer provide the systems limit in the airplane flight manual for the cargo fire suppression system, and the next most time-limited system that is installed on the airplane. The FAA does not anticipate a need to account for more than the top two time-limited systems, although a manufacturer is welcome to provide more information if it so chooses.

FedEx, KLM, and IATA asked about the diversion considerations caused by headwinds and whether the flight should be cancelled if this factor cannot be accommodated. The FAA clarified that the time limited system capability that is stated in the airplane flight manual cannot be exceeded. If the airplane systems capability is not adequate for the intended route, then the flight cannot proceed. The operator must ensure that the airplanes systems capability is sufficient for the intended route.

KLM commented that the only time-limiting system that can be justified is the cargo hold fire suppression. They stated that oxygen cannot be limiting since this has to be covered by procedures. The FAA cannot agree. Although the best-known and understood limiting capability system is the cargo fire suppression system, the manufacturer must still identify the next most limiting system, because the incident requiring diversion may be unrelated to a fire in the cargo hold. For some airplanes this second limiting factor may be the fuel load capability of the airplane, which needs as a minimum the capability to support the required ETOPS critical fuel reserves.

UK CAA and the JAA agreed with the proposal but noted that UK CAA airplanes incorporate the required 15 minutes within the calculation of all time-limited functions. Commenters stated that the 15 minutes should not be incorporated twice. The FAA agrees that the European regulation should not require the 15-minute pad twice. These and other issues require harmonization to be resolved in follow-on discussions that would determine applicability.

The FAA proposed to define ''maximum diversion time'' to mean, for the purposes of ETOPS in part 121, the diversion time, under standard conditions in still air at the one-engine inoperative cruise speed. JAA and UK CAA found this definition misleading as it refers only to still air time. These commenters suggested that an approved still airtime be given to operators and that the maximum diversion time be defined as the system limit (to be determined on the day of the flight in the forecast conditions).

We generally agree with this comment. For ETOPS beyond 180 minutes use of this term is only applicable to prior ETOPS route planning, not day-to-day operations. Accordingly, the definition is clarified to read, ''for ETOPS route planning,'' thus applying to all ETOPS planning (including operations beyond 180 minutes). This does not contradict the new § 121.633, which applies to day-to-day operations since the term ''maximum diversion time'' is not used in that section.

Today's rule requires in § 121.646 that an airplane have enough fuel on board, assuming combinations of an engine failure and a rapid decompression at the most critical point of the route, to land at an adequate airport with enough additional fuel to hold for 15 minutes at 1500 feet above field elevation. It adds additional fuel requirements to compensate for wind, icing, and an APU unit, if one is required as a power source. This subject has been termed the ''critical fuel scenario'' and has been a significant part of two-engine ETOPS guidance from AC120.42A. Based on the weather forecasting techniques of the early 1980s, the advisory circular required very conservative calculations for wind and icing effects. The advisory circular required a 5% fuel addition to total fuel to account for wind forecast errors and required the operator to assume icing and ice drag for the entire scenario. However, winds-aloft forecasting has improved dramatically in the last twenty years. The use of these products and techniques has reduced the need for such conservative calculations and the FAA is requiring only a 5% adjustment to the forecast wind if approved techniques are employed. Based on studies done by the Atmospheric Environment Service of Canada such as CASP II, the probability of a continuous or repetitive significant icing encounter is very small on a long flight segment. For these reasons the proposed icing calculations have been reduced to the effects of ice drag during only 10% of the time ice is forecast or the use of icing systems during the entire time of forecast icing.

ATA, Northwest, United, and IATA commented that the requirement for an additional 15 minutes of fuel for the three- and four-engine airplane for more than 90 minutes, but less than 180 minutes, will add costs to operators. ATA suggested that the current fuel requirements be retained for these aircraft.

The FAA accepts the comment that the additional 15 minutes of holding fuel is a new requirement that has been added to § 121.646(a) to require sufficient fuel for a decompression scenario. However, the added 15-minute holding-fuel requirement does not represent an additional cost to operators. Part 121 currently has two separate fuel requirements that apply to three- and four-engine operators conducting U.S. flag and supplemental operations. Section 121.645(b)(4) requires fuel for 30 minutes at holding speed at 1,500 feet with all engines operating. Section 121.193(c)(2)(iv) requires fuel to fly with two engines inoperative to an airport to arrive 1500 feet directly overhead and then fly for an additional 15 minutes at cruise power. The requirement of § 121.646(a) for holding fuel is a value less than fuel reserves already required for the operation and therefore is not an additional cost to the operator.

BALPA commented that the reduction of the 5% additional fuel for wind is overly optimistic given the ICAO standard of a 20% forecasting error and the fact that typically fuel-indicating systems are accurate only to a 1–1.5% scale. BALPA suggested that the critical fuel calculation have an additional sum of fuel to allow for an overall error of not less than 3% of the calculated fuel from the critical point to the alternate airport. Qantas however, supported the reduction in critical fuel values. Qantas also concurred with an additional fuel requirement if an APU unit is required. UK CAA commented the FAA should either retain the 5% fuel factor or use a reduction analysis based on historical data and proof that the operator is using the World Area Forecasting System unequivocally.

The FAA concurs with the ETOPS ARAC conclusion that the industry has a better and more accurate wind forecast ability than previously available. This

enhanced capability justifies the change in determining fuel required for a flight. The FAA does not accept BALPA's recommendation to increase the contingency fuel to a 3% value as proposed. Likewise, the FAA does not agree with the UK CAA. The basis for the contingency fuel values in § 121.646(b) is the service experience gained in ETOPS for almost two decades and the vast improvement in accuracy of the World Area Forecasting System wind forecasting.

FedEx, Singapore, and IATA commented that in the current regulatory language additional fuel for icing is implied for operations beyond 90 minutes and is now required in ETOPS. They have requested clarification. To clarify, the intent to include icing in § 121.646(a) is to clearly state that the fuel required to operate engine and wing anti-ice systems as well (as to account for the induced drag from ice accumulation on unheated surfaces) must be included. The FAA has, however, modified the language of this section to be consistent with the language used in other sections of part 121. Section 121.646(a) is modified to read: ''* * * considering wind and other weather conditions expected, it has enough fuel * * *''. The intent with this change remains the same in that if icing conditions are expected, then the fuel requirements for this condition need to be accounted for in the fuel calculation.

FedEx, Singapore, IATA, and Japan Airlines commented that the rationale for adopting a 90-minute threshold for three- and four-engine airplanes is not clearly addressed. The 180-minute threshold seems to be based on the ETOPS threshold for rapid decompression, which several commenters found unreasonable. The rationale for selecting the 90-minute threshold in § 121.646(a) is based on § 121.193(c), that established the 90-minute threshold for three- and four-engine airplanes.

Qantas questioned the need to allow extra fuel for decompression and a simultaneous engine failure, noting that most engine failures occur at times of major thrust. Qantas suggested that in the extremely unlikely event that these two events should occur simultaneously, the flight variable reserve would suffice. The FAA does not agree with this rationale. The connection with the loss of an engine combined with the loss of pressurization has previously occurred due to an uncontained engine failure. Such a failure can occur on all airplanes, especially four-engine airplanes where the inboard engines are located in closer proximity to the fuselage. In determining the critical fuel reserve required for ETOPS, § 121.646(b) requires the operator to use the greater fuel burn rate between flying all engines unpressurized versus flying one-engine inoperative unpressurized. Planning for this type of failure ensures that sufficient fuel is onboard to fly to and land at an alternate airport. This fuel planning allows the other contingency fuel requirements to be available to the pilot for the non-planned variables.

Qantas commented the FAA has overlooked two factors: additional oxygen for passengers and high or mountainous terrain areas where longer decompression tracks will be required. The FAA crew and passenger supplemental oxygen requirements are contained in §§ 121.329 and 121.333 of current regulations. These requirements are applicable to all flights. Special escape tracks over high or mountainous terrain are necessary in the event the flight cannot maintain the necessary obstruction clearances due to an engine loss or loss of pressurization. Such routes require approval by the FAA, and are listed in the operator's operations specifications.

Transport Canada commented that future technology aircraft may allow airplanes to fly decompression profiles at altitudes higher than 15,000 feet. Therefore, Transport Canada proposed that analysis be done to verify altitudes greater than 15,000 feet and whether the 5% alternative still remains valid. The FAA agrees that continued assessments as to the accuracy of wind forecasts would be needed. If data indicates that a desired level of accuracy has not been achieved, then appropriate fuel margins up to the standard 5% value are appropriate.

F. Dispatch or Flight Release

1. Original Dispatch or Flight Release, Re-Dispatch or Amendment of Dispatch or Flight Release

The FAA proposed that before passing the ETOPS entry point, weather conditions at alternate airports must be evaluated to ensure that they are at or above the operating minimums specified in the operator's operations specifications. This rule codifies current ETOPS requirements expressed in AC 120–42A.

ATA requested the FAA clarify its intent concerning the ETOPS entry point to include the intended authority of the captain and dispatcher to determine the suitability of an en-route alternate airport. FedEx, United, Singapore and IATA made a similar comment, saying that it is not clear whether weather changes at alternate airports, once the ETOPS entry point is passed, may require a turn back.

The FAA agreed that clarification is needed for the situation where the flight has passed the ETOPS entry point.[26] An operator is not required to turn back once the flight has gone beyond the ETOPS Entry Point if an unexpected worsening of the weather at the designated ETOPS alternate airport drops the airport below operating landing minima (or any other event occurs that makes the runway at that airport unusable). The FAA expects that the pilot-in-command, in coordination with the dispatcher if appropriate, will exercise judgment in evaluating the situation and make a decision as to the safest course of action. This may be a turn back, re-routing to another ETOPS alternate airport, or continuing on the planned route. Should the operator become aware of a potential weather problem prior to the airplane entering the ETOPS stage of the flight, the rule allows the operator to designate a different alternate airport at the ETOPS entry point in order to continue the flight.

UK CAA recommended that the requirement be amended to say that the flight crew are to remain informed of changes in conditions at designated en-route alternate airports. If conditions are identified that preclude safe approach and landing, the crew should take an appropriate action. The FAA believes that the language of the NPRM and final rule adequately convey a practice that has been required for all two-engine ETOPS conducted up to 180 minutes as well as the 207-minute ETOPS policy letter.

Airbus and JAA found this requirement impractical for polar routes, where the ETOPS alternate airport may be located outside the ETOPS area. Airbus therefore recommended the FAA exclude polar flights with a diversion time not exceeding 60 minutes for a two-engine airplane or 180 minutes for a three-or four-engine airplane from the scope of this requirement. The FAA agrees that the original intent of the NPRM—to establish the Polar Areas as areas where the ETOPS rules apply—created confusion. We have therefore abandoned this concept. The

[26] Section 121.7 defines ETOPS Entry Point as the first point on the route of an ETOPS flight, determined using a one-engine inoperative cruise speed under standard conditions in still air, that is—

(1) More than 60 minutes from an adequate airport for airplanes with two engines; or

(2) More than 180 minutes from an adequate airport for airplanes with more than two engines.

application of the ETOPS rules for these areas are no different than for any other area of the world and are only required for two-engine airplanes whose routes take them farther than 60 minutes from an adequate airport and for passenger airplanes with more than two engines whose routes take them farther than 180 minutes from an adequate airport. The FAA believes that the particular requirements of current polar policy codified in this rule are sufficient to ensure the safety of all other non-ETOPS flights in these areas.

2. Dispatch Release: U.S. Flag and Domestic Operations

In the NPRM, the FAA proposed adding ETOPS approvals to the items that must be included in a flight dispatch release. A flight dispatch release for each flight is a regulatory requirement for each certificate holder conducting domestic or flag operations. It must contain information on the flight, list the airports to be used by the flight including alternates, and contain pertinent weather and maintenance information. It must be signed by both the pilot and dispatcher.

Qantas commented that this requirement is unnecessary, arguing the pilot already knows of the ETOPS approvals for a particular fleet. The pilot-in-command should be notified only when there are changes. Qantas objected to application of this requirement to supplemental operations. United agreed with the proposal and suggested that it simply be added to the Flight Plan Forecast.

The purpose of the requirement to show the ETOPS time basis on the dispatch or flight release is to ensure that the status of the equipment, flight planning, and crew qualification all match for the planned flight. The time an ETOPS flight is released for flight requires that all personnel involved be focused on that flight's requirements. The dispatch and flight planning process considers not only the airline's approved ETOPS authority, but also the status of the airplane and its equipment to meet those standards. The dispatch and flight planning personnel, the maintenance personnel, and the flight crew must all be aware of what is required for the flight so that last minute adjustments or decisions are correctly applied. We agree that the use of the Flight Plan Forecast is the most logical method of compliance.

G. Engine Inoperative Landing

Today's rule requires that under certain circumstances a pilot must land the airplane at the nearest suitable airport as soon as a safe landing can be made. The FAA proposed a change in the wording of this rule from ''* * * whenever the rotation of an engine is stopped to prevent possible damage,'' to ''whenever an engine is shut down to prevent possible damage.'' This minor revision was made to delete the reference to stopping the rotation of an engine, which applies only to propeller driven airplanes, and adding a reference to engine shutdown, which applies to all airplane engines. In the final rule this application is extended to all relevant paragraphs in § 121.565.

Although JAA and UK CAA supported the proposal, many operators took the opportunity to discuss the term ''suitable'' in the rule language. They commented that while this section is consistent with today's ETOPS operations, the ARAC and ICAO Operations Panel recommended a more flexible plan by allowing the pilot to determine the optimum airport based on factors such as weather or facilities. These commenters believe that the pilot should be able to choose the most appropriate airport if the diversion time is only slightly different. Omni makes a similar comment. Boeing commented that it assumes the FAA will define ''*nearest* suitable airport'' in its advisory circular.

The FAA understands the commenters' concern about determining what would be the best airport for diversion. The ETOPS ARAC Working Group recommended to the FAA material that provides guidance and clarification to pilots to determine the ''suitability'' of an airport for landing. The FAA believes such material is better suited to an advisory circular. The FAA does not require any pilot to land at an airport that the pilot-in-command does not deem to be suitable. The requirement of § 121.565(a) does require landing at the ''*nearest* suitable airport''. However, a pilot-in-command may exercise his command authority to land at an airport other than the nearest suitable airport, and then file a report as required by § 121.565(d).

XII. ETOPS Authorization Criteria

The final rule creates a new Appendix P to part 121, which specifies the criteria the FAA Administrator will evaluate in approving ETOPs operations. These ETOPs authorities must be listed in the certificate holder's operations specifications. Appendix P is divided into three sections, approvals for two-engine airplanes, approvals for passenger-carrying airplanes with more than two engines, and approvals for all airplanes in Polar operations.

A. ETOPS Approvals for Part 121 Operations—Airplanes With Two Engines

The FAA proposed certain criteria for extended operations, from 60 minutes to more than 240 minutes, for two-engine airplanes. We have codified the step ETOPS approvals in AC 120–42A (75, 120, 138, 180, and 207 minutes), added a 90 minute approval for Micronesia, and have expanded the operation of two-engine airplanes to include new authorities of 240 minutes and ''greater than 240 minutes''. Like all previous approvals discussed in section I of the preamble, these new authorities are area specific and have operator experience and minimum equipment (MEL) requirements.

Additionally, we have added to the NPRM language a reference to the propulsion system reliability for ETOPS that is required by § 21.4(b)(2) and which comes from the original guidance of AC120–42A, paragraph 10(b). This guidance required that before the FAA grants ETOPS operational approval, an assessment should be made of the applicant's ability to achieve and maintain the demonstrated level of propulsion system reliability of the world fleet. This determination can be based on service experience, ETOPS process validation or a combination of both and will be addressed in advisory material. This language is now codified in the final rule in part 121, Appendix P, section I, paragraph (a).

IATA and United correctly noted that allowing 138-minute ETOPS to be applied in any geographical location adds flexibility. The 138-minute diversion authority is no longer restricted to the North Atlantic area of operation. The operator may request the use of 138-minute ETOPS in geographical areas that have sufficient adequate airports that could, for the given flight, be used as ETOPs alternate airports within 138-minutes diversion distance.

United commented that the proposal to add all of the 207-minute ETOPS requirements on all operations beyond 180 minutes may be too restrictive to some operators. United also contended that the 207-minute ETOPS should be allowed in all areas where the operator is authorized to conduct 240-minute ETOPS. This should apply to the polar region and South Pacific.

The development of the 207-minute ETOPS authority was in response to a request from United and others and was a joint effort between the FAA, ATA and several U.S. carriers. Its goal was to develop methodologies to extend ETOPS beyond 180 minutes while

maintaining the level of safety in the operation. The FAA does not agree with the expansion of 207-minute ETOPS as suggested. The 207-minute diversion authority was developed to deal with a particular problem in the NOPAC. The FAA approved the use of a 207-minute ETOPS in NOPAC based on safety benefits for the flight. Airlines could dispatch the flight on a preferred air traffic route that actually placed the flight in closer proximity to a greater number of adequate airports located in northern Russia and the Aleutians even though the flight was up to 207 minutes from its declared ETOPS alternate airport at its farthest point. This type of dispatch is limited to only those flights where the normal 180-minute dispatch will not work. Since this safety argument was only applied to NOPAC, it would not be appropriate to have the 207-minute NOPAC authority apply to other areas that have different conditions. More importantly, for the case of 207-minute ETOPS, the airplane-engine combination need only be ETOPS type design approved for 180-minutes. For other two-engine ETOPS approvals for beyond 180-minutes, the airplane-engine combination needs to have a world fleet IFSD rate of 0.01 per 1,000 engine hours, and also be ETOPS type design approved for a minimum of 240 minutes.

Both United and Continental commented that in the absence of a rule expanding the 207-minute authority, the FAA should expand the 240-minute ETOPS areas of approval. Further, United requested that this extension apply to areas of the South and Central Pacific as well as the North Pacific. United also commented that the area of the North Pacific should be expanded from the current proposal of 40° N latitude to those routes north of the equator between North America and Asia and between Hawaii and Asia.

The FAA agrees with the commenters that it is necessary to clarify the areas where both the 207-minute and 240-minute ETOPS authority may be exercised. Likewise we have agreed to expand both areas of operation. The FAA has modified the 207-minute ETOPS authority to cover the ''North Pacific area of operations'', defined as Pacific Ocean areas north of 40° N latitudes including NOPAC air traffic routes, and published PACOTS (Pacific Organized Track System) tracks between Japan and North America. The FAA has modified Appendix P to allow 240-minute ETOPS for the Pacific Ocean area north of the equator.

United commented that the IFSD rate for the 240-minute ETOPS in a small fleet could cause an operator to lose ETOPS authority for 12 months with just one IFSD. However, if the 207-minute ETOPS were available in areas other than the north Pacific, it would allow operators to employ the lesser 207-minute ETOPS IFSD target rate. The FAA agrees that this is a legitimate concern for a small fleet IFSD, but the FAA will not manage ETOPS approvals only by operator IFSD rates. Many factors are considered, especially the commitment and proactive response by the operator to determine the root cause of each failure. Once the cause has been determined, planned corrective actions are taken as well as a means to ensure that the problem is fixed. There may be no safety need to change the operator's ETOPS authority provided the operator shows that it is effectively managing the problem. The FAA does not see this as a valid reason to expand the 207-minute ETOPS area of authority.

United commented further that the existence of special MEL requirements for 120, 180, and presumably 240-minute ETOPS means that additional ''must be available'' MEL requirements would be added for 240-minute ETOPS. Any amendment to the MMEL for 240-minute ETOPS will be processed through the FAA FOEB process.

Airbus stated that the proposal was not specific in the amount of prerequisite ETOPS experience required of two-engine operators applying for routes between 180 and 240 minutes. Airbus also questioned the criteria an operator must use to determine what ''extreme weather'' conditions would allow an operator to utilize 240-minute ETOPS authority in the Pacific Ocean areas north of the equator. They suggested that the choice to select more distant diversion airports be predicated on medical data-link and cargo hold monitoring capabilities on the airplane.

The rule requires that all operators requesting ETOPS approval beyond 180 minutes must have existing 180-minute ETOPS approval for the airplane-engine combination in their application. The FAA believes this is satisfactory. Rather than requiring a minimum experience level and allowing for reductions based on compensating factors similar to past guidance, the FAA believes that the language is satisfactory to limit any accelerated approval process to an initial authority beyond 180 minutes while still leaving the approval decision to the particular merits of the operator's application. The FAA believes that the discussion of what constitutes acceptable criteria to extend diversion times to 240 minutes can be discussed within the context of advisory language. As stated in the rule language, the definition of extreme weather ''must be established by the certificate holder and accepted by the FAA.''

Qantas found the limits in Appendix P arbitrary and not based on any scientific method. They posited that the historical and safety analysis would show that 120-minute ETOPS should be the starting point for two-engine airplanes and that the smaller step approvals for modern airplanes (60-, 75-, and 90-minute) are inappropriate and should be withdrawn. There should also be grandfathering rights for operators who have flown ETOPS routes for decades, requiring no additional approval processes.

Qantas has not provided sufficient data to support its premise. Past progress and successes achieved in ETOPS have been due to the deliberate and limited step process of extending diversion lengths in response to improvements in type design and the needs of the operational environment. The FAA believes maintaining current ETOPS authorities adds flexibility for an operator to choose ETOPS approvals that match their specific needs. Changing the threshold for two-engine ETOPS was not part of the ARAC tasking and is beyond the scope of this rulemaking. The success of past ETOPS shows the importance of the operator's continued airworthiness maintenance program that is a requirement for all ETOPS authority levels. We therefore do not accept the recommendation that the ETOPS threshold for two-engine airplanes should start at 120 minutes. It is not necessary to address grandfathering since there is no language in the NPRM or this rule that requires new ETOPS approvals for airplanes or operators to continue flying routes for which they already have ETOPS approval. As stated earlier in this preamble we have added a new § 121.162 which clarifies the ability of current ETOPS qualified operators to continue operating their ETOPS routes without a new approval process.

B. ETOPS Approvals for Part 121 Operations—Passenger-Carrying Airplanes With More Than Two Engines

The FAA proposed certain criteria for extended operations for airplanes with more than two engines. These criteria include certification requirements for the airplane-engine combination, requirements for en-route flight planning to ETOPS alternate airports based on system limitations, an ETOPS maintenance program and certain system and MEL requirements.

FedEx, IATA, and KLM noted that adding three- and four-engine airplanes to ETOPS will add maintenance and other training requirements for these

airplanes. The FAA agrees in part to the comment regarding possible additional training for employees. The FAA strongly believes that all operators would benefit from an ETOPS maintenance program. However, the FAA agrees with many of the commenters that the cost of implementing this new requirement for airplanes with more than two engines would be significant. The FAA has determined that this cost cannot be justified based on the current level of safety achieved by the combination of engine reliability and the engine redundancy of this fleet of airplanes. Therefore, the requirement for an ETOPS maintenance program for airplanes with more than two engines in ETOPS has been withdrawn. The remaining costs have been calculated and are presented in the final regulatory evaluation for today's rule. If the operator is an existing two-engine ETOPS operator, the training burden should be minimal. If the operator is a new ETOPS operator, the burden will be more substantial but is necessary to ensure safe operation. The individual operators, with concurrence from the FAA principal inspectors, will determine what, if any, additional training employees will require. It will be up to each individual operator to develop a training program that suits its operation.

JAA commented the FAA should introduce a compliance time for operators of three- and four-engine airplanes to meet the requirements of this section that will not disrupt operations. This commenter also requested the FAA add a paragraph to this section that addresses greater than 240-minute operations as it did for the two-engine airplane. The FAA agrees that a compliance period is justified for those operators with airplanes with more than two engines conducting ETOPS. We are adopting a compliance period of 1 year following publication of today's rule. There is no need to address those operations beyond 240 minutes in section II in the same manner as for two-engine ETOPS in section I because the rule does not require the operator to do anything more than designate the nearest available ETOPS alternate airport on the planned route of flight. However the rule language has been modified to drop the reference to a specific 240-minute approval since this might cause confusion.

Qantas opined this is a commercially-based rule and has no safety relevance for more than two-engine airplanes that have been operating safely for years. They stated that the rule would all but stop flights between Australia and the U.S., Australia and South America, and Australia and Africa. Qantas stated that restrictions based on a time limit from an alternate airport is arbitrary and that the rule should be based on reliability requirements. They noted that the NPRM does not address the major cause of diversions—passenger requirements. Qantas posited that paramedics may be required on flights in the future, and this would have a greater impact than any flight time limit to a diversion airport. Qantas also noted there has never been an on-board fire, yet the NPRM would require cargo compartment fire protection while ignoring passenger compartment fires.

The FAA does not accept the assertion that this rule is commercially based or has no safety basis for ETOPS operational application for airplanes with more than two engines. These same requirements have been in place for two-engine engine ETOPS for many years and the commenter has not shown justification for limiting its use to two-engines. The FAA reiterates its position that the risk analysis shows that three- and four-engine operations are similar enough to demand certain, common application of the rules. Throughout this rule the FAA has based its reasoning on the safety risk associated with long range flying over remote and hazardous areas that are far from adequate airports. We agree that some of those areas mentioned by the commenter would be subject to these new ETOPS rules under certain conditions. It will be the operator's choice to accept the rule requirements or reroute to avoid their application. The FAA believes that no rule could ever address all issues that would cause a diversion. However, the examples given by the commenter are further justification for this rule and the need to protect those listed diversions when they occur.

C. ETOPS Approvals for Part 135 Operations

The rule incorporates a new § 135.364 which stated that no certificate holder may operate an airplane other than an all-cargo airplane with more than two engines on a planned route that exceeds 180 minutes flying time (at the one-engine inoperative cruise speed under standard conditions in still air) from an adequate airport outside the continental United States unless the operation is approved by the FAA in accordance with Appendix G of this part, Extended Operations (ETOPS). The FAA has revised the part 135 rule to be consistent with part 121 operations to exclude all-cargo operations on airplanes with more than two engines from the ETOPS requirements and has limited the ETOPS maintenance program requirements to two-engine ETOPS airplanes. Appendix G defines ETOPS requirements for such things as operator experience, airplane certification, operational procedures and training of personnel. New language has been added to § 135.411 that requires two-engine airplanes used in ETOPS to conform to the additional maintenance requirements of the same Appendix G.

Airbus commented that currently part 135 operators do not need approval for ETOPS flights since the current ETOPS operations are deviations from § 121.166. There is no FAA guidance for, and FAA inspectors have not approved, any part 135 ETOPS flights. Dassault echoed this observation, stating that the cost assumptions in the draft regulatory evaluation were accordingly incorrect. Airbus noted, however, that there may currently be long-range business jets that fly from the West Coast of the U.S. to Australia. NBAA commented that the primary cost for operations with airplanes that meet the ETOPS requirements will be maintenance-related.

The FAA acknowledges that this rule imposes new requirements on part 135 operations. However, along with ARAC, the FAA has determined that part 135 operations in remote areas pose the same risk to crew and passengers as part 121 operations. Recognizing that many part 135 operations are not frequently recurring, as is the case with part 121 scheduled service operations, the rule imposes fewer restrictions on part 135 ETOPS than on part 121 ETOPS. The FAA agrees that a major cost of implementing an ETOPS program is the cost to develop and apply an ETOPS maintenance program. The FAA has determined that based on the probability of critical loss of thrust for two-engine airplanes the cost of an ETOPS maintenance program is justified. However, because of the combination of current engine reliability and engine redundancy, the FAA has decided against adopting an ETOPS maintenance requirement for airplanes with more than two engines.

The Final Regulatory Evaluation assesses the cost of the rule for part 135 operators as new costs since no ETOPS restrictions have been imposed on these operators until now.

135.364 Maximum distance from an airport.

The FAA proposed that no part 135 operation could be conducted outside the continental U.S. unless the planned route remains within 180 minutes flying time from an airport meeting the ETOPS requirements of §§ 135.385, 135.387, 135.393 or 135.395 (as applicable), and

§§ 135.219 or 135.221 (as applicable). In response to many commenters concerns with the cost justification of the proposal, the FAA has withdrawn this requirement for all-cargo operations in airplanes with more than two engines.

Netjets requests that the rule be revised to require that at no time will the airplane be operated in such as manner that it cannot reach a suitable airport from the Equal Time Point [27] of the planned route. The FAA notes that equal time points are based on an engine failure only. Accordingly, it is inappropriate to consider that engine failure or a loss of pressurization can only occur separately in determining necessary fuel reserves. The regulatory standard required by the ICAO Annex 6 is for a threshold to be established by the State that clearly defines when ETOPS requirements and standards take effect for all two-engine airplanes. Section 135.364 establishes that threshold and is consistent with many years of FAA/JAA deliberation that involved the U.S. industry on this matter. The wording is such that consideration by users is not necessary until flights are planned that are outside of the continental United States.

Part 135, Appendix G, Certificate holder experience prior to conducting ETOPS.

The FAA proposed 12 months of international operating experience in transport category turbine engine powered airplanes (excluding Canada and Mexico, but including Hawaii), 6 months of which could be domestic (if conducted before the effective date of the rule); or ETOPS experience in other aircraft as approved by the Administrator.

NetJets commented that these requirements do not recognize the exemplary safety record of part 135 operators currently conducting ETOPS operations and that full credit should be given to current operations. NATA disagreed with the exclusion of Canada and Mexico, noting that flights over these countries could include remote areas.

Netjets stated it can reach the same objective of having the full 12-month credit apply to all its ''ETOPS'' type flights because of the delayed effective date of this rule. The FAA will not require compliance with part 135 ETOPS until 1 year following the publication of the rule, allowing for more operating experience that will be creditable. In response to NATA, the intent of the rule is to ensure a carrier's ability to deal not only with routes over remote areas, but also routes in dissimilar, international airspace. If ETOPS requirements were to apply to such routes in these countries, then current flights to those countries would also satisfy the experience requirement.

Part 135 Appendix G.—Airplane requirements.

In the NPRM, the FAA proposed that any airplane added to an operator's operations specifications 8 years after the effective date of the final rule must meet the certification standards of § 25.1535. The NPRM proposed that those aircraft added on or before 8 years must only meet certain electrical and fuel redundancies.

Gulfstream commented the FAA should change the 8-year compliance date to 10 years or make the certification applicable to airplanes certificated 5 years after the effective date of the rule. In a related comment, NBAA commented that there is no safety justification for this requirement. This commenter found that the rule does not recognize the actual useful life of turbine-powered business airplanes. The association posited that continuing ETOPS operations beyond 8 years should be based on operator experience and its safety record.

The FAA partially agrees with the commenter about the useful life of these airplane types. Thus, we have changed the basis for grandfathering current part 135 airplanes. The criterion is now based on a ''manufactured date'' rather than the time an airplane is placed on a certificate holder's operations specifications.

Airbus commented that the NPRM discussion falsely stated that current 135 operations are restricted from those operations proposed to be regulated by this rule. NetJets and Actus Aviation stated that the rule will restrict the current mainland to Hawaii operations of certain types of their aircraft.

The FAA agrees that the NPRM was incorrect in assuming that part 135 operations defined as ETOPS in this rule were previously restricted. The FAA has corrected that assumption in the analysis of this final rule and agrees with the commenter and others that this rule will impose costs on those operators who chose to operate in ETOPS.

The question of whether or not operations between the mainland U.S. and Hawaii are defined as ETOPS for part 135 operators is dependent on the computed single engine cruise speeds for their airplanes. The FAA does not agree that the majority of those airplanes whose range and endurance legitimately qualifies them for such operations would be considered ETOPS in this case. But the FAA does agree that there is difficulty in obtaining sufficient single engine data across all fleets of airplanes to accurately account for the cost of the rule's application in this case. Without this data there is no way to calculate the costs and which operators would be affected. In consideration of this fact and because of a lack of incident data in this operation, the rule provides a grandfathering provision for all those airplanes manufactured up to eight years beyond the effective date of this rule. Further, the fuel and electric requirements for airplanes added to an operator's operation specifications between the effective date of the rule and 8 years later, contained in the NPRM, have been deleted.

Gulfstream commented that the proposed rule implies that compliance with Appendix G will be retroactive to existing operators approved for more than 180-minute ETOPS. This commenter asks the FAA provide relief in the form of an alternate means of compliance for the operator that cannot meet portions of the rule that provide no safety benefit. The rule does not impose a retroactive requirement within Appendix G for operators to conduct ETOPS. Paragraph (c)(2) of Appendix G gives consideration for the use of existing airplanes in ETOPS. The FAA fully understands that it would not be economically feasible to require any retrofit on existing airplanes to the new part 25 ETOPS requirements. This is why it is grandfathering airplanes manufactured up to 8 years after the effective date of the rule and used in part 135.

NATA questioned the intent of the rule that the operator has available, in flight, current weather and operational information for all airports. This commenter found the requirement vague and asked what equipment would be acceptable. They questioned whether the communications equipment required by new Appendix G is sufficient. The FAA has not considered requiring any additional communications equipment for the flight crews to use in-flight to update weather reports and other operational information. The communications required by paragraph (F) in Appendix G should meet all communication needs.

Both NBAA and NATA questioned the intent of the rule as it pertains to the requirements for weather analysis at the ETOPS entry point and beyond. NATA questioned what is the basis of determining whether or not an en-route alternate airport is ''above minimums.''

[27] Equi-Time Point is a point on the route of flight where the flight time, considering wind, to each of two selected airports is equal.

NATA recommended a requirement that the airport be at or above approach minima, not alternate airport minima.

NATA appeared to confuse the ETOPS dispatch requirements of an ETOPS alternate in part 121 with this rule language. Part 135 requires only that the alternate be ''at or above operating minimums''. The FAA agrees that clarification is needed for the situation where the flight has passed the ETOPS Entry Point. As with part 121 operations, once the flight has gone beyond the ETOPS Entry Point, an unexpected worsening of the weather at the designated ETOPS alternate to below operating landing minima, or any event that makes the runway at that airport unusable does not require a turn back by this regulation. It is expected that the pilot-in-command, in coordination with the dispatcher if appropriate, will exercise judgment in evaluating the situation and make a decision as to the safest course of action. This may be a turn back, or re-routing to another ETOPS alternate, or continuing on its planned routing.

Dassault disagreed with the requirement for sufficient fuel to fly to an alternate airport at cruise speed assuming a rapid decompression and a simultaneous engine failure at the most critical point. We discussed the potential for simultaneous failure of these systems earlier in this document. The purpose of the ETOPS critical fuel reserves is to protect that flight by ensuring that it will have sufficient fuel to fly to an alternate airport. Having an ETOPS alternate airport designated for use, and then not carrying sufficient fuel to make that alternate viable for a possible failure scenario is not managing known risks to the operation.

UK CAA commented on the 5% fuel factor for wind by saying that it should remain in place for events that cannot be predicted, unless the operator produces historical data to show that the extra fuel is superfluous (fuel remaining at the critical point), or the operator proves that the World Area Forecasting System is unequivocally being used in the flight plan. The FAA does not agree. The basis for the contingency fuel values in paragraph (G) of Appendix G is the service experience gained in ETOPS for almost two decades, and the vast improvement in accuracy of the World Area Forecasting System wind forecasting. For those operators that cannot show the use of a wind model acceptable to the FAA, then 5% of the total ETOPS fuel is to be added to compensate for errors in wind forecast data.

NBAA agreed with the FAA's proposal for extra fuel for anti-icing systems; however, it notes that not all of its members' airplane flight manuals have information on increased fuel burn due to anti-icing systems. This commenter opined the FAA should not require a performance factor that operators cannot figure out from the airplane flight manual. The FAA agrees that performance data for the particular airplane is necessary for operators to apply correct values when determining fuel requirements. Airplanes that have the range and technology to undertake operations of this complexity and stage length are limited and unique to the industry. The FAA is aware of significant performance history and supporting manufacturer data for most of these types. The FAA has also been assured by manufacturers and GAMA that this data will be available for those airplanes that qualify for ETOPS. The FAA will not require the application of part 135 ETOPS until 1 year following the publication of the final rule.

Part 135, Appendix G, Definitions.

The FAA proposed definitions for ETOPS and ETOPS dual maintenance. For this final rule, the definition of ETOPS Alternate Airport and ETOPS Entry Point have been added for clarification, while limitations on dual maintenance are now specified rather than defined. For part 135, any passenger-carrying operation outside the continental United States more than 180 minutes flying time (in still air at normal cruise speed with one engine inoperative) from an airport is considered ETOPS. This operation is further limited to a maximum of 240 minutes.

JAA, UK CAA, and Airbus commented that the definition of ETOPS would limit the maximum diversion time for part 135 airplanes to 240 minutes and argued that this limitation for three- and four-engine airplanes should be removed. NBAA likewise disagreed with the maximum 240-minute diversion, noting that operations that have been flown beyond the 240-minute limit would now be prohibited. They also opined that a restriction on airplanes with more than two engines is unnecessary. NBAA stated it would support some limited additional requirement, such as limitations on dual maintenance for ETOPS critical components, to allow approval beyond 240-minute operations.

The FAA continues to believe that three- and four-engine airplanes conducting ETOPS should be limited to 240-minute diversion authority. This subject was discussed extensively during the ARAC process, and the same conclusion was reached each time. The industry agreed that for operations conducted under part 135, a 240-minute diversion limit was sufficient. It was the consensus of the industry that the 240-minute diversion limit met the industry needs. Part 135 on-demand flight operations have few restrictions on the type of airport required for use. Thus, the number of airports that could be used as an ETOPS alternate airport is far greater than what is available for a part 121 ETOPS operator. For the part 135 ETOPS operator, the airport is not required to have part 139 equivalent safety standards. Likewise, part 135 on-demand operators are not required to have a minimum RFFS capability at the selected ETOPS alternate airports. Because of the different performance capabilities with small turbojet airplanes used in part 135 on-demand ETOPS, the minimum airport runway length is far less, typically around 5,000 feet. Thus there are many more airports available in all areas of the world that may be used as an ETOPS alternate airport by the part 135 ETOPS operator. As a result, the 240-minute limit will not restrict flight operations, and a diversion time exceeding 240-minutes is not supported. Although NBAA now disagrees with the 240-minute limit, this organization supported the ARAC proposal.

NATA and NBAA commented that the manufacturer, not the operator, must determine the air speeds necessary for ETOPS approval. They stated they are not aware of any publicly approved data to meet this need and that the lack of information on air speeds prevents any meaningful comment on the effect of the proposed rule on part 135 on-demand operators. Without the ability to determine a 180-minute range, no operator can comply with the proposed regulations.

The FAA agrees with the commenter that the manufacturer must develop the required data on engine-inoperative cruise speeds. The General Aviation Manufacturers Association (GAMA) organization has assured the FAA that the manufacturers will have this data available to operators before this rule is effective. The FAA is committed to provide the necessary time for part 135 operators to evaluate the applicability of the rule to their operation, and to make any necessary ETOPS program and associated training program changes. This time will also be available to manufacturers to develop and publish the necessary performance data. The FAA has adjusted the effective date of the part 135 rule for the operational requirements to be 1 year from the effective date. Likewise, the FAA has expanded the grandfathering criteria of the NPRM to provide a uniform

application between parts 121 and 135. Those airplanes manufactured up to 8 years after the effective date of this rule do not have to comply with the airworthiness requirements of this rule.

NATA requested the regulation specifically state how the 180-minute distance is calculated once ETOPS speeds are available. For example, the preamble stated the ETOPS threshold is based on ''a single-engine inoperative speed in still air and standard conditions''; Appendix G fails to state the standard conditions and only ''still air'' is indicated.

Calculations made to determine the distance represented by 180 minutes should use standard conditions and still air. Section 135.364 has been changed to reflect this requirement. In calculating the distance flown at the selected one-engine inoperative cruise speed, the operator may select a speed provided by the manufacturer that best suits the area of operation being flown. A slower speed will result in a higher engine-inoperative service ceiling, but in less distance flown. A slower speed may be required when terrain clearance is an issue. Conversely, the selection of the fastest speed will result in a further distance flown, but at a much lower engine-inoperative ceiling. The selection of a higher speed will also result in a higher fuel burn, and that fuel burn rate for the planned one-engine inoperative speed must be used in the ETOPS critical fuel calculation. This calculation can result in a larger critical fuel reserve requirement for the flight, and that may impact the useable payload for that flight. Since the operator is in the best position to know what factors to consider on a particular flight, the FAA has provided operators with the flexibility to make those determinations.

D. Airplane Approvals in the North Polar and South Polar Areas

1. Part 121 Operations

The current FAA Polar Policy letter guidance, discussed earlier in this document, is codified in this section and is expanded to include the South Pole.

Qantas and IATA commented that Polar operations are unique and therefore, requirements for operations in this area should be addressed in a separate rule. While the polar requirements could be addressed in another rule, they were proposed in the NPRM and the FAA does not believe there is any reason to further delay their adoption. Operations in these areas are necessarily conducted over parts of the globe subject to hazardous conditions and have many of the same characteristics as areas of the world containing routes that are greater than 180 minutes from adequate airports. The current polar guidance codified in this rule contains requirements specific to these areas, including some ETOPS-like requirements such as passenger recovery plans and diversion planning.

The South Polar area by this rule is defined in this rule as the area South of 60° S latitude. The FAA is aware that there is not a great amount of industry experience conducting flight operations in this area of the world. However the forecast for traffic growth prepared by both major airplane manufacturers indicate that the South Polar area, like the North Pole, will become a major region for commercial air transportation as direct routes over the polar cap to, from, and between South America, Australia, New Zealand, and South Africa are established. The rules that will apply to the South Polar area provide a proven safety process for these future operations.

Several commenters, including JAA, NACA, and Airbus, noted that meeting the ETOPS planning, equipage, and operational requirements for polar areas may not be practical, and may give some operators an economic advantage. FedEx found while the dispatch requirements may be reasonable, other ETOPS requirements, such as maintenance and reporting, should not be an issue for three- and four-engine airplanes operating in the Polar region today.

The Polar policy letter already requires planning, equipage and operational requirements similar to ETOPS in these areas and the rule codifies such practices in this section III. To the extent some operators may face greater costs than others, the FAA has made certain changes to the NPRM necessary to address the economic burden on those operators. Specifically, for the polar areas where flight operations can be conducted at less than 180 minutes, Appendix P, section II has been changed to eliminate ETOPS requirements from polar route approval. If the operator flight plans the route in a manner that would classify the operations as ETOPS under other circumstances, the operator must meet both the ETOPS requirements and the polar requirements established by this rule.

FedEx commented that the NPRM would require any aircraft operating north of 78° N latitude to comply with these requirements, yet it has operations specifications that already address operations in Polar areas. FedEx believes that the NPRM addresses passenger-carrying aircraft and that these issues have already been addressed for all-cargo operations.

The commenter's reference to current operations specifications represents the current FAA Polar Policy codified in this rule. Because the FAA intends all operations in the polar areas to be governed by the agency's polar policy, we believe it is more appropriate to regulate these operations through a rule of general applicability rather than by operations specifications. The Polar policy outlined in Appendix P, Section III of this rule apply to all air carrier operations in these areas including all-cargo operations.

JAA fully supported the concern of the FAA concerning the use of airports in severe weather conditions, but found that the proposed rule does not achieve its intended purpose in that it does not account for the variability of airports in Polar regions. Some airports may present an unacceptable level of risk, regardless of the season, and others are safe during the summer, but not otherwise. While the JAA takes into account safety precautions (based on seasonal, wind and temperature factors) for specific airports, the NPRM does not take such factors into account.

The FAA does not agree with the conclusion reached by the JAA that today's rule fails to meet the intended purpose of applying safety precautions to those airports designated for use as alternates that are in severe climate areas. The FAA fully understands the JAA/European approach to designated airports located in severe climate areas, i.e., operators need only consider specified alternate airports already deemed adequate by the JAA. We believe the FAA rule is sufficiently robust, and ultimately places the responsibility with the operator as to the required amount of detail and preparation necessary for passenger protection and recovery. The operator also has the flexibility to modify the procedures if seasonal variations for that airport exist. The JAA draft proposal as currently written does not require any preparation for those airports used as ETOPS alternate airports that are not determined to be severe climate airports. We believe that this system might encourage some operators to avoid those ''designated severe climate airports'' to avoid the need for a passenger recovery plan, even when the use of that airport may be the most appropriate action for the given problem encountered.

2. Part 135 Operations

This rule likewise codifies the current FAA Polar Policy letter guidance for

part 135 operations in § 135.98. This section covers only the North Polar area and although the operation is not considered ETOPS, certificate holders must follow these standards whenever a route is flown and a portion of the route traverses this area. The FAA proposed that, except for intrastate operations within the State of Alaska, any operations in the region north of 78° N latitude, designated as Polar, must be authorized by the Administrator and have certain items addressed in the operator's operation specifications. Included in these items were identification of alternate airports, recovery plans, specific communication systems, changes to the operator's MEL including the requirement for special equipment and consideration of solar flare activity.

Dassault commented that the proposal implies that an operator may not enter the Polar area unless the weather and operating conditions of the required alternate airports are reviewed and are expected to be above minimums specified in the operations specifications. It recommended the FAA specify the type of weather in the weather information requirement. Dassault also commented the FAA should consider a reduced recovery plan for airplanes with a maximum seating capacity of 19 or fewer passengers. Dassault goes on to say the FAA should allow a 1-year compliance period for setting up an MEL that takes Polar operations into account which becomes effective one year after, and apply only to those airplanes that were added to the operator's operations specifications, 8 years after the effective date of the rule. Dassault noted the proposal would require considerations during solar flare activity and recommends the FAA allow a predictive method for evaluation of radiation, since measuring equipment is not yet available on the market. Finally, Dassault recommended the requirement for Polar equipment only apply to the crewmembers, and the FAA should specify the contents of the Polar kit.

The FAA does not agree that the rule need be so detailed that it specifies the weather information required. In general it is understood that the weather reports should provide the present weather conditions including surface winds, any adverse trends, and the updated weather forecast for the expected time of use, if available. In addition, field condition reports should be obtained. The pilot will need to evaluate this information to determine that the weather minimums required for the instrument approach can be met.

The FAA agrees that the recovery plan for a part 135 passenger-carrying operator will require far less complexity than a plan for a similar part 121 operator because of the limited number of passengers. However, it does not agree that a further reduced plan is appropriate if the maximum seating capacity is less than 20. Currently, part 135 applies to certain passenger-carrying airplanes with a maximum seating capacity of 30 or less. Should the FAA change the current restriction on seating capacity in part 135 operations, it may consider permitting a tailored passenger recovery plan based on the seating capacity of a particular airplane.

In response to Dessault's comment, the FAA has determined that a 1-year compliance period is acceptable for development of an MMEL and MEL. As discussed earlier, the certification requirements of this rule apply specifically to those aircraft manufactured 8 years after publication of today's rule. The FAA is not requiring operators to equip their airplanes with radiation measuring equipment. There is advisory material already available to set up a predictive system for measuring solar flare activity. AC 120–52, Radiation Exposure of Air Carrier Crewmembers, and AC 120–61, Crewmember Training on In-Flight Radiation Exposure, are excellent resources for the operator to consult in developing a system and any necessary training. Likewise, today's rule does not require a part 135 operator to keep any ''polar kits'' on board the airplane. Rather, cold weather anti-exposure suits are for use by the crewmembers. No provision is made for passengers, although operators may choose to provide such suits should they transport passengers through the polar regions.

XIII. Comments on the Costs and Benefits of the Proposed Rule

Many commenters noted that current part 121 and part 135 regulations do not prohibit operations beyond 180 minutes and that the initial regulatory assessment was wrong. The FAA acknowledges the error and the final regulatory evaluation does not attribute any cost savings to more efficient routings. The following is a summary of the proposed provisions that would entail costs and an analysis of the comments concerning economic impacts from the NPRM.

In response to the certifications requirements of the proposed rule, Airbus and other commenters stated the proposed rule might be understood to require manufacturers of current generation ETOPS aircraft to apply retroactively for type design approval under this section and appendix K, which would impose very high costs. Airbus estimated costs for manufacturers at $500,000 per aircraft family to perform an assessment of all time-limited systems in normal and degraded system configurations, with a full numerical system safety assessment of all aircraft systems in the order of $1 million per aircraft family. Any design change found necessary as a result of these assessments would increase this cost.

The FAA has recognized that existing aircraft designs may have difficulty complying with the new part 25 requirements and has added § 25.3. Airplanes with existing type certificates at the time this rule becomes effective are exempted from some or all of the new part 25 requirements. Therefore the FAA does not find that these system-wide costs will be incurred.

Airbus and Dassault commented that the icing requirements in the proposal go beyond the current requirement and would require analytical and flight test assessment. Airbus stated that manufacturers would incur costs in the order of $1.5 million per aircraft family to complete an analysis and a flight demonstration of icing on unprotected areas of the airplane in order to comply with this provision.

The FAA agrees that this requirement may add additional analysis to the certification of a new airplane to meet the requirements of the rule. However, evaluating ice accumulation on an airplane in icing conditions is required for a new part 25 airplane regardless of whether it's ETOPS certified. The effect of the ETOPS rule will be to add another criterion for determining the size of the ice shapes simulated during certification testing. The ETOPS environment will not necessarily be the most critical condition for the maximum ice accumulation. An applicant will determine the maximum ice accretion on an airplane during an ETOPS diversion and compare that to the maximum accretion from other icing conditions used for basic part 25 compliance. The additional costs associated with flight testing an airplane for ETOPS icing will be minor since an applicant will likely only test the most critical ice accretion from all these conditions as is done for basic part 25 certification.

UPS stated that the installation of a low fuel alerting system ''would require extensive modifications to three- and four-engine aircraft to add flight management computers that will allow the system to provide the required flight deck alerts * * *'' but did not provide

any cost information. Airbus stated that the design and certification costs would be in the order of $2.5 million per aircraft family not yet fitted with any of the prescribed alerts and up to $1 million per aircraft family partly compliant. The FAA estimates the cost of a full retrofit will be $200,000 per aircraft; the cost of a partial retrofit will be up to $110,000 per aircraft.

Dassault recommended allowing alternate solutions to the fuel alert display.

The FAA recognizes that some existing airplanes may have difficulty in complying with this requirement without substantial airplane system modifications. Older three-crew airplanes, in particular, have a flight engineer who monitors fuel quantity throughout a long flight and the FAA considers this additional crewmember to be an acceptable alternative to the automatic low fuel alerting for those airplanes. As such, the requirement for a low fuel alerting system does not apply to three- and four-engine airplanes with a required flight engineer, or to three- and four-engine airplanes with existing type certificates manufactured up to eight years after the effective date of this rule. This rule will also not apply to two-engine airplanes with existing type certificates being approved for ETOPS up to 180-minutes. However, all newly type-certificated airplanes, and two-engine airplanes being approved for ETOPS greater than 180 minutes must comply. The FAA will continue to use its estimate of $2.25 million that substantially agrees with Airbus' estimate.

Air New Zealand, Dassault, JAA, New World Jet, Northwest, and United made comments on various technical aspects of the APU requirements. KLM commented that the NPRM is unclear if existing three- and four-engine aircraft on long range routes must have an APU In-flight Start Capability, noting that MD11s have an APU in-flight start capability below and up to flight level (FL) 250 and all 747–400s APUs do not have an in-flight start capability at all. This requirement will have a large cost impact that is not addressed in the NPRM. FedEx made a similar statement. UPS noted that APUs are not currently installed on its DC8 fleet, and it is unclear whether this proposal would require installation for ETOPS. ATA noted those efforts would include design or adaptation of an APU, development of new interface equipment, and extensive ground and flight testing. The effort also would include potentially extensive aircraft structural modifications to accommodate the APU installation.

The FAA has amended the final rule language to make it clear that an APU in-flight start and run program is only required if APU in-flight start and run capability is required by the type certificate for ETOPS. ETOPS requires that the airplane must be equipped with at least three independent sources of electrical power. For airplanes that must use the availability of the APU to satisfy this requirement, an APU in-flight start and run program is required. Since current models of the 747–400 satisfy this certification requirement without the APU, no such program is required. The rule is written to take into account possible future airplane designs or existing airplane modifications which would make this requirement applicable. The cost of designing an APU program for a new model is minimal. The final economic evaluation does not include any costs related to the APU requirement.

Boeing proposed changing the requirements to obtain certification for a two-engine airplane for ETOPS to state that a flight test must be conducted to validate the adequacy of the airplane's flying qualities, performance and the flight crew's ability to safely conduct an ETOPS diversion with an engine inoperative and under non-normal worst case ETOPS significant system failure conditions. The FAA agrees that the intent of the flight testing is to evaluate ETOPS significant systems. We have included the cost of this testing.

In response to Boeing, the Air Line Pilots Association, International (IALPA), and the BALPA comment on the post-airplane demonstration inspection requirement, the FAA has changed the first sentence of paragraph K25.2.2(g)(4) to require that the ETOPS significant systems must undergo on-wing inspections in accordance with the tasks defined in the Instructions for Continued Airworthiness required by § 25.1529 to establish the ETOPS significant system condition for continued safe operation. The engines must also undergo a gas path inspection. These inspections must identify abnormal conditions that could result in an in-flight shutdown or diversion. Any abnormal conditions must be identified, tracked and resolved in accordance with paragraph (l) of section K25.2. The costs of these assessments are contained in the final rule.

The FAA's preliminary economic assessment for additional voice communication equipment for all ETOPS operations beyond 180 minutes estimated the installed cost per unit at $223,000 or $209,000, discounted. The operating costs per unit include weight-related fuel consumption, a fixed monthly fee, and a variable usage charge. The FAA estimated that revenues derived from passenger use of the SATCOM capabilities or improved maintenance procedures made possible by the new system would offset the variable usage fee. The annual operating costs per unit were estimated at approximately $2,500 ($2,000 fixed fee + $500 fuel cost). Atlas Air estimated that the first-year cost of installing and maintaining SATCOM would be roughly $225,000 per aircraft. FedEx estimated the unit cost of installing SATCOM and alternate communication capabilities at $263,035 and annual costs of $3,035. ATA surveyed members and reported an average one-time charge of $329,892. (A key assumption in ATA's estimate is an anticipated need to install a dual HF/DL communication system in addition to the SATCOM at an additional cost of $105,000 per unit.) ATA members did not take issue with the FAA's estimate of annual recurring charges. Airbus stated, depending on the SATCOM system, charges-per-minute may be incurred which may also include air traffic system use. FedEx, and IATA requested that three- or four-engine operators not meeting the requirement be permitted to continue ETOPS for a period not to exceed 6 years from the rule's effective date. Commenters also said that SATCOM was ineffective in Polar areas.

The FAA does not agree that a dual HF/DL system will need to be installed under the requirements of this rule. Adjusting FedEx's estimate by the $105,000 it included in its estimate reduces its estimate to $158,035, significantly below the FAA's estimate. The same adjustment to the ATA cost estimate results in a cost of $224,892, also below the FAA estimate. These lower estimates reflect lower initial equipment costs. The higher fuel costs cited by FedEx result in an additional cost of fuel of approximately $160 per year. The FAA also does not agree with Airbus' assertion that the variable use costs were not addressed; the FAA believes these costs will be offset as noted above. The FAA, in order to be conservative, will retain its higher initial cost estimate and we have substituted fuel price projections provided by the Office of Management and Budget, which are higher than FedEx's estimate.

As discussed earlier, the FAA does not agree to the 6-year phase-in period requested for the communications equipment; we allow a 12-month installation period for three- and four-engine airplanes used for ETOPS.

The FAA agrees that for the polar areas, three- and four-engine passenger

carrying operators do not have to meet the ETOPS requirements provided the flight operations are planned not to exceed 180-minutes to an ETOPS alternate airport. The FAA has amended Appendix P to clarify this fact. As stated earlier, all-cargo operations using airplanes with more than two engines never have to comply with ETOPS requirements.

The FAA did not assign any cost to the fire fighting requirements proposed in the NPRM. Omni International stated the additional costs to upgrade the capabilities of an aerodrome, including the cost of training additional personnel, are not one that a municipality or State will entertain willingly on the off chance that an aircraft might divert there. It is entirely conceivable that carriers like Omni will be compelled to bear these costs either through consortia established to protect the integrity of an ETOPS route, or through radical increases in user's fees like navigation charges.

The FAA has amended § 121.106 to be in-line with the RFFS requirements established for the 207-minute ETOPS policy. For ETOPS beyond 180-minutes, the minimum acceptable RFFS for ETOPS alternates remains at ICAO category 4 as long as the aircraft remains within the authorized diversion time (for that flight) to an adequate airport that has a ICAO category 7 RFFS capability or higher. Since operators currently do not fund RFFS operations and the agency cannot speculate on future conditions, the FAA does not find a cost to be associated with this change.

A commenter stated that the public protection requirements of the NPRM demand data regarding the provision of public protection including facilities to a detail that is not available in all parts of the world but are obviously required to complete the proposed aerodrome specific passenger recovery plans.

The FAA clarifies that additional data may be required to complete the passenger recovery plan. However, the airline is responsible to obtain the data under the existing regulation, even if that requires visiting some airports. Furthermore, it is expected that more than one carrier will serve such routes and the data will be shared and readily available.

The rule will require certificate holders with passenger operations beyond 180 minutes from an ETOPS alternate airport or operating in a polar area to prepare passenger recovery plans that are robust enough to handle a diversion. The FAA estimated that the initial development of a plan would cost $7,500 and $3,000 annually to maintain the robustness of each plan. In a discussion of the benefits, the FAA sought information on the costs of diversions and provided a hypothetical ''worse case'' scenario of recovery costs as high as $1 million. FedEx, IATA, and KLM stated that in some cases this would require a spare aircraft and/or crew with all related costs. American Trans Air stated that this requirement would require the addition of full time employees at significant costs. It also requested an 18-month phase-in period. The ATA stated that, based on the ''worse case'' scenario, costs and the number of projected diversions of three- and four-engine airplanes would result in costs of $2.05 million. The Association also stated that 73 percent of ETOPS-candidate three- and four-engine airplanes of ATA members are all-cargo operators.

The FAA requested information on the number and cost of diversions. While the possibility exists that a spare aircraft may be needed, the history of mechanically related diversions indicates that this will be a rare event and the need for a spare aircraft even rarer. The commenters provided no cost information so the FAA cannot consider this issue. The FAA does not agree with American Trans Air's assertion for the need to add full-time employees because of this provision. The estimated hours necessary to set-up and maintain recovery plans do not warrant full-time employees and it should be noted that expert contract employees can be retained to develop and respond to this requirement. The FAA acknowledges ATA's estimate of all-cargo operations and has removed the passenger recovery plan requirement for such operations.

The FAA however does not oppose that the air carrier passenger recovery plan being a part of the air carrier's emergency response plan. The FAA cannot use the ''worst case'' cost offered by the ATA since it is unsubstantiated.

The FAA requested comments and supporting data on the impact of the requirement that all MEL items, the Fuel Quantity Indicating System, and the communication system must be operational. American Trans Air stated that the proposed regulation would restrict and/or remove its L1011 aircraft from North Polar Operations. Airbus commented that the cost for operators to modify two-engine aircraft and long-range three- and four-engine aircraft procedures, documentation, training and the software applications that they use in fuel planning, flight planning, and other related activities has not been taken into account in the Economic Impact Assessment. The lead-time for the companies that supply computerized flight-plan and map plotting systems to release new versions of their applications compliant with the new rules is 12 months after the publications date of the rule. The cost of the updating the necessary software applications ranges from $7,000 to $15,000 depending on the application and supplier. The overall cost of documentary modifications and re-issuing of documents and manuals is estimated to $200,000 for an operator with one ETOPS aircraft. The lead-time is in the order of 6 months. Fuel reserve training is estimated at $200,000 and passenger recovery training is estimated at $100,000 for a fleet of six aircraft. In addition, three- and four-engine aircraft operators would have to undergo a full process of operational assessment and approval including an assessment of their service experience and reliability record. This assessment is comparable to an ETOPS assessment for a first approval under current ETOPS criteria and requires 6 months notice with FAA. The overall cost of the approval process is estimated to cost $500,000 per applicant based on data from former ETOPS assessments. Three- and four-engine aircraft operators would have to train their flight crew, dispatchers, maintenance personnel and cabin crew to the entire extent of the operation and maintenance rules instead of just to the modified elements. The overall cost for a fleet of six four-engine aircraft of one type is estimated at $2.5 million.

The FAA is allowing delayed compliance to minimize the costs to operators. The commenter does not explain the basis for its estimated costs. Existing regulations in section 121 already require operators of airplanes with more than two engines to take into consideration adequate airports along the route in the event of one or two engines becoming inoperative. The new requirement for ETOPS en-route alternate airports does not constitute a big impact; the final regulatory evaluation includes a per flight charge to account for this task. Existing regulations require fuel reserves. The commenter has not shown how the incremental cost of the new passenger recovery training requirements will be $100,000. However, the FAA has included the cost of four hours of initial ETOPS training for pilots and dispatchers in the final rule in addition to passenger recovery training for pilots, dispatchers, and flight attendants where applicable. If the operator intends to only fly the North or South Pole at or below 180 minutes, there are no additional ETOPS requirements. Operators currently serving the North

Pole must meet current polar policy guidance and its operational requirements such as having a recovery plan, listing en-route alternate airports, and having effective communication capability for all portions of the flight route. For operators desiring to operate ETOPS in any other geographical area subject to ETOPS, an ETOPS application process will need to be completed. The commenter did not explain what they mean by data from former ETOPS assessments and has not provided detail to support this cost estimate.

The FAA believes it is reasonable to assume that an operator will make a decision that minimizes costs and creates the most efficient operations. Experience with other rules in part 121 provide evidence that operators do not train every flight crewmember and every maintenance person on every new rule. However, we cannot determine that only four airplanes and five mechanics per airplane used in the initial economic assessment accurately reflect the most efficient operation. Therefore, in order not to underestimate the costs of the final rule, we assume that the operator will have to train a full crew and ground personnel and equip all or most airplanes for ETOPS.

FedEx and IATA recommended that ETOPS regulations not be applied to airplanes with more than two engines. The FAA does not agree completely with the commenter that ETOPS should not be applied to airplanes with more than two engines. The basic concept of ETOPS is to preclude the diversion and, if a diversion is required, to protect that diversion. We do however agree that for airplanes with more than two engines, passenger carrying operations may be excluded from the ETOPS maintenance program requirements and that all-cargo operations may be excluded from all ETOPS requirements.

The concept of precluding and protecting the diversion has equal validity among all passenger-carrying airplanes, regardless of the number of engines. In addition, the increased frequency of operations on routes that are distant from en-route airports and the recent opening of routes over the Canadian and Russian far North bring additional challenges that affect the operations of all airplanes, regardless of the number of engines. Even though these passenger-carrying airplanes with more than two engines have operated safely and successfully on long range routes in all areas of the world for many decades, it is reasonable to expect airplanes with more than two engines to designate the nearest alternate airport, and be flight planned at 240-minute diversion authority, if possible. The application of such ETOPS concepts as recovery plans; designating the nearest alternate airport, and pre-flight planning to operators of airplanes with two-or-more engines will enhance the safety of their operations and benefit the industry.

Section 121.374 sets forth the ETOPS maintenance elements: CMP; CAMP; monitoring of propulsion system, engine condition, and oil consumption; APU in-flight start program; maintenance training; and procedural changes approval. While many of these elements are a normal part of an operator's maintenance program, some may need to be supplemented in consideration of the special requirements of ETOPS. Airbus commented that these additions would require that operators engaged in any of the ETOPS operations covered in Appendix P of part 121 apply all ETOPS maintenance elements. The FAA acknowledges possible confusion regarding the maintenance elements required in appendix P. Section 121.374 has been amended. An operator's maintenance program for all two-engine ETOPS airplanes, regardless of diversion time, must comply with § 121.374. An operator of three- and four-engine airplanes operating beyond 180 minutes will not be required to have an ETOPS maintenance program.

FedEx noted three- and four-engine aircraft, pursuant to the provisions of a CMP, do not have parts and systems that must be equipped on aircraft in ETOPS operations. Presumably, the manufacturers will develop and offer these parts for sale once a CMP has been created. FedEx anticipates buying and storing these parts will be very expensive. FedEx also estimated certification costs (including the costs of developing CMP documents, and certification of aircraft parts and systems) as a one-time cost of $4,962,000. The development of ETOPS parts Control Programs, maintenance training, creation of centralized maintenance control system, additional parts inventory, performance of pre-departure service checks and other § 121.374 programs would be $17,033,000 as a one-time cost, and $847,000 per year.

The FAA does not agree. As stated in the preamble, if there is no CMP document for an existing airplane, then there is no requirement to comply with a CMP. The certification costs are a cost to manufacturers and not operators. These costs are discussed in parts 21, 25, and 33. Most likely the existing IPC program will satisfy the ETOPS parts control needs. Most airlines already have a centralized maintenance control program and if they do not it will require minimal cost to establish and the operator has a year to accomplish it. The FAA does not have a specific ETOPS parts inventory requirement.

Continental noted the time estimated by the FAA of 6 weeks to create the pre-departure check does not include the timeframe for FAA approval. When the FAA approval time is factored in development time would be 14 weeks. The FAA has provided a 1-year period to implement the maintenance requirements. The FAA also estimated the continuing costs of several elements of the CAMP program. A pre-departure check was estimated to take two staff-hours at a cost of $90.

ATA did not concur with proposed pre-departure check for three- and four-engine airplanes. It posited utilizing the proposed ETOPS pre-departure service check would prevent none of the incidents cited in the proposal risk analysis. The FAA has agreed to withdraw this requirement and all other elements of the ETOPS maintenance program for airplanes with more than two engines in ETOPS.

FedEx commented that it agrees with the additional training for passenger recovery training for crewmembers and dispatchers of three- and four-engine aircraft pilots as required, as well as generally on ETOPS procedures. Northwest stated that it would like to minimize cost and operational impact by training through bulletins and written procedures.

We understand that an air carrier may need to adjust the pilot training syllabus in order to accommodate the new training unit for three- and four-engine flight crews. We have included the costs of 4 hours of initial pilot and dispatcher training and recurring costs for ETOPS related training, and 1 hour for passenger recovery training for pilots and dispatchers and one-half hour for flight attendants for those operators conducting ETOPS greater than 180 minutes from an ETOPS alternate airport and for operations in the polar areas.

The training syllabus, as well as the means to provide that training, is at the discretion of the air carrier, as it should be tailored to fit within existing training and operational experience.

Airbus stated the cost of training cabin and flight crews for their roles in the passenger recovery plan is estimated to be $100,000 for a fleet of six ETOPS aircraft not involved in Polar and NOPAC operations using airports subject to extreme Polar weather.

Airbus did not provide supporting data, and the FAA cannot accept its estimate. This requirement will only entail minimum training of cabin and

flight crews. An air carrier's existing emergency response plan includes many of the elements of a passenger recovery plan. In addition, there are expert contract services available to implement the passenger recovery plan. The FAA has included initial training and recurring training costs for pilots, flight attendants and dispatchers for those operators conducting ETOPS greater than 180 minutes from an ETOPS alternate airport and for operations in the polar areas in the final regulatory evaluation.

Several carriers including Atlas Air, Omni International, FedEx, and UPS included aggregate costs of training maintenance, crewmembers, flight attendants, dispatchers, and other operational personnel covering all or significant portions of their fleets.

The FAA in this final regulatory evaluation has estimated the cost of training all maintenance personnel, all dispatchers, all international pilots and flight attendants, and included all or significant portions of operators fleets that have operation specifications for affected areas and have or may have conducted flights in the affected areas during a one-year period.

Airbus stated that the requirement to consider all alternate airports in its dispatch or flight release would result in a severe increase in the cost of implementing the rule. Airbus recommends that the definition of an adequate airport be amended such that these airports would be required to have the infrastructure and services necessary to support a passenger recovery plan. Alternatively, the rule might be amended to require that the operator consider all adequate airports ''capable of supporting a passenger recovery plan for the concerned aircraft.''

The FAA does not agree. The requirement to consider all adequate airports in an operator's selection of ETOPS alternates for a specific flight will likely occur during the route planning stage and will be a minimal addition to the route planning process. It is a requirement of the rule that only adequate airports that meet such passenger recovery criteria be used as ETOPS alternate airports during the dispatch planning. The final regulatory evaluation includes a computer programming cost.

The final rule requires that flight plans for ETOPS beyond 180 minutes be calculated based on certain criteria so that the resulting time not exceed the time specified in the airplane flight manual for the airplane's cargo fire suppression time minus 15 minutes. Three- and four-engine airplanes not meeting this requirement will have a period not to exceed 6 years from the date of this regulation to meet the requirement. The FAA estimated the cost of the upgrade kit and an additional Halon bottle at $75,000 plus a $1,400 installation cost per aircraft. Additional fuel costs will also be incurred. ATA's survey of its members indicated an average of $62,500 for parts. Atlas Air estimated first year cargo fire suppression cost at $81,200. FedEx estimated installation of fire suppression upgrades at $54,800 per aircraft and annual costs of $1,450. They indicate that the time to modify the cargo fire extinguishing system should be at least 8 years. IATA and KLM agree with the 8-year time frame.

The ATA survey results were 17 percent lower than the FAA estimate with an average ten-year total cost per aircraft eight percent less than the FAA estimate. The Atlas Air and FedEx estimates were also lower. In order to not underestimate the costs of installing the fire suppression system, the FAA will retain its estimate of installation costs and revise its annual cost to reflect higher fuel costs. The FAA does not agree with the request to extend the installation deadline by an additional 2 years.

The final rule prohibits the dispatch or release of a flight by an airplane with more than two engines for more than 90 minutes at full cruise speed unless it has adequate fuel, considering wind and weather conditions, assuming a rapid decompression, followed by descent to a safe altitude to fly to an adequate airport, including enough fuel to hold for 15 minutes at 1,500 feet. ETOPS flights greater than 180 minutes have to comply with similar conditions in flight planning. The FAA estimated flight-planning costs to be minimal since they are generally computerized. Airbus commented the cost of retraining dispatchers and flight crews on the new fuel reserves and dispatch criteria is estimated to be $150,000 for a fleet of six ETOPS aircraft of one type. The lead-time is 3 months after the new software applications have been deployed and validated. FedEx noted this additional rule will increase rapid decompression fuel requirements for three- and four-engine aircraft, with the addition of 15 minutes holding fuel at 1500 feet whenever the aircraft is operated more than 90 minutes but less than 180 minutes from an adequate airport. This rule represents a cost not required in current operations. Northwest requested further review of the increase to the decompression fuel requirements for three- and four-engine aircraft. This all engine reserve is not currently required and represents an additional cost (either fuel cost to carry or payload limiting) to operators.

The FAA disagrees. The added 15 minutes of holding fuel does not represent an additional cost to operators. There is currently within part 121 two separate fuel requirements that apply to 3- and 4-engine operators conducting flag and supplemental operations. The requirement of § 121.646(a) for holding fuel is a lesser amount of fuel reserves already required for the operation and is therefore not an additional cost to the operator.

Appendix P to part 121 sets forth the ETOPS approval requirements and limitations for various areas of operation and diversion time limits. Airbus stated that the retroactivity of type design requirements would impose very high costs for existing ETOPS aircraft and for three- or four-engine aircraft. It recommends a compliance time of at least 6 years for all two-engine ETOPS aircraft already assessed or in the process under current criteria and at least 8 years for three-or four-engine aircraft.

The FAA is not making the type design requirements retroactive as explained earlier in the preamble.

The rule will require a part 135 operator to be ETOPS certified for operations outside the continental United Stated unless the route is planned to remain with 180 minutes flying time of an adequate airport or the operation involves an all-cargo operation aboard an airplane with more than two engines. NATA believes that this will require proof that a flight was below the 180 minute threshold. The FAA, however, holds that it is the responsibility of the operator to determine what is and is not ETOPS. If it is, then they must flight plan accordingly. There is no requirement to prove a flight is not ETOPS. The rule does not impose any burden of proof in this case and therefore there is no additional paperwork or associated cost.

Part 135 operators will have to comply with the continuous maintenance program and the requirements of Appendix G if the operations use two-engine airplanes. NetJets stated the cost/benefit analysis does not adequately address the added costs of maintaining ''9 passenger seat or less'' aircraft under a continuous maintenance program currently required for aircraft with ''10 or more'' passenger seats. These costs not only include the actual development and approval of the program, but the added costs associated with maintaining personnel for the program. Also, the ''dual maintenance'' requirement will mandate that more maintenance technicians be made

available for maintenance conducted on ETOPS aircraft. This cost is not addressed in the cost/benefit analysis.

The FAA's database indicates that only 37 operators have aircraft that currently meet the aircraft requirements but do not meet the maintenance provisions for aircraft type certificated for 10 or more seats that is a requirement for operations beyond 180 minutes. None are authorized for operations in the Polar regions. The only other route beyond the ETOPS 180-minutes threshold is a portion of the South Pacific, which can be avoided by some additional flying time. The FAA concludes that these operators can continue to fly non-ETOPS international routes and therefore will not incur ETOPS-related costs. Also the FAA has eliminated the ETOPS maintenance requirements for ETOPS on passenger-carrying airplanes with more than two engines.

ETOPS flights beyond 180 minutes but planned to remain within 240 minutes have, in addition to the maintenance requirements, certain planning, operational, experience, and equipment requirements. Dassault commented that the check required immediately before a flight and certified by an ETOPS qualified maintenance person is unrealistic for part 135 operators who do not fly ETOPS routes on a regular basis.

The FAA disagrees that a pre-departure service check is unrealistic for 135 operators. Part 135 operators are already required to have procedures in place to ensure that maintenance is performed by properly qualified maintenance personnel. Allowing a pilot to perform a pre-departure service check degrades the importance of the check and places a safety critical task below the level of performance required to change a tire or replace a light bulb for reading.

NetJets, Inc., commented that it manages and/or operates approximately 500 turbojet aircraft in fractional ownership programs and part 135 operations. The flight operations of approximately 220 of those aircraft will be directly impacted by this proposed rule. The most significant impact is for operations conducted between the west coast of the United States and Hawaii. In 2003, they conducted more than 760 flights to and from Hawaii and the contiguous U.S. At the present pace, more than 1100 flights will occur in 2004. Based on the data available at this time, approximately 75–80% of these flights will not be possible if the proposed rule is adopted as written. It is estimated that over the 10-year period following adoption of the proposed rule, 21,420 flights would be eliminated. Actus Aviation stated that residents of the state of Hawaii rely on long-range air ambulance flights to transport them to the mainland where more advanced critical medical treatment is available. Currently part 135 operators are utilizing Lear 36 aircraft and 1125 Astra Jets to fly these missions. Actus believes that if this rule becomes final, the next aircraft to conduct the flights would be a Falcon 50 or larger aircraft. The cost differential between the Astra and a Falcon 50 would be a minimum of $1,000 per hour.

The FAA has corrected its assumption that operations between the west coast and Hawaii would be classified as ETOPS. The question of whether or not operations between the mainland U.S. and Hawaii are defined as ETOPS for part 135 operators is dependent on the computed single-engine cruise speeds for their airplanes. The FAA does not agree that the majority of those airplanes whose range and endurance legitimately qualifies them for such operations would be considered ETOPS in this case. But the FAA does agree that there is difficulty in obtaining sufficient single-engine data across all fleets of airplanes to accurately account for the cost of the rules application in this case. Without this data there is no way to calculate the costs and which operators would be affected. In consideration of this fact and because of a lack of incident data in this operation, the rule provides an exemption for all those airplanes listed on an operator's operations specification for up to eight years beyond the effective date of this rule. Further, the fuel and electric requirements for airplanes added to an operator's operation specifications between the effective date of the rule and 8 years later, contained in the NPRM, have been deleted.

NetJets was also concerned that all maintenance personnel performing maintenance on ETOPS aircraft must be trained in accordance with the certificate holder's ETOPS maintenance training program. The vast majority of maintenance work for part 135 operators is conducted by repair stations and/or manufacturer service centers, which places a substantial training burden on the certificate holder. Coupled with the fact that all manual changes would require approval before adoption, NetJets asserted that a very ponderous maintenance requirement is being proposed.

The FAA finds that the operator is already required to train persons performing preventative maintenance functions in accordance with § 135.433. The amount of additional burden for ETOPS-specific training depends on the type of training program the operator chooses to incorporate. The FAA has limited the ETOPS maintenance requirements to only two-engine operations in part 135.

TriCoastal Air, a part 135 on-demand air cargo carrier, stated that the two Lear 35As operated by that firm are capable of exceeding the 180-minute range. This carrier estimated that compliance with this rule was estimated at $150,000 per aircraft not including the cost of pilot training. The commenter realized the possible payback in terms of monies saved from fuel stops, but noted that it simply does not have the financial resources for the upfront investment.

The rule provides an exemption for all airplanes that are manufactured up to 8 years beyond the effective date of this rule. In addition, part 135 operators are likewise given 8 years to comply. In view of the fact that the only route beyond the ETOPS 180-minutes threshold is located in a portion of the South Pacific, the operator can maintain the safety of its operations by avoiding this area.

NetJets questioned the basis for the estimated cost savings; it finds the 2 hours of flying time per round trip for operations beyond 180 minutes to be inaccurate. The FAA has corrected that assumption in the analysis of this final rule and agrees that this rule will impose costs on those operators who chose to operate in ETOPS.

XIV. Rulemaking Notices and Analyses

Economic Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal

governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, the FAA has determined this rule (1) has benefits that justify its costs, is a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 and is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not place U.S. operators at a significant competitive disadvantage to foreign operators of three- and four-engine airplanes; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the final regulatory evaluation supporting today's rule, are summarized below.

Total Costs and Benefits of This Rulemaking

The total costs to the industry are estimated at $20.2 million over a 16-year period or $11.9 million, in present value. These costs assume:

- An Operator of four-engine airplanes that has conducted operations in the South Pacific area beyond 180-minutes will elect to incur extra flying time costs rather than comply with the ETOPS requirements.
- No Part 135 operator will seek North polar area authorization or serve the South Pacific area beyond 180-minutes.
- There are two ''makes'' of U.S. manufactured three-or four-engine airplanes (B–747, MD–11) that will obtain supplemental certification.
- Only one ''major'' business airplane manufacturer will comply with the aircraft manufacturing provisions of the rule.

Who is Potentially Affected by This Rulemaking

- Part 121 operators with operations beyond 180 minutes from an alternate airport or operating in the polar regions
- Part 135 operators with operations beyond 180 minutes from an alternate airport or operating in the North Polar Region
- Engine and airplane manufacturers

Our Costs Assumptions and Information

A number of fundamental changes since the NPRM regulatory evaluation have been made to the cost assumptions in the preparation of this final regulatory evaluation as outlined below:

- Current Parts 121 regulations for airplanes with more than two engines and 135 regulations do not impose requirements for operations beyond 180-minutes from a suitable airport. The NPRM assumed that policy letters and operation specifications prevented operations beyond 180 minutes, and thus cost savings would result from more efficient routings.
- Type design requirements are not retroactive. Airplanes manufactured up to eight years after the effective date of the rule are grandfathered.
- Recovery plans are required for all part 121 operators with operations beyond 180 minutes or in a polar area. The initial regulatory assessment incorrectly estimated the cost of recovery plans as only for ETOPS operations on a single route.
- Recovery plan training hours were incorrectly estimated in the initial regulatory assessment and no training hours were estimated for ETOPS training. The final regulatory assessment corrects these mistakes.
- The NPRM assumed only one route for all operations specification holders. In the regulatory evaluation for this final rule, activity is based on FAA internal records of flight operations. If an operator did not conduct ETOPS area flights, no costs are estimated for that operator.
- Hourly wage estimates for most positions are based at the 75th percentile level rather than the mean level used in the NPRM. Adjustments to these base rates for benefits and overhead costs are the same as the initial evaluation. Pilot and flight attendant wage estimates based on industry input; other wages based on Bureau of Labor Statistics data.
- Airplanes cost estimates are based on the number of planes operated by a Part 121 carrier. Communication equipment costs exclude airplanes that, according to industry information, already have the equipment installed. Part 135 cost estimates are calculated on an assumed fleet size.
- The cost analysis has been extended to 16 years to include the effects of the cargo fire suppression provisions that have a six-year phase-in.

In addition to changes to the cost assumptions, a number of regulatory changes to the final rule affect the costs of the rule. These are discussed in the ''Changes from the NPRM to the Final Rule'' section.

Alternatives Considered

The basic framework of the ETOPS rule represents the consensus of a working group consisting of over 50 members, including U.S. and foreign airlines, aircraft and engine manufacturers, pilot unions, industry associations, international regulatory bodies, and the FAA. During the course of their discussions many alternatives were considered and the NPRM reflected their views. In general, the more than 50 commenters to the NPRM agreed with the framework of the NPRM but disputed specific provisions.

The FAA rejected some of the proposals but adopted a number that significantly change provisions of the final rule and are discussed in the ''Changes from the NPRM to the Final Rule'' section.

Benefits of This Rulemaking

The upgraded fire suppression and communications systems, coupled with ETOPS procedures and planning will help reduce the risks of flying over remote areas, distant from alternate airports. The cargo and baggage compartment fire suppression system requirement will ensure that all ETOPS airplanes will have fire suppression systems capable of putting out fires and suppressing any chance of re-ignition for the longest duration diversion that the airplane is approved for. The SATCOM requirement will result in a significant improvement in communications that can greatly benefit the safety of an ETOPS flight that could be three or more hours from a landing site. The ETOPS safety enhancements contained in this rule focus on defining methods of preventing potential threats caused by known sources of potential failures.

The passenger recovery plan will ensure the safety of the passengers and crew. The FAA is projecting that there could be between 220 and 300 diversions during the next sixteen years for ETOPS flights. Some of these diversions may involve airports that are in rather remote locations, where it would not be safe to off-load passengers and crew until help arrived and where it may not be safe to keep them on-board the aircraft either.

Cost Summary

The Part 121 operators with passenger operations beyond 180 minutes from an ETOPS alternate airport will incur costs for passenger recovery plans and related training totaling $158,000 or $94,000, present value. The total cost to operators in the South polar area is estimated at $305,000 or $185,000, present value excluding passenger recovery related costs. The costs to the operators that have conducted operations in the area of the South Pacific where some flights may exceed 180-minutes from an alternate airport will be $1.386 million or $735,000, present value. The total cost to Part 121 operators is estimated at $1.9 million or $1.0 million, present value over a 16-year period.

Part 135 operators seeking to avoid operating over 180-minutes from an alternate airport will incur extra flying time costs of $396,000 or $224,000, present value.

A business aircraft manufacturer will incur reporting and investigation costs that will be required by the provisions of Part 21 estimated at $5.3 million or $3.1 million, present value. The manufacturer will also incur airplane ETOPS certification costs of $5.4 million. This would consist of design costs of $4.5 million, and assessment and validation costs of $900,000. Engine certification costs (for a model that does not require Early ETOPS) to make an engine ETOPS eligible will cost $1.4 million or $800,000, present value. This will consist of design and certification costs of $1.0 million and establishing engine condition monitoring procedures at a cost of $375,000. The total cost to a business aircraft manufacturer for reporting and investigation, and airframe and engine certification will be $12.1 million or $7.1 million, present value. The absence of any significant activity in the North polar area or in other areas beyond 180 minutes from an alternate will result in only one manufacturer complying with the provisions of the rule.

The manufacturer of an existing four-engine airplane will incur additional reporting costs under part 21 of $3.7 million to include operators that choose to fly beyond 180-minutes, supplemental certification costs of $1.9 million to allow operators of existing three- or four-engine airplanes to increase the capacity of the cargo fire suppression system required for beyond 180-minutes ETOPS and other required costs of $200,000 for a total cost of $5.8 million, or $3.6 million, present value.

Benefits

The FAA is projecting that there could be between 220 and 300 diversions during the next 10 years involving multi-engine aircraft performing an ETOPS operation. Some of the ETOPS operations have alternate airports, which are beyond 180 minutes and these airports are in rather remote locations, where it would not be safe to off-load passengers and crew until help arrived and it may not be safe to keep them on-board the aircraft either. Some of the above diversions are bound to happen at a remote airport where this might be the case. Therefore, the FAA is requiring operators to develop airport specific passenger recovery plans for ETOPS alternate airports beyond 180-minutes.

The historical rate of occurrence of in-flight cargo and baggage compartment fires is approximately 1×10^{-7} per flight hour. Since these events cannot be considered extremely improbable the possibility must be addressed. For this reason, aircraft cargo and baggage compartment fire suppression systems must be capable of putting out fires and suppressing any chance of re-ignition for the longest duration diversion for which the aircraft is approved. Currently this is not the case for some three- and four-engine aircraft used in ETOPS operations. This rule will require that all aircraft have a fire suppression capability to put out the fire and suppress any re-ignition during the longest duration diversion.

Final Regulatory Flexibility Determination

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

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

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

The final rule will not have a significant economic impact on a substantial number of airframe and engine manufacturers or part 121 and part 135 operators. All United States manufacturers of transport category airplanes exceed the Small Business Administration small entity criteria of 1,500 employees for aircraft manufacturers. Those U.S. manufacturers include: Boeing, Cessna, Gulfstream, Lockheed Martin, McDonnell Douglas, Raytheon, and Sabreliner. All United States manufacturers of ETOPS-capable engines exceed the Small Business Administration small entity criteria of 1,000 employees for aircraft engine manufacturers. Those U.S. manufacturers include: General Electric, Pratt & Whitney, and Rolls Royce. All United States operators of transport category airplanes that are currently authorized to conduct 180-minute ETOPS operations exceed the Small Business 0Administration small entity criteria of 1,500 employees for scheduled and non-scheduled air transportation firms. Those U.S. operators include: American, American Trans Air, Continental, Delta, United, and U.S. Airways.

All United States operators of transport category airplanes that are currently authorized to conduct 180-minute ETOPS operations exceed the Small Business Administration small entity criteria of 1,500 employees for scheduled and non-scheduled air transportation firms. Those U.S. operators include: American, American Trans Air, Continental, Delta, United, and U.S. Airways.

Two part 121 operators that have operation specifications to serve the South polar area are small entities. To assess the cost impact to these airlines, the FAA uses the highest estimated annual cost to operators in the period of analysis. This analysis indicates that neither of these carriers will experience a significant economic impact. One non-scheduled part 121 operators that operate in the South Pacific area is not a small entity. It also will not incur significant avoidance costs to continue operating in the area. The FAA, therefore, certifies that the final rule will not have a significant economic impact on a substantial number of small part 121 operators.

One of the 14 part 135 operators with flight activity in the South Pacific is a large entity and the 13 others are small entities under the SBA criteria. We determined annual revenues for six of the 13 small entities and the amounts ranged from $1.4 million to $50 million. We believe the revenues of none of the operators with unknown revenues are less than the lowest amount of $1.4 million. Two of the operators with unknown revenues flew three flights in the area where some flights may exceed 180-minutesd from an alternate airport and the rest flew two or less. Even if all three flights were to incur avoidance costs (which is unlikely since only 20 percent of flights may encounter conditions requiring extra flying time) the total cost will be only seven-tenths

of one percent of the estimated revenues of $1.4 million. None of the operators with known revenues will incur significant costs. The FAA therefore certifies that the final rule will not have a significant economic impact on a substantial number of small part 135 operators.

International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and concludes that these requirements may have some potential affect on a small number of U.S. operators under certain conditions unless other countries adopt similar aviation regulations. The requirements imposed on both domestic and foreign airframe and engine manufacturers create no obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million. The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and concludes that these requirements may have some potential affect on a small number of U.S. operators under certain conditions unless other countries adopt similar aviation regulations. The requirements imposed on both domestic and foreign airframe and engine manufacturers create no obstacles to the foreign commerce of the United States.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

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

International Compatibility

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

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. To the extent possible, the regulations adopted today meet these criteria. However, in some instances terms that are not readily understandable to the general public have been used. Today's rule imposes no obligation on the general public. The entities regulated under this final rule, airplane and engine manufacturers and air carriers and on-demand operators, are familiar with the terminology included in the regulation. Accordingly, the FAA believes the regulation meets the requirements of Executive Order 12866.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from the preparation of an environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined that this rulemaking action qualifies for the categorical exclusion and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

Paperwork Reduction Act

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

The FAA included a detailed discussion of the new information collection requirements of the proposed rule at 68 FR 64782, November 14, 2003. No comments were received on these estimated requirements.

However, with certain revisions to the proposal, the FAA finds that the information collection burden on the public will be less than originally estimated in the NPRM. Some of the reasons for this are that type design requirements are not retroactive; therefore, there is no paperwork burden for recertification of airplanes used in existing ETOPS. In addition, based on operator comment and internal FAA research, this paperwork estimate is based on actual activity levels of individual operators rather than averages for potential fleet operation. Regional recovery plans also have been omitted from the final rule, reducing that burden. The following chart shows the record keeping requirements of today's final rule.

SUMMARY OF INITIAL AND TOTAL PAPERWORK HOURS AND COSTS

Category	Initial hours	Initial cost	Sixteen year hours	Sixteen year costs
Part 121				
Passenger Recovery Plans	200	$20,600	1,320	$135,960
Recovery Training	55	8,960	132	21,504
South Polar—flare planning	200	20,000	480	132,000
South Polar—fuel strategies	200	20,000	480	132,000
§ 121.415 training:				
Pilots	200	34,600	480	83,040
Dispatchers	20	1,240	48	2,976
§ 121.415 computer planning	.....	29,200	.....	438,000
Part 21				
ETOPS Reporting	4,160	187,200	66,560	2,995,200
Investigations	2,000	146,000	32,000	2,336,000
Part 25				
Electrical system design	30,000	2,250,000	30,000	2,250,000
Fuel system design	30,000	2,250,000	30,000	2,250,000
System assessments	12,000	898,000	12,000	898,000
Part 33				
Engine Monitoring	5,000	375,000	5,000	375,000
Part 135				
South Pacific Operations	64	4,608	288	20,736
Total	.....	.....	.....	12,049,416

XV. Appendix of Tables

TABLE 1.—APPLICABILITY OF FINAL RULE

	Current requirements			Final Rule		
	Up to 60 minutes	Beyond 60 minutes up to 180 minutes	Beyond 180 minutes	Up to 60 minutes	Beyond 60 minutes up to 180 minutes	Beyond 180 minutes
Part 121 two-engine.	Section 121.161 applies.	Advisory material and policy letters.	Currently restricted.	.....	Would codify previous ETOPS guidance with some reductions in requirements*.	New ETOPS rules would apply. Airport specific PRP.
Part 121 more than two-engine.	No current regulation.	No current regulation.	No current regulation.	.....	(From 90–180 minutes) New requirement: Fuel for depressurization.	New ETOPS rules would apply to passenger-carrying operations only. Airport specific PRP. No ETOPS maintenance program.
Part 135	No current regulation.	No current regulation.	No current regulation.	No change	No change	New ETOPS rules would apply. All-cargo airplanes with more than two engines excluded. PRP in North Polar region only. No ETOPS maintenance program for airplanes with more than two engines.

PRP = passenger recovery plan.
*a. Fuel requirements for icing and wind calculations in the critical fuel scenario have been reduced.
b. The area of applicability for 207-minute ETOPS has been increased.

TABLE 2.—PART 121 AND PART 135 OPERATIONAL REQUIREMENTS TIMETABLE

Requirement	Compliance date	
Part 121	Airplanes with two engines	Airplanes with more than two engines
Part 1 & 121.7 Definitions	30 days	30 days.
121.97 Airport required data	1 year	1 year.
121.99 & 121.122 SATCOM	1 year (except for 207-minute ETOPS approval in the North Pacific area of operation).	1 year.
121.106 Rescue and firefighting equipment at alternate airports	30 days	30 days.
121.135 Passenger recovery plan	1 year	1 year.
121.161 Airplane limitations	30 days	1 year.
121.162 ETOPS Type Design Approval	30 days	8 years.
121.374 Maintenance	30 days	Not required.
121.415 Crew training	1 year	1 year.
121.565 Reporting—engine inoperative landing	30 days	30 days.
121.624 ETOPS alternates	30 days	30 days.
121.625 Alternate weather minimums	30 days	30 days.
121.631 Dispatch	30 days	30 days.
121.633 Cargo fire suppression	30 days	6 years.
121.646 En-route fuel supply	30 days	30 days.
121.687 & 689 Contents of dispatch	30 days	30 days.
Part 135	All airplanes	
135.98 North Polar Operations	1 year.	
135.345 Passenger Recovery Training	1 year.	
135.364 Maximum Flying Time	1 year.	
135.411 Applicability	1 year.	
Part 135 Appendix G (General)	1 year.	
a. Time-Limited Systems	8 years.	
b. Airplane Requirements	8 years.	

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Table 3
Certification Requirements.

	Description	Compliance required
All airplanes	**Airplane and Engine Manufacturer Reporting Requirements (Section 21.4)**	General rule is effective 30 days after publication
	Part 25 Airplane Certification Requirements	General rule is effective 30 days after publication. All airplanes with applications for original type certification submitted after effective date must comply with all part 25 requirements for ETOPS type design approval.
Airplanes with two engines	**Two-engine airplanes that have received ETOPS approval for up to 180 minutes before effective date of the rule (Including 207-minute operations in the North Pacific)**	Grandfathered
	Airplanes with existing type certificates on the effective date of the rule and application for ETOPS approval up to 180 minutes submitted after effective date of the rule (Including 207-minute operations in the North Pacific)	Must comply with all part 25 requirements except 1) Fuel system pressure and flow requirements; 2) Low fuel alerting; 3) Engine oil tank design
	Application for an original type certificate submitted before effective date of the rule and application for ETOPS approval up to 180 minutes submitted after effective date of the rule (Including 207-minute operations in the North Pacific)	Must comply with all part 25 requirements except 1) Fuel system pressure and flow requirements; 2) Low fuel alerting; 3) Engine oil tank design

	Application for ETOPS approval greater than 180 minutes submitted after effective date of the rule regardless of type certification status on the effective date of the rule	Must comply with all part 25 requirements
Airplanes with more than two engines	**Airplanes manufactured before 8 years after the effective date of the rule**	Grandfathered
	Airplanes manufactured on or after 8 years after the effective date of the rule	Must comply with all part 25 requirements except airplanes configured for a required flight engineer are exempt from low fuel alerting requirement

Table 4
Comparison of current ETOPS guidance; regulations proposed by the NPRM; and final rule

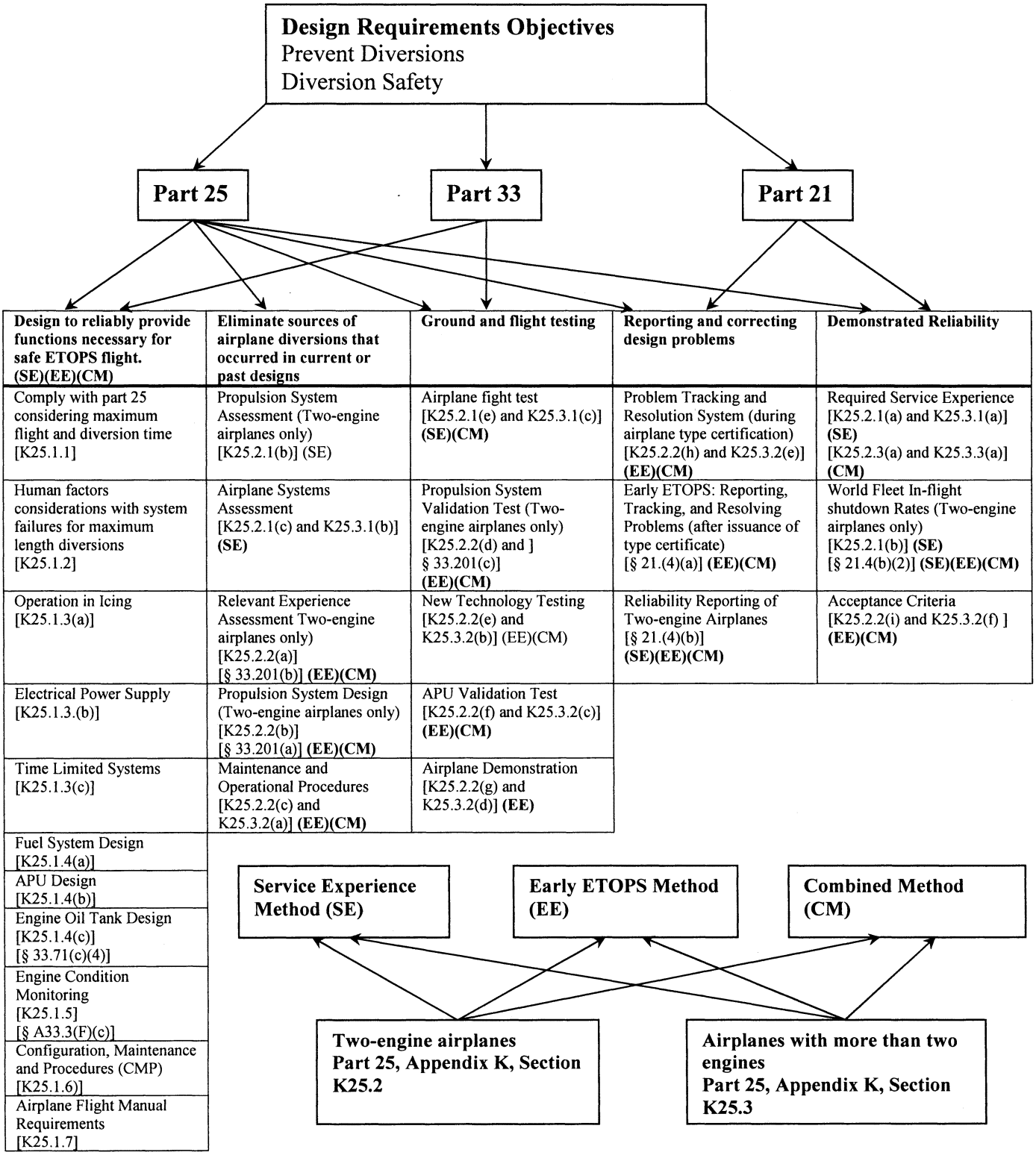
	Under current advisory circulars and policy			Under the proposed regulation (NPRM)			Under the Final Rule		
ETOPS requirement	**Two-engines**	**More than two engines**	**part 135 operations**	**Two-engines**	**More than two engines**	**part 135 operations**	**Two-engines**	**More than two engines**	**Part 135 Operations**
Applicability	More than 60 minutes from an adequate airport	Does not apply	Does not apply	More than 60 minutes from an adequate airport	More than 180 minutes from an adequate airport	More than 180 minutes from an adequate airport	No change from NPRM	All-cargo operations excluded.	All-cargo operations in airplanes with more than two engines excluded
Effectivity: Operations	At time of application	Does not apply	Does not apply	At time of application	At time of application	At time of application	No change from NPRM	Up to 1 year from compliance date.	1 year from compliance date.

	Under current advisory circulars and policy			Under the proposed regulation (NPRM)			Under the Final Rule		
ETOPS requirement	**Two-engines**	**More than two engines**	**part 135 operations**	**Two-engines**	**More than two engines**	**part 135 operations**	**Two-engines**	**More than two engines**	**Part 135 Operations**
Airplanes	All airplanes	Does not apply	Does not apply	All airplanes	All airplanes	1. Remain on original owner's ops specs: grandfathered 2. Added to ops specs less than 8 years after rule is effective: grandfathered except must meet certain fuel and electrical requirements 3. Airplanes added after eight years must comply with part 25.	1. Airplanes with existing ETOPS approvals on the effective date grandfathered 2. Airplanes with existing type certificates or original type certificate applications received before effective date, for ETOPS approval of up to 180-minutes (Including 207-minute operations in the North Pacific), must comply with part 25 except low fuel alerting, engine fuel pump inlet pressure, and oil tank cap 3. Airplanes with original type certificate applications received after effective date, or for ETOPS approval beyond 180-minutes, must comply with all part 25 requirements.	1. Airplanes with existing type certificates manufactured up to 8 years after effective date grandfathered 2. Airplanes with existing type certificates manufactured after 8 years must comply with all of part 25 except that such airplanes configured with a required flight engineer exempt form low fuel alerting. 3. Airplanes with original type certificate applications received after effective date must comply with all of part 25.	1. Airplanes manufactured up to 8 years after the effective date: grandfathered. 2. Airplanes manufactured after 8 years must comply with all of part 25.
Terminology	ETOPS (Extended Range Operation With Two-Engine Airplanes)	ETOPS does not currently apply to airplanes with more than two engines	ETOPS does not currently apply to part 135 operations	ETOPS (Extended Operations)	ETOPS (Extended Operations)	ETOPS (Extended Operations)	No change from NPRM.	No change from NPRM other than definition of ETOPS to exclude all-cargo operations on airplanes with	No change from NPRM.

ETOPS requirement	Under current advisory circulars and policy			Under the proposed regulation (NPRM)			Under the Final Rule		
	Two-engines	More than two engines	part 135 operations	Two-engines	More than two engines	part 135 operations	Two-engines	More than two engines	Part 135 Operations
								more than two engines.	
Maximum permissible time from an adequate airport	207 minutes	Not regulated	Not regulated	240 minutes with certificate holder approval, beyond 240 minutes with route specific approval	To maximum system limitation	240 minutes	Expanded area of applicability for 240-minute authority	No change from NPRM.	No change from NPRM.
Cargo and baggage compartment fire suppression	Diversion limit plus 15 minutes	Not regulated	Not regulated	Diversion limit plus 15 minutes.	Diversion limit plus 15 minutes (6 year compliance period)	Diversion limit plus 15 minutes	No change from NPRM.	No change (6 year compliance period)	No change (8 Year compliance period)
Rescue and fire fighting service capability	ICAO category 4	Not required	Not required	ICAO category 4 up to 180 min, ICAO category 7 beyond 180 min	ICAO category 7	Not required	ICAO category 4 up to 180 minutes, category 7 for at least one adequate airport beyond 180 minutes		No change from NPRM
Passenger recovery plan	Required for Polar operations	Required for Polar operations	Required for Polar operations	Required for all US flag and supplemental operations regardless of distance from airport		Required in North Polar Area	Required for ETOPS greater than 180 minutes and for operations in the North and South Polar areas for passenger-carrying operations.		No change from NPRM
Engine reliability standards	IFSD rates: 0.05/1000 hrs for 120 min, 0.02/1000 hrs for 180 min, 0.19/1000 hrs for 207 min	None	None	IFSD rates: 0.05/1000 hrs for 120 min, 0.02/1000 hrs for 180 min, 0.01/1000 hrs for > 180 min	IFSD rates: 0.2/1000 hrs for 3 engine airplanes, 0.1/1000 hrs for 4 engine airplanes	Not specified	No change from NPRM	No change from NPRM	No change from NPRM
Areas of designated ETOPS applicability	Polar	Polar	Polar	Polar	Polar	Polar	none		none
Time-limited systems	Per type design approval limit for the airplane (up to 207 min).	No requirement	No requirement	Specified in part 25, Appendix K	Specified in part 25, Appendix K	Specified in part 25, Appendix K	No change from NPRM.	No change from NPRM.	No change from NPRM.
Dispatch weather requirements for alternate airport	Applies to all ETOPS	No requirement	No requirement	Applies to all ETOPS (reduced requirements)	Applies to all ETOPS	Applies to all ETOPS	No change from NPRM.	No change from NPRM.	No change from NPRM.
ETOPS maintenance program	Required for all ETOPS	No requirement	No requirement	Required for all ETOPS	Required to all ETOPS	Required for all ETOPS	No change from NPRM.	Not required for 3-and 4-engine ETOPS	Not required for 3- and 4-engine ETOPS

	Under current advisory circulars and policy			Under the proposed regulation (NPRM)			Under the Final Rule		
ETOPS requirement	**Two-engines**	**More than two engines**	**part 135 operations**	**Two-engines**	**More than two engines**	**part 135 operations**	**Two-engines**	**More than two engines**	**Part 135 Operations**
Communication capabilities	SATCOM required for 207 min ETOPS	No requirement	No requirement	Additional com required. SATCOM beyond 180 min.	Additional com required. SATCOM beyond 180 min.	Additional com required. SATCOM beyond 180 min.	No change from NPRM.	No change from NPRM	No change from NPRM.
Critical Fuel Scenario	Required for all ETOPS.	No requirement	No requirement	Applies for all ETOPS (reduced requirements)	Applies for all ETOPS.	Applies for all ETOPS.	No change from NPRM.	No change from NPRM.	No change from NPRM.

Table 5
Design Requirements Objectives



Design to reliably provide functions necessary for safe ETOPS flight. (SE)(EE)(CM)	**Eliminate sources of airplane diversions that occurred in current or past designs**	**Ground and flight testing**	**Reporting and correcting design problems**	**Demonstrated Reliability**
Comply with part 25 considering maximum flight and diversion time [K25.1.1]	Propulsion System Assessment (Two-engine airplanes only) [K25.2.1(b)] (SE)	Airplane fight test [K25.2.1(e) and K25.3.1(c)] **(SE)(CM)**	Problem Tracking and Resolution System (during airplane type certification) [K25.2.2(h) and K25.3.2(e)] **(EE)(CM)**	Required Service Experience [K25.2.1(a) and K25.3.1(a)] **(SE)** [K25.2.3(a) and K25.3.3(a)] **(CM)**
Human factors considerations with system failures for maximum length diversions [K25.1.2]	Airplane Systems Assessment [K25.2.1(c) and K25.3.1(b)] **(SE)**	Propulsion System Validation Test (Two-engine airplanes only) [K25.2.2(d) and] § 33.201(c)] **(EE)(CM)**	Early ETOPS: Reporting, Tracking, and Resolving Problems (after issuance of type certificate) [§ 21.(4)(a)] **(EE)(CM)**	World Fleet In-flight shutdown Rates (Two-engine airplanes only) [K25.2.1(b)] **(SE)** [§ 21.4(b)(2)] **(SE)(EE)(CM)**
Operation in Icing [K25.1.3(a)]	Relevant Experience Assessment Two-engine airplanes only) [K25.2.2(a)] [§ 33.201(b)] **(EE)(CM)**	New Technology Testing [K25.2.2(e) and K25.3.2(b)] (EE)(CM)	Reliability Reporting of Two-engine Airplanes [§ 21.(4)(b)] **(SE)(EE)(CM)**	Acceptance Criteria [K25.2.2(i) and K25.3.2(f)] **(EE)(CM)**
Electrical Power Supply [K25.1.3.(b)]	Propulsion System Design (Two-engine airplanes only) [K25.2.2(b)] [§ 33.201(a)] **(EE)(CM)**	APU Validation Test [K25.2.2(f) and K25.3.2(c)] **(EE)(CM)**		
Time Limited Systems [K25.1.3(c)]	Maintenance and Operational Procedures [K25.2.2(c) and K25.3.2(a)] **(EE)(CM)**	Airplane Demonstration [K25.2.2(g) and K25.3.2(d)] **(EE)**		
Fuel System Design [K25.1.4(a)]				
APU Design [K25.1.4(b)]				
Engine Oil Tank Design [K25.1.4(c)] [§ 33.71(c)(4)]				
Engine Condition Monitoring [K25.1.5] [§ A33.3(F)(c)]				
Configuration, Maintenance and Procedures (CMP) [K25.1.6)]				
Airplane Flight Manual Requirements [K25.1.7]				

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TABLE 6.—PART 25, APPENDIX K REVISED NUMBERING

NPRM (old Appendix L)	Final Rule (Appendix K)
Section I	K25.1.
§ 25.1535(a)	K25.1.1.
§ 25.1535(b)	K25.1.2.
(a)	K25.1.3.
(a)(1)	K25.1.3(a).
(a)(2)	K25.1.3(b).
(a)(3)	K25.1.3(c).
(b)	K25.1.4.
(b)(1)	K25.1.4(a).
(b)(2)	K25.1.4(b).
(b)(2)(i)	K25.1.4(b)(1).
(b)(2)(ii)	K25.1.4(b)(2).
(b)(3)	K25.1.4(c).
(c)	K25.1.5.
(d)	K25.1.6.
(e)	K25.1.7.
Section II	K25.2.
(a)	K25.2.1.
(a)(1)	K25.2.1(a).
(a)(2)	K25.2.1(c).
(a)(3)	K25.2.1(d).
(a)(4)	K25.2.1(b).
(a)(5)	K25.2.1(e).
(b)	K25.2.2.
(b)(1)	K25.2.2(a).
(b)(2)	K25.2.2(b).
(b)(3)	K25.2.2(c).
(b)(4)	K25.2.2(d).
(b)(5)	K25.2.2(e).
(b)(6)	K25.2.2(f).
(b)(7)	K25.2.2(g).
(b)(9)	K25.2.2(i).
(c)	K25.2.3.
Section III	K25.3.
(a)	K25.3.1.
(a)(1)	K25.3.1(a).
(a)(2)	K25.3.1(b).
(a)(3)	K25.3.1(c).
(b)	K25.3.2.
(b)(1)	K25.3.2(a).
(b)(2)	K25.3.2(b).
(b)(3)	K25.3.2(c).
(b)(4)	K25.3.2(d).
(b)(5)	K25.3.2(e).
(b)(6)	K25.3.2(f).
(c)	K25.3.3.

XVI. The Final Rule

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 33

Aircraft, Aviation safety.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Reporting and recordkeeping requirements.

The Amendment

■ For the reasons discussed in the preamble, the Federal Aviation Administration amends 14 CFR parts 1, 21, 25, 33, 121, and 135 as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

■ 2. Amend § 1.1 by adding the following definitions in alphabetical order to read as follows:

§ 1.1 General definitions.

* * * * *

Configuration, Maintenance, and Procedures (CMP) document means a document approved by the FAA that contains minimum configuration, operating, and maintenance requirements, hardware life-limits, and Master Minimum Equipment List (MMEL) constraints necessary for an airplane-engine combination to meet ETOPS type design approval requirements.

* * * * *

Early ETOPS means ETOPS type design approval obtained without gaining non-ETOPS service experience on the candidate airplane-engine combination certified for ETOPS.

* * * * *

ETOPS Significant System means an airplane system, including the propulsion system, the failure or malfunctioning of which could adversely affect the safety of an ETOPS flight, or the continued safe flight and landing of an airplane during an ETOPS diversion. Each ETOPS significant system is either an ETOPS group 1 significant system or an ETOPS group 2 significant system.

(1) An ETOPS group 1 Significant System—

(i) Has fail-safe characteristics directly linked to the degree of redundancy provided by the number of engines on the airplane.

(ii) Is a system, the failure or malfunction of which could result in an IFSD, loss of thrust control, or other power loss.

(iii) Contributes significantly to the safety of an ETOPS diversion by providing additional redundancy for any system power source lost as a result of an inoperative engine.

(iv) Is essential for prolonged operation of an airplane at engine inoperative altitudes.

(2) An ETOPS group 2 significant system is an ETOPS significant system that is not an ETOPS group 1 significant system.

Extended Operations (ETOPS) means an airplane flight operation other than an all-cargo operation in an airplane with more than two engines during which a portion of the flight is conducted beyond a time threshold identified in part 121 or part 135 of this chapter that is determined using an approved one-engine-inoperative cruise speed under standard atmospheric conditions in still air.

* * * * *

In-flight shutdown (IFSD) means, for ETOPS only, when an engine ceases to function (when the airplane is airborne) and is shutdown, whether self induced, flightcrew initiated or caused by an external influence. The FAA considers IFSD for all causes: for example, flameout, internal failure, flightcrew initiated shutdown, foreign object ingestion, icing, inability to obtain or control desired thrust or power, and cycling of the start control, however briefly, even if the engine operates normally for the remainder of the flight. This definition excludes the airborne cessation of the functioning of an engine when immediately followed by an automatic engine relight and when an engine does not achieve desired thrust or power but is not shutdown.

* * * * *

■ 3. Amend § 1.2 by adding the following abbreviations in alphabetical order to read as follows:

§ 1.2 Abbreviations and symbols

* * * * *

AFM means airplane flight manual.

* * * * *

APU means auxiliary power unit.

* * * * *

ATS means Air Traffic Service.

CAMP means continuous airworthiness maintenance program.

* * * * *

CHDO means an FAA Flight Standards certificate holding district office.

CMP means configuration, maintenance, and procedures.

* * * * *

Equi-Time Point means a point on the route of flight where the flight time, considering wind, to each of two selected airports is equal.

ETOPS means extended operations.

* * * * *

IFSD means in-flight shutdown.

* * * * *

MEL means minimum equipment list.

* * * * *

NOPAC means North Pacific area of operation.

* * * * *

OPSPECS means operations specifications.

PACOTS means Pacific Organized Track System.

* * * * *

PTRS means Performance Tracking and Reporting System.

* * * * *

RFFS means rescue and firefighting services.

* * * * *

SATCOM means satellite communications.

* * * * *

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

■ 4. The authority citation for part 21 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

■ 5. Add § 21.4 to read as follows:

§ 21.4 ETOPS reporting requirements.

(a) *Early ETOPS: reporting, tracking, and resolving problems.* The holder of a type certificate for an airplane-engine combination approved using the Early ETOPS method specified in part 25, Appendix K, of this chapter must use a system for reporting, tracking, and resolving each problem resulting in one of the occurrences specified in paragraph (a)(6) of this section.

(1) The system must identify how the type certificate holder will promptly identify problems, report them to the responsible FAA aircraft certification office, and propose a solution to the FAA to resolve each problem. A proposed solution must consist of—

(i) A change in the airplane or engine type design;

(ii) A change in a manufacturing process;

(iii) A change in an operating or maintenance procedure; or

(iv) Any other solution acceptable to the FAA.

(2) For an airplane with more than two engines, the system must be in place for the first 250,000 world fleet engine-hours for the approved airplane-engine combination.

(3) For two-engine airplanes, the system must be in place for the first 250,000 world fleet engine-hours for the approved airplane-engine combination and after that until—

(i) The world fleet 12-month rolling average IFSD rate is at or below the rate required by paragraph (b)(2) of this section; and

(ii) The FAA determines that the rate is stable.

(4) For an airplane-engine combination that is a derivative of an airplane-engine combination previously approved for ETOPS, the system need only address those problems specified in the following table, provided the type certificate holder obtains prior authorization from the FAA:

If the change does not require a new airplane type certificate and . . .	Then the Problem Tracking and Resolution System must address . . .
(i) Requires a new engine type certificate	All problems applicable to the new engine installation, and for the remainder of the airplane, problems in changed systems only.
(ii) Does not require a new engine type certificate	Problems in changed systems only.

(5) The type certificate holder must identify the sources and content of data that it will use for its system. The data must be adequate to evaluate the specific cause of any in-service problem reportable under this section or § 21.3(c) that could affect the safety of ETOPS.

(6) In implementing this system, the type certificate holder must report the following occurrences:

(i) IFSDs, except planned IFSDs performed for flight training.

(ii) For two-engine airplanes, IFSD rates.

(iii) Inability to control an engine or obtain desired thrust or power.

(iv) Precautionary thrust or power reductions.

(v) Degraded ability to start an engine in flight.

(vi) Inadvertent fuel loss or unavailability, or uncorrectable fuel imbalance in flight.

(vii) Turn backs or diversions for failures, malfunctions, or defects associated with an ETOPS group 1 significant system.

(viii) Loss of any power source for an ETOPS group 1 significant system, including any power source designed to provide backup power for that system.

(ix) Any event that would jeopardize the safe flight and landing of the airplane on an ETOPS flight.

(x) Any unscheduled engine removal for a condition that could result in one of the reportable occurrences listed in this paragraph.

(b) *Reliability of two-engine airplanes*—(1) *Reporting of two-engine airplane in-service reliability.* The holder of a type certificate for an airplane approved for ETOPS and the holder of a type certificate for an engine installed on an airplane approved for ETOPS must report monthly to their respective FAA type certificate holding office on the reliability of the world fleet of those airplanes and engines. The report provided by both the airplane and engine type certificate holders must address each airplane-engine combination approved for ETOPS. The FAA may approve quarterly reporting if the airplane-engine combination demonstrates an IFSD rate at or below those specified in paragraph (b)(2) of this section for a period acceptable to the FAA. This reporting may be combined with the reporting required by § 21.3. The responsible type certificate holder must investigate any cause of an IFSD resulting from an occurrence attributable to the design of its product and report the results of that investigation to its FAA office responsible for administering its type certificate. Reporting must include:

(i) Engine IFSDs, except planned IFSDs performed for flight training.

(ii) The world fleet 12-month rolling average IFSD rates for all causes, except planned IFSDs performed for flight training.

(iii) ETOPS fleet utilization, including a list of operators, their ETOPS diversion time authority, flight hours, and cycles.

(2) *World fleet IFSD rate for two-engine airplanes.* The holder of a type certificate for an airplane approved for ETOPS and the holder of a type certificate for an engine installed on an airplane approved for ETOPS must issue service information to the operators of those airplanes and engines, as appropriate, to maintain the world fleet 12-month rolling average IFSD rate at or below the following levels:

(i) A rate of 0.05 per 1,000 world-fleet engine-hours for an airplane-engine combination approved for up to and including 120-minute ETOPS. When all ETOPS operators have complied with the corrective actions required in the configuration, maintenance and procedures (CMP) document as a condition for ETOPS approval, the rate to be maintained is at or below 0.02 per 1,000 world-fleet engine-hours.

(ii) A rate of 0.02 per 1,000 world-fleet engine-hours for an airplane-engine combination approved for up to and including 180-minute ETOPS, including airplane-engine combinations approved for 207-minute ETOPS in the North Pacific operating area under appendix P, section I, paragraph (h), of part 121 of this chapter.

(iii) A rate of 0.01 per 1,000 world-fleet engine-hours for an airplane-engine combination approved for ETOPS beyond 180 minutes, excluding airplane-engine combinations approved for 207-minute ETOPS in the North Pacific operating area under appendix P, section I, paragraph (h), of part 121 of this chapter.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 6. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

■ 7. Add § 25.3 to subpart A to read as follows:

§ 25.3 Special provisions for ETOPS type design approvals.

(a) *Applicability.* This section applies to an applicant for ETOPS type design approval of an airplane:

(1) That has an existing type certificate on February 15, 2007; or

(2) For which an application for an original type certificate was submitted before February 15, 2007.

(b) *Airplanes with two engines.* (1) For ETOPS type design approval of an airplane up to and including 180 minutes, an applicant must comply with § 25.1535, except that it need not comply with the following provisions of Appendix K, K25.1.4, of this part:

(i) K25.1.4(a), fuel system pressure and flow requirements;

(ii) K25.1.4(a)(3), low fuel alerting; and

(iii) K25.1.4(c), engine oil tank design.

(2) For ETOPS type design approval of an airplane beyond 180 minutes an applicant must comply with § 25.1535.

(c) *Airplanes with more than two engines.* An applicant for ETOPS type design approval must comply with § 25.1535 for an airplane manufactured on or after February 17, 2015, except that, for an airplane configured for a three person flight crew, the applicant need not comply with Appendix K, K25.1.4(a)(3), of this part, low fuel alerting.

■ 8. Add § 25.1535 to read as follows:

§ 25.1535 ETOPS approval.

Except as provided in § 25.3, each applicant seeking ETOPS type design approval must comply with the provisions of Appendix K of this part.

■ 9. Add Appendix K to read as follows:

Appendix K to PART 25—EXTENDED OPERATIONS (ETOPS)

This appendix specifies airworthiness requirements for the approval of an airplane-engine combination for extended operations (ETOPS). For two-engine airplanes, the applicant must comply with sections K25.1 and K25.2 of this appendix. For airplanes with more than two engines, the applicant must comply with sections K25.1 and K25.3 of this appendix.

K25.1 *Design requirements.*

K25.1.1 *Part 25 compliance.*

The airplane-engine combination must comply with the requirements of part 25 considering the maximum flight time and the longest diversion time for which the applicant seeks approval.

K25.1.2 *Human factors.*

An applicant must consider crew workload, operational implications, and the crew's and passengers' physiological needs during continued operation with failure effects for the longest diversion time for which it seeks approval.

K25.1.3 *Airplane systems.*

(a) *Operation in icing conditions.*

(1) The airplane must be certificated for operation in icing conditions in accordance with § 25.1419.

(2) The airplane must be able to safely conduct an ETOPS diversion with the most critical ice accretion resulting from:

(i) Icing conditions encountered at an altitude that the airplane would have to fly following an engine failure or cabin decompression.

(ii) A 15-minute hold in the continuous maximum icing conditions specified in Appendix C of this part with a liquid water content factor of 1.0.

(iii) Ice accumulated during approach and landing in the icing conditions specified in Appendix C of this part.

(b) *Electrical power supply.* The airplane must be equipped with at least three independent sources of electrical power.

(c) *Time limited systems.* The applicant must define the system time capability of each ETOPS significant system that is time-limited.

K25.1.4 *Propulsion systems.*

(a) *Fuel system design.* Fuel necessary to complete an ETOPS flight (including a diversion for the longest time for which the applicant seeks approval) must be available to the operating engines at the pressure and fuel-flow required by § 25.955 under any airplane failure condition not shown to be extremely improbable. Types of failures that must be considered include, but are not limited to: crossfeed valve failures, automatic fuel management system failures, and normal electrical power generation failures.

(1) If the engine has been certified for limited operation with negative engine-fuel-pump-inlet pressures, the following requirements apply:

(i) Airplane demonstration-testing must cover worst case cruise and diversion conditions involving:

(A) Fuel grade and temperature.

(B) Thrust or power variations.

(C) Turbulence and negative G.

(D) Fuel system components degraded within their approved maintenance limits.

(ii) Unusable-fuel quantity in the suction feed configuration must be determined in accordance with § 25.959.

(2) For two-engine airplanes to be certificated for ETOPS beyond 180 minutes, one fuel boost pump in each main tank and at least one crossfeed valve, or other means for transferring fuel, must be powered by an independent electrical power source other than the three power sources required to comply with section K25.1.3(b) of this appendix. This requirement does not apply if the normal fuel boost pressure, crossfeed valve actuation, or fuel transfer capability is not provided by electrical power.

(3) An alert must be displayed to the flightcrew when the quantity of fuel available to the engines falls below the level required to fly to the destination. The alert must be given when there is enough fuel remaining to safely complete a diversion. This alert must account for abnormal fuel management or transfer between tanks, and possible loss of fuel. This paragraph does not apply to airplanes with a required flight engineer.

(b) *APU design.* If an APU is needed to comply with this appendix, the applicant must demonstrate that:

(1) The reliability of the APU is adequate to meet those requirements; and

(2) If it is necessary that the APU be able to start in flight, it is able to start at any altitude up to the maximum operating altitude of the airplane, or 45,000 feet, whichever is lower, and run for the remainder of any flight .

(c) *Engine oil tank design.* The engine oil tank filler cap must comply with § 33.71(c)(4) of this chapter.

K25.1.5 *Engine-condition monitoring.*

Procedures for engine-condition monitoring must be specified and validated in accordance with Part 33, Appendix A, paragraph A33.3(c) of this chapter.

K25.1.6 *Configuration, maintenance, and procedures.*

The applicant must list any configuration, operating and maintenance requirements, hardware life limits, MMEL constraints, and ETOPS approval in a CMP document.

K25.1.7 *Airplane flight manual.*

The airplane flight manual must contain the following information applicable to the ETOPS type design approval:

(a) Special limitations, including any limitation associated with operation of the airplane up to the maximum diversion time being approved.

(b) Required markings or placards.

(c) The airborne equipment required for extended operations and flightcrew operating procedures for this equipment.

(d) The system time capability for the following:

(1) The most limiting fire suppression system for Class C cargo or baggage compartments.

(2) The most limiting ETOPS significant system other than fire suppression systems for Class C cargo or baggage compartments.

(e) This statement: ''The type-design reliability and performance of this airplane-engine combination has been evaluated under 14 CFR 25.1535 and found suitable for (identify maximum approved diversion time) extended operations (ETOPS) when the configuration, maintenance, and procedures standard contained in (identify the CMP document) are met. The actual maximum approved diversion time for this airplane may be less based on its most limiting system time capability. This finding does not constitute operational approval to conduct ETOPS.''

K25.2. *Two-engine airplanes.*

An applicant for ETOPS type design approval of a two-engine airplane must use one of the methods described in section K25.2.1, K25.2.2, or K25.2.3 of this appendix.

K25.2.1 *Service experience method.*

An applicant for ETOPS type design approval using the service experience method must comply with sections K25.2.1(a) and K25.2.1(b) of this appendix before conducting the assessments specified in sections K25.2.1(c) and K25.2.1(d) of this appendix, and the flight test specified in section K25.2.1(e) of this appendix.

(a) *Service experience.* The world fleet for the airplane-engine combination must accumulate a minimum of 250,000 engine-hours. The FAA may reduce this number of hours if the applicant identifies compensating factors that are acceptable to the FAA. The compensating factors may include experience on another airplane, but experience on the candidate airplane must make up a significant portion of the total service experience.

(b) *In-flight shutdown (IFSD) rates.* The demonstrated 12-month rolling average IFSD rate for the world fleet of the airplane-engine combination must be commensurate with the level of ETOPS approval being sought.

(1) For type design approval up to and including 120 minutes: An IFSD rate of 0.05 or less per 1,000 world-fleet engine-hours, unless otherwise approved by the FAA. Unless the IFSD rate is 0.02 or less per 1,000 world-fleet engine-hours, the applicant must provide a list of corrective actions in the CMP document specified in section K25.1.6 of this appendix, that, when taken, would result in an IFSD rate of 0.02 or less per 1,000 fleet engine-hours.

(2) For type design approval up to and including 180 minutes: An IFSD rate of 0.02 or less per 1,000 world-fleet engine-hours, unless otherwise approved by the FAA. If the airplane-engine combination does not meet this rate by compliance with an existing 120-minute CMP document, then new or additional CMP requirements that the applicant has demonstrated would achieve this IFSD rate must be added to the CMP document.

(3) For type design approval beyond 180 minutes: An IFSD rate of 0.01 or less per 1,000 fleet engine-hours unless otherwise approved by the FAA. If the airplane-engine combination does not meet this rate by compliance with an existing 120-minute or 180-minute CMP document, then new or additional CMP requirements that the applicant has demonstrated would achieve this IFSD rate must be added to the CMP document.

(c) *Propulsion system assessment.* (1) The applicant must conduct a propulsion system assessment based on the following data collected from the world-fleet of the airplane-engine combination:

(i) A list of all IFSD's, unplanned ground engine shutdowns, and occurrences (both ground and in-flight) when an engine was not shut down, but engine control or the desired thrust or power level was not achieved, including engine flameouts. Planned IFSD's performed during flight training need not be included. For each item, the applicant must provide—

(A) Each airplane and engine make, model, and serial number;

(B) Engine configuration, and major alteration history;

(C) Engine position;

(D) Circumstances leading up to the engine shutdown or occurrence;

(E) Phase of flight or ground operation;

(F) Weather and other environmental conditions; and

(G) Cause of engine shutdown or occurrence.

(ii) A history of unscheduled engine removal rates since introduction into service (using 6- and 12-month rolling averages), with a summary of the major causes for the removals.

(iii) A list of all propulsion system events (whether or not caused by maintenance or flightcrew error), including dispatch delays, cancellations, aborted takeoffs, turnbacks, diversions, and flights that continue to destination after the event.

(iv) The total number of engine hours and cycles, the number of hours for the engine with the highest number of hours, the number of cycles for the engine with the highest number of cycles, and the distribution of hours and cycles.

(v) The mean time between failures (MTBF) of propulsion system components that affect reliability.

(vi) A history of the IFSD rates since introduction into service using a 12-month rolling average.

(2) The cause or potential cause of each item listed in K25.2.1(c)(1)(i) must have a corrective action or actions that are shown to be effective in preventing future occurrences. Each corrective action must be identified in the CMP document specified in section K25.1.6. A corrective action is not required:

(i) For an item where the manufacturer is unable to determine a cause or potential cause.

(ii) For an event where it is technically unfeasible to develop a corrective action.

(iii) If the world-fleet IFSD rate—

(A) Is at or below 0.02 per 1,000 world-fleet engine-hours for approval up to and including 180-minute ETOPS; or

(B) Is at or below 0.01 per 1,000 world-fleet engine-hours for approval greater than 180-minute ETOPS.

(d) *Airplane systems assessment.* The applicant must conduct an airplane systems assessment. The applicant must show that the airplane systems comply with § 25.1309(b) using available in-service reliability data for ETOPS significant systems on the candidate airplane-engine combination. Each cause or potential cause of a relevant design, manufacturing, operational, and maintenance problem occurring in service must have a corrective action or actions that are shown to be effective in preventing future occurrences. Each corrective action must be identified in the CMP document specified in section K25.1.6 of this appendix. A corrective action is not required if the problem would not significantly impact the safety or reliability of the airplane system involved. A relevant problem is a problem with an ETOPS group 1 significant system that has or could result in, an IFSD or diversion. The applicant must include in this assessment relevant problems with similar or identical equipment installed on other types of airplanes to the extent such information is reasonably available.

(e) *Airplane flight test.* The applicant must conduct a flight test to validate the flightcrew's ability to safely conduct an ETOPS diversion with an inoperative engine and worst-case ETOPS Significant System failures and malfunctions that could occur in service. The flight test must validate the airplane's flying qualities and performance with the demonstrated failures and malfunctions.

K25.2.2 *Early ETOPS method.*

An applicant for ETOPS type design approval using the Early ETOPS method must comply with the following requirements:

(a) *Assessment of relevant experience with airplanes previously certificated under part 25.* The applicant must identify specific corrective actions taken on the candidate airplane to prevent relevant design, manufacturing, operational, and maintenance problems experienced on airplanes previously certificated under part 25 manufactured by the applicant. Specific corrective actions are not required if the nature of a problem is such that the problem would not significantly impact the safety or reliability of the airplane system involved. A relevant problem is a problem with an ETOPS group 1 significant system that has or could result in an IFSD or diversion. The applicant must include in this assessment relevant problems of supplier-provided ETOPS group 1 significant systems and similar or identical equipment used on airplanes built by other manufacturers to the extent such information is reasonably available.

(b) *Propulsion system design.* (1) The engine used in the applicant's airplane design must be approved as eligible for Early ETOPS in accordance with § 33.201 of this chapter.

(2) The applicant must design the propulsion system to preclude failures or

malfunctions that could result in an IFSD. The applicant must show compliance with this requirement by analysis, test, in-service experience on other airplanes, or other means acceptable to the FAA. If analysis is used, the applicant must show that the propulsion system design will minimize failures and malfunctions with the objective of achieving the following IFSD rates:

(i) An IFSD rate of 0.02 or less per 1,000 world-fleet engine-hours for type design approval up to and including 180 minutes.

(ii) An IFSD rate of 0.01 or less per 1,000 world-fleet engine-hours for type design approval beyond 180 minutes.

(c) *Maintenance and operational procedures.* The applicant must validate all maintenance and operational procedures for ETOPS significant systems. The applicant must identify, track, and resolve any problems found during the validation in accordance with the problem tracking and resolution system specified in section K25.2.2(h) of this appendix.

(d) *Propulsion system validation test.* (1) The installed engine configuration for which approval is being sought must comply with § 33.201(c) of this chapter. The test engine must be configured with a complete airplane nacelle package, including engine-mounted equipment, except for any configuration differences necessary to accommodate test stand interfaces with the engine nacelle package. At the conclusion of the test, the propulsion system must be—

(i) Visually inspected according to the applicant's on-wing inspection recommendations and limits; and

(ii) Completely disassembled and the propulsion system hardware inspected to determine whether it meets the service limits specified in the Instructions for Continued Airworthiness submitted in compliance with § 25.1529.

(2) The applicant must identify, track, and resolve each cause or potential cause of IFSD, loss of thrust control, or other power loss encountered during this inspection in accordance with the problem tracking and resolution system specified in section K25.2.2 (h) of this appendix.

(e) *New technology testing.* Technology new to the applicant, including substantially new manufacturing techniques, must be tested to substantiate its suitability for the airplane design.

(f) *APU validation test.* If an APU is needed to comply with this appendix, one APU of the type to be certified with the airplane must be tested for 3,000 equivalent airplane operational cycles. Following completion of the test, the APU must be disassembled and inspected. The applicant must identify, track, and resolve each cause or potential cause of an inability to start or operate the APU in flight as intended in accordance with the problem tracking and resolution system specified in section K25.2.2(h) of this appendix.

(g) *Airplane demonstration.* For each airplane-engine combination to be approved for ETOPS, the applicant must flight test at least one airplane to demonstrate that the airplane, and its components and equipment are capable of functioning properly during ETOPS flights and diversions of the longest duration for which the applicant seeks approval. This flight testing may be performed in conjunction with, but may not substitute for the flight testing required by § 21.35(b)(2) of this chapter.

(1) The airplane demonstration flight test program must include:

(i) Flights simulating actual ETOPS, including flight at normal cruise altitude, step climbs, and, if applicable, APU operation.

(ii) Maximum duration flights with maximum duration diversions.

(iii) Maximum duration engine-inoperative diversions distributed among the engines installed on the airplanes used for the airplane demonstration flight test program. At least two one-engine-inoperative diversions must be conducted at maximum continuous thrust or power using the same engine.

(iv) Flights under non-normal conditions to demonstrate the flightcrew's ability to safely conduct an ETOPS diversion with worst-case ETOPS significant system failures or malfunctions that could occur in service.

(v) Diversions to airports that represent airports of the types used for ETOPS diversions.

(vi) Repeated exposure to humid and inclement weather on the ground followed by a long-duration flight at normal cruise altitude.

(2) The airplane demonstration flight test program must validate the adequacy of the airplane's flying qualities and performance, and the flightcrew's ability to safely conduct an ETOPS diversion under the conditions specified in section K25.2.2(g)(1) of this appendix.

(3) During the airplane demonstration flight test program, each test airplane must be operated and maintained using the applicant's recommended operating and maintenance procedures.

(4) At the completion of the airplane demonstration flight test program, each ETOPS significant system must undergo an on-wing inspection or test in accordance with the tasks defined in the proposed Instructions for Continued Airworthiness to establish its condition for continued safe operation. Each engine must also undergo a gas path inspection. These inspections must be conducted in a manner to identify abnormal conditions that could result in an IFSD or diversion. The applicant must identify, track and resolve any abnormal conditions in accordance with the problem tracking and resolution system specified in section K25.2.2(h) of this appendix.

(h) *Problem tracking and resolution system.* (1) The applicant must establish and maintain a problem tracking and resolution system. The system must:

(i) Contain a process for prompt reporting to the responsible FAA aircraft certification office of each occurrence reportable under § 21.4(a)(6) encountered during the phases of airplane and engine development used to assess Early ETOPS eligibility.

(ii) Contain a process for notifying the responsible FAA aircraft certification office of each proposed corrective action that the applicant determines necessary for each problem identified from the occurrences reported under section K25.2.2. (h)(1)(i) of this appendix. The timing of the notification must permit appropriate FAA review before taking the proposed corrective action.

(2) If the applicant is seeking ETOPS type design approval of a change to an airplane-engine combination previously approved for ETOPS, the problem tracking and resolution system need only address those problems specified in the following table, provided the applicant obtains prior authorization from the FAA:

If the change does not require a new airplane type certificate and . . .	Then the Problem Tracking and Resolution System must address . . .
(i) Requires a new engine type certificate	All problems applicable to the new engine installation, and for the remainder of the airplane, problems in changed systems only.
(ii) Does not require a new engine type certificate	Problems in changed systems only.

(i) *Acceptance criteria.* The type and frequency of failures and malfunctions on ETOPS significant systems that occur during the airplane flight test program and the airplane demonstration flight test program specified in section K25.2.2(g) of this appendix must be consistent with the type and frequency of failures and malfunctions that would be expected to occur on currently certificated airplanes approved for ETOPS.

K25.2.3. *Combined service experience and Early ETOPS method.*

An applicant for ETOPS type design approval using the combined service experience and Early ETOPS method must comply with the following requirements.

(a) A service experience requirement of not less than 15,000 engine-hours for the world fleet of the candidate airplane-engine combination.

(b) The Early ETOPS requirements of K25.2.2, except for the airplane demonstration specified in section K25.2.2(g) of this appendix; and

(c) The flight test requirement of section K25.2.1(e) of this appendix.

K25.3. *Airplanes with more than two engines.*

An applicant for ETOPS type design approval of an airplane with more than two engines must use one of the methods described in section K25.3.1, K25.3.2, or K25.3.3 of this appendix.

K25.3.1 *Service experience method.*

An applicant for ETOPS type design approval using the service experience

method must comply with section K25.3.1(a) of this appendix before conducting the airplane systems assessment specified in K25.3.1(b), and the flight test specified in section K25.3.1(c) of this appendix.

(a) *Service experience.* The world fleet for the airplane-engine combination must accumulate a minimum of 250,000 engine-hours. The FAA may reduce this number of hours if the applicant identifies compensating factors that are acceptable to the FAA. The compensating factors may include experience on another airplane, but experience on the candidate airplane must make up a significant portion of the total required service experience.

(b) *Airplane systems assessment.* The applicant must conduct an airplane systems assessment. The applicant must show that the airplane systems comply with the § 25.1309(b) using available in-service reliability data for ETOPS significant systems on the candidate airplane-engine combination. Each cause or potential cause of a relevant design, manufacturing, operational or maintenance problem occurring in service must have a corrective action or actions that are shown to be effective in preventing future occurrences. Each corrective action must be identified in the CMP document specified in section K25.1.6 of this appendix. A corrective action is not required if the problem would not significantly impact the safety or reliability of the airplane system involved. A relevant problem is a problem with an ETOPS group 1 significant system that has or could result in an IFSD or diversion. The applicant must include in this assessment relevant problems with similar or identical equipment installed on other types of airplanes to the extent such information is reasonably available.

(c) *Airplane flight test.* The applicant must conduct a flight test to validate the flightcrew's ability to safely conduct an ETOPS diversion with an inoperative engine and worst-case ETOPS significant system failures and malfunctions that could occur in service. The flight test must validate the airplane's flying qualities and performance with the demonstrated failures and malfunctions.

K25.3.2 Early ETOPS method.

An applicant for ETOPS type design approval using the Early ETOPS method must comply with the following requirements:

(a) *Maintenance and operational procedures.* The applicant must validate all maintenance and operational procedures for ETOPS significant systems. The applicant must identify, track and resolve any problems found during the validation in accordance with the problem tracking and resolution system specified in section K25.3.2(e) of this appendix.

(b) *New technology testing.* Technology new to the applicant, including substantially new manufacturing techniques, must be tested to substantiate its suitability for the airplane design.

(c) *APU validation test.* If an APU is needed to comply with this appendix, one APU of the type to be certified with the airplane must be tested for 3,000 equivalent airplane operational cycles. Following completion of the test, the APU must be disassembled and inspected. The applicant must identify, track, and resolve each cause or potential cause of an inability to start or operate the APU in flight as intended in accordance with the problem tracking and resolution system specified in section K25.3.2(e) of this appendix.

(d) *Airplane demonstration.* For each airplane-engine combination to be approved for ETOPS, the applicant must flight test at least one airplane to demonstrate that the airplane, and its components and equipment are capable of functioning properly during ETOPS flights and diversions of the longest duration for which the applicant seeks approval. This flight testing may be performed in conjunction with, but may not substitute for the flight testing required by § 21.35(b)(2).

(1) The airplane demonstration flight test program must include:

(i) Flights simulating actual ETOPS including flight at normal cruise altitude, step climbs, and, if applicable, APU operation.

(ii) Maximum duration flights with maximum duration diversions.

(iii) Maximum duration engine-inoperative diversions distributed among the engines installed on the airplanes used for the airplane demonstration flight test program. At least two one engine-inoperative diversions must be conducted at maximum continuous thrust or power using the same engine.

(iv) Flights under non-normal conditions to validate the flightcrew's ability to safely conduct an ETOPS diversion with worst-case ETOPS significant system failures or malfunctions that could occur in service.

(v) Diversions to airports that represent airports of the types used for ETOPS diversions.

(vi) Repeated exposure to humid and inclement weather on the ground followed by a long duration flight at normal cruise altitude.

(2) The airplane demonstration flight test program must validate the adequacy of the airplane's flying qualities and performance, and the flightcrew's ability to safely conduct an ETOPS diversion under the conditions specified in section K25.3.2(d)(1) of this appendix.

(3) During the airplane demonstration flight test program, each test airplane must be operated and maintained using the applicant's recommended operating and maintenance procedures.

(4) At the completion of the airplane demonstration, each ETOPS significant system must undergo an on-wing inspection or test in accordance with the tasks defined in the proposed Instructions for Continued Airworthiness to establish its condition for continued safe operation. Each engine must also undergo a gas path inspection. These inspections must be conducted in a manner to identify abnormal conditions that could result in an IFSD or diversion. The applicant must identify, track and resolve any abnormal conditions in accordance with the problem tracking and resolution system specified in section K25.3.2(e) of this appendix.

(e) *Problem tracking and resolution system.* (1) The applicant must establish and maintain a problem tracking and resolution system. The system must:

(i) Contain a process for prompt reporting to the responsible FAA aircraft certification office of each occurrence reportable under § 21.4(a)(6) encountered during the phases of airplane and engine development used to assess Early ETOPS eligibility.

(ii) Contain a process for notifying the responsible FAA aircraft certification office of each proposed corrective action that the applicant determines necessary for each problem identified from the occurrences reported under section K25.3.2(h)(1)(i) of this appendix. The timing of the notification must permit appropriate FAA review before taking the proposed corrective action.

(2) If the applicant is seeking ETOPS type design approval of a change to an airplane-engine combination previously approved for ETOPS, the problem tracking and resolution system need only address those problems specified in the following table, provided the applicant obtains prior authorization from the FAA:

If the change does not require a new airplane type certificate and . . .	Then the Problem Tracking and Resolution System must address . . .
(i) Requires a new engine type certificate	All problems applicable to the new engine installation, and for the remainder of the airplane, problems in changed systems only.
(ii) Does not require a new engine type certificate	Problems in changed systems only.

(f) *Acceptance criteria.* The type and frequency of failures and malfunctions on ETOPS significant systems that occur during the airplane flight test program and the airplane demonstration flight test program specified in section K25.3.2(d) of this appendix must be consistent with the type and frequency of failures and malfunctions that would be expected to occur on currently certificated airplanes approved for ETOPS.

K25.3.3 *Combined service experience and Early ETOPS method.*

An applicant for ETOPS type design approval using the Early ETOPS method must comply with the following requirements:

(a) A service experience requirement of less than 15,000 engine-hours for the world fleet of the candidate airplane-engine combination;

(b) The Early ETOPS requirements of section K25.3.2 of this appendix, except for the airplane demonstration specified in section K25.3.2(d) of this appendix; and

(c) The flight test requirement of section K25.3.1(c) of this appendix.

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

■ 10. The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

■ 11. Amend § 33.71 by revising paragraph (c)(4) to read as follows:

§ 33.71 Lubrication system.

* * * * *

(c) * * *

(4) Each oil tank cap must provide an oil-tight seal. For an applicant seeking eligibility for an engine to be installed on an airplane approved for ETOPS, the oil tank must be designed to prevent a hazardous loss of oil due to an incorrectly installed oil tank cap.

* * * * *

■ 12. Revise § 33.90 to read as follows:

§ 33.90 Initial maintenance inspection test.

Each applicant, except an applicant for an engine being type certificated through amendment of an existing type certificate or through supplemental type certification procedures, must complete one of the following tests on an engine that substantially conforms to the type design to establish when the initial maintenance inspection is required:

(a) An approved engine test that simulates the conditions in which the engine is expected to operate in service, including typical start-stop cycles.

(b) An approved engine test conducted in accordance with § 33.201 (c) through (f).

■ 13. Add subpart G to read as follows:

Subpart G—Special Requirements: Turbine Aircraft Engines

§ 33.201 Design and test requirements for Early ETOPS eligibility.

An applicant seeking type design approval for an engine to be installed on a two-engine airplane approved for ETOPS without the service experience specified in part 25, Appendix K, K25.2.1 of this chapter, must comply with the following:

(a) The engine must be designed using a design quality process acceptable to the FAA, that ensures the design features of the engine minimize the occurrence of failures, malfunctions, defects, and maintenance errors that could result in an IFSD, loss of thrust control, or other power loss.

(b) The design features of the engine must address problems shown to result in an IFSD, loss of thrust control, or other power loss in the applicant's other relevant type designs approved within the past 10 years, to the extent that adequate service data is available within that 10-year period. An applicant without adequate service data must show experience with and knowledge of problem mitigating design practices equivalent to that gained from actual service experience in a manner acceptable to the FAA.

(c) Except as specified in paragraph (f) of this section, the applicant must conduct a simulated ETOPS mission cyclic endurance test in accordance with an approved test plan on an engine that substantially conforms to the type design. The test must:

(1) Include a minimum of 3,000 representative service start-stop mission cycles and three simulated diversion cycles at maximum continuous thrust or power for the maximum diversion time for which ETOPS eligibility is sought. Each start-stop mission cycle must include the use of take-off, climb, cruise, descent, approach, and landing thrust or power and the use of thrust reverse (if applicable). The diversions must be evenly distributed over the duration of the test. The last diversion must be conducted within 100 cycles of the completion of the test.

(2) Be performed with the high speed and low speed main engine rotors independently unbalanced to obtain a minimum of 90 percent of the recommended field service maintenance vibration levels. For engines with three main engine rotors, the intermediate speed rotor must be independently unbalanced to obtain a minimum of 90 percent of the recommended production acceptance vibration level. The required peak vibration levels must be verified during a slow acceleration and deceleration run of the test engine covering the main engine rotor operating speed ranges.

(3) Include a minimum of three million vibration cycles for each 60 rpm incremental step of the typical high-speed rotor start-stop mission cycle. The test may be conducted using any rotor speed step increment from 60 to 200 rpm provided the test encompasses the typical service start-stop cycle speed range. For incremental steps greater than 60 rpm, the minimum number of vibration cycles must be linearly increased up to ten million cycles for a 200 rpm incremental step.

(4) Include a minimum of 300,000 vibration cycles for each 60 rpm incremental step of the high-speed rotor approved operational speed range between minimum flight idle and cruise power not covered by paragraph (c)(3) of this section. The test may be conducted using any rotor speed step increment from 60 to 200 rpm provided the test encompasses the applicable speed range. For incremental steps greater than 60 rpm the minimum number of vibration cycles must be linearly increased up to 1 million for a 200 rpm incremental step.

(5) Include vibration surveys at periodic intervals throughout the test. The equivalent value of the peak vibration level observed during the surveys must meet the minimum vibration requirement of § 33.201(c)(2).

(d) Prior to the test required by paragraph (c) of this section, the engine must be subjected to a calibration test to document power and thrust characteristics.

(e) At the conclusion of the testing required by paragraph (c) of this section, the engine must:

(1) Be subjected to a calibration test at sea-level conditions. Any change in power or thrust characteristics must be within approved limits.

(2) Be visually inspected in accordance with the on-wing inspection recommendations and limits contained in the Instructions for Continued Airworthiness submitted in compliance with § 33.4.

(3) Be completely disassembled and inspected—

(i) In accordance with the applicable inspection recommendations and limits contained in the Instructions for Continued Airworthiness submitted in compliance with § 33.4;

(ii) With consideration of the causes of IFSD, loss of thrust control, or other power loss identified by paragraph (b) of this section; and

(iii) In a manner to identify wear or distress conditions that could result in an IFSD, loss of thrust control, or other power loss not specifically identified by paragraph (b) of this section or addressed within the Instructions for Continued Airworthiness.

(4) Not show wear or distress to the extent that could result in an IFSD, loss of thrust control, or other power loss within a period of operation before the component, assembly, or system would likely have been inspected or functionally tested for integrity while in service. Such wear or distress must have corrective action implemented through a design change, a change to maintenance instructions, or operational procedures before ETOPS eligibility is granted. The type and frequency of wear and distress that occurs during the engine test must be consistent with the type and frequency of wear and distress

that would be expected to occur on ETOPS eligible engines.

(f) An alternative mission cycle endurance test that provides an equivalent demonstration of the unbalance and vibration specified in paragraph (c) of this section may be used when approved by the FAA.

(g) For an applicant using the simulated ETOPS mission cyclic endurance test to comply with § 33.90, the test may be interrupted so that the engine may be inspected by an on-wing or other method, using criteria acceptable to the FAA, after completion of the test cycles required to comply with § 33.90(a). Following the inspection, the ETOPS test must be resumed to complete the requirements of this section.

■ 14. Add paragraph A33.3(c) to Appendix A to read as follows:

Appendix A to Part 33—Instructions for Continued Airworthiness

* * * * *

A33.3 Content

* * * * *

(c) *ETOPS Requirements.* For an applicant seeking eligibility for an engine to be installed on an airplane approved for ETOPS, the Instructions for Continued Airworthiness must include procedures for engine condition monitoring. The engine condition monitoring procedures must be able to determine prior to flight, whether an engine is capable of providing, within approved engine operating limits, maximum continuous power or thrust, bleed air, and power extraction required for a relevant engine inoperative diversion. For an engine to be installed on a two-engine airplane approved for ETOPS, the engine condition monitoring procedures must be validated before ETOPS eligibility is granted.

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 15. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 16. Add § 121.7 to read as follows:

§ 121.7 Definitions.

The following definitions apply to those sections of part 121 that apply to ETOPS:

Adequate Airport means an airport that an airplane operator may list with approval from the FAA because that airport meets the landing limitations of § 121.197 and is either—

(1) An airport that meets the requirements of part 139, subpart D of this chapter, excluding those that apply to aircraft rescue and firefighting service, or

(2) A military airport that is active and operational.

ETOPS Alternate Airport means an adequate airport listed in the certificate holder's operations specifications that is designated in a dispatch or flight release for use in the event of a diversion during ETOPS. This definition applies to flight planning and does not in any way limit the authority of the pilot-in-command during flight.

ETOPS Area of Operation means one of the following areas:

(1) For turbine-engine-powered airplanes with two engines, an area beyond 60 minutes from an adequate airport, computed using a one-engine-inoperative cruise speed under standard conditions in still air.

(2) For turbine-engine-powered passenger-carrying airplanes with more than two engines, an area beyond 180 minutes from an adequate airport, computed using a one-engine-inoperative cruise speed under standard conditions in still air.

ETOPS Entry Point means the first point on the route of an ETOPS flight, determined using a one-engine-inoperative cruise speed under standard conditions in still air, that is—

(1) More than 60 minutes from an adequate airport for airplanes with two engines;

(2) More than 180 minutes from an adequate airport for passenger-carrying airplanes with more than two engines.

ETOPS Qualified Person means a person, performing maintenance for the certificate holder, who has satisfactorily completed the certificate holder's ETOPS training program.

Maximum Diversion Time means, for the purposes of ETOPS route planning, the longest diversion time authorized for a flight under the operator's ETOPS authority. It is calculated under standard conditions in still air at a one-engine-inoperative cruise speed.

North Pacific Area of Operation means Pacific Ocean areas north of 40° N latitudes including NOPAC ATS routes, and published PACOTS tracks between Japan and North America.

North Polar Area means the entire area north of 78° N latitude.

One-engine-inoperative-Cruise Speed means a speed within the certified operating limits of the airplane that is specified by the certificate holder and approved by the FAA for —

(1) Calculating required fuel reserves needed to account for an inoperative engine; or

(2) Determining whether an ETOPS alternate is within the maximum diversion time authorized for an ETOPS flight.

South Polar Area means the entire area South of 60° S latitude.

■ 17. Amend § 121.97 by revising paragraph (b)(1)(ii) to read as follows:

§ 121. 97 Airports: Required data.

* * * * *

(b) * * *

(1) * * *

(ii) Public protection. After February 15, 2008, for ETOPS beyond 180 minutes or operations in the North Polar area and South Polar area, this includes facilities at each airport or in the immediate area sufficient to protect the passengers from the elements and to see to their welfare.

* * * * *

■ 18. Amend § 121.99 by revising the section heading and adding paragraphs (c), (d) and (e) to read as follows:

§ 121.99 Communications facilities—domestic and flag operations.

* * * * *

(c) Each certificate holder conducting flag operations must provide voice communications for ETOPS where voice communication facilities are available. In determining whether facilities are available, the certificate holder must consider potential routes and altitudes needed for diversion to ETOPS Alternate Airports. Where facilities are not available or are of such poor quality that voice communication is not possible, another communication system must be substituted.

(d) Except as provided in paragraph (e) of this section, after February 15, 2008 for ETOPS beyond 180 minutes, each certificate holder conducting flag operations must have a second communication system in addition to that required by paragraph (c) of this section. That system must be able to provide immediate satellite-based voice communications of landline-telephone fidelity. The system must be able to communicate between the flight crew and air traffic services, and the flight crew and the certificate holder. In determining whether such communications are available, the certificate holder must consider potential routes and altitudes needed for diversion to ETOPS Alternate Airports. Where immediate, satellite-based voice communications are not available, or are of such poor quality that voice communication is not possible, another communication system must be substituted.

(e) Operators of two-engine turbine-powered airplanes with 207 minute

ETOPS approval in the North Pacific Area of Operation must comply with the requirements of paragraph (d) of this section as of February 15, 2007.

■ 19. Add § 121.106 to read as follows:

§ 121.106 ETOPS Alternate Airport: Rescue and fire fighting service.

(a) Except as provided in paragraph (b) of this section, the following rescue and fire fighting service (RFFS) must be available at each airport listed as an ETOPS Alternate Airport in a dispatch or flight release.

(1) For ETOPS up to 180 minutes, each designated ETOPS Alternate Airport must have RFFS equivalent to that specified by ICAO as Category 4, or higher.

(2) For ETOPS beyond 180 minutes, each designated ETOPS Alternate Airport must have RFFS equivalent to that specified by ICAO Category 4, or higher. In addition, the aircraft must remain within the ETOPS authorized diversion time from an Adequate Airport that has RFFS equivalent to that specified by ICAO Category 7, or higher.

(b) If the equipment and personnel required in paragraph (a) of this section are not immediately available at an airport, the certificate holder may still list the airport on the dispatch or flight release if the airport's RFFS can be augmented to meet paragraph (a) of this section from local fire fighting assets. A 30-minute response time for augmentation is adequate if the local assets can be notified while the diverting airplane is en route. The augmenting equipment and personnel must be available on arrival of the diverting airplane and must remain as long as the diverting airplane needs RFFS.

■ 20. Add § 121.122 to read as follows:

§ 121.122 Communications facilities—supplemental operations.

(a) Each certificate holder conducting supplemental operations other than all-cargo operations in an airplane with more than two engines must show that a two-way radio communication system or other means of communication approved by the FAA is available. It must ensure reliable and rapid communications under normal operating conditions over the entire route (either direct or via approved point-to-point circuits) between each airplane and the certificate holder, and between each airplane and the appropriate air traffic services, except as specified in § 121.351(c).

(b) Except as provided in paragraph (d) of this section, each certificate holder conducting supplemental operations other than all-cargo operations in an airplane with more than two engines must provide voice communications for ETOPS where voice communication facilities are available. In determining whether facilities are available, the certificate holder must consider potential routes and altitudes needed for diversion to ETOPS Alternate Airports. Where facilities are not available or are of such poor quality that voice communication is not possible, another communication system must be substituted.

(c) Except as provided in paragraph (d) of this section, for ETOPS beyond 180 minutes each certificate holder conducting supplemental operations other than all-cargo operations in an airplane with more than two engines must have a second communication system in addition to that required by paragraph (b) of this section. That system must be able to provide immediate satellite-based voice communications of landline telephone-fidelity. The system must provide communication capabilities between the flight crew and air traffic services and the flight crew and the certificate holder. In determining whether such communications are available, the certificate holder must consider potential routes and altitudes needed for diversion to ETOPS Alternate Airports. Where immediate, satellite-based voice communications are not available, or are of such poor quality that voice communication is not possible, another communication system must be substituted.

(d) Operators of turbine engine powered airplanes do not need to meet the requirements of paragraphs (b) and (c) of this section until February 15, 2008.

■ 21. Amend § 121.135 by—

■ a. Redesignating paragraphs (b)(23) and (b)(24) as paragraphs (b)(25) and (b)(26);

■ b. Redesignating paragraphs (b)(10) through (b)(22) as paragraphs (b)(11) through (b)(23); and

■ c. Adding paragraphs (b)(10) and (b)(24) to read as follows:

§ 121.135 Contents.

* * * * *

(b) * * *

(10) For ETOPS, airplane performance data to support all phases of these operations.

* * * * *

(24) After February 15, 2008, for passenger flag operations and for those supplemental operations that are not all-cargo operations outside the 48 contiguous States and Alaska,

(i) For ETOPS greater than 180 minutes a specific passenger recovery plan for each ETOPS Alternate Airport used in those operations, and

(ii) For operations in the North Polar Area and South Polar Area a specific passenger recovery plan for each diversion airport used in those operations.

* * * * *

■ 22. Amend § 121.161 by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 121.161 Airplane limitations: Type of route.

(a) Except as provided in paragraph (e) of this section, unless approved by the Administrator in accordance with Appendix P of this part and authorized in the certificate holder's operations specifications, no certificate holder may operate a turbine-engine-powered airplane over a route that contains a point—

(1) Farther than a flying time from an Adequate Airport (at a one-engine-inoperative cruise speed under standard conditions in still air) of 60 minutes for a two-engine airplane or 180 minutes for a passenger-carrying airplane with more than two engines;

(2) Within the North Polar Area; or

(3) Within the South Polar Area.

* * * * *

(d) Unless authorized by the Administrator based on the character of the terrain, the kind of operation, or the performance of the airplane to be used, no certificate holder may operate a reciprocating-engine-powered airplane over a route that contains a point farther than 60 minutes flying time (at a one-engine-inoperative cruise speed under standard conditions in still air) from an Adequate Airport.

(e) Operators of turbine-engine powered airplanes with more than two engines do not need to meet the requirements of paragraph (a)(1) of this section until February 15, 2008.

■ 23. Add new § 121.162 to read as follows:

§ 121.162 ETOPS Type Design Approval Basis.

Except for a passenger-carrying airplane with more than two engines manufactured prior to February 17, 2015 and except for a two-engine airplane that, when used in ETOPS, is only used for ETOPS of 75 minutes or less, no certificate holder may conduct ETOPS unless the airplane has been type design approved for ETOPS and each airplane used in ETOPS complies with its CMP document as follows:

(a) For a two-engine airplane, that is of the same model airplane-engine combination that received FAA approval for ETOPS up to 180 minutes

prior to February 15, 2007, the CMP document for that model airplane-engine combination in effect on February 14, 2007.

(b) For a two-engine airplane, that is not of the same model airplane-engine combination that received FAA approval for ETOPS up to 180 minutes before February 15, 2007, the CMP document for that new model airplane-engine combination issued in accordance with § 25.3(b)(1) of this chapter.

(c) For a two-engine airplane approved for ETOPS beyond 180 minutes, the CMP document for that model airplane-engine combination issued in accordance with § 25.3(b)(2) of this chapter.

(d) For an airplane with more than 2 engines manufactured on or after February 17, 2015, the CMP document for that model airplane-engine combination issued in accordance with § 25.3(c) of this chapter.

■ 24. Add § 121.374 to read as follows:

§ 121.374 Continuous airworthiness maintenance program (CAMP) for two-engine ETOPS.

In order to conduct an ETOPS flight using a two-engine airplane, each certificate holder must develop and comply with the ETOPS continuous airworthiness maintenance program, as authorized in the certificate holder's operations specifications, for each airplane-engine combination used in ETOPS. The certificate holder must develop this ETOPS CAMP by supplementing the manufacturer's maintenance program or the CAMP currently approved for the certificate holder. This ETOPS CAMP must include the following elements:

(a) *ETOPS maintenance document.* The certificate holder must have an ETOPS maintenance document for use by each person involved in ETOPS.

(1) The document must—

(i) List each ETOPS significant system,

(ii) Refer to or include all of the ETOPS maintenance elements in this section,

(iii) Refer to or include all supportive programs and procedures,

(iv) Refer to or include all duties and responsibilities, and

(v) Clearly state where referenced material is located in the certificate holder's document system.

(b) *ETOPS pre-departure service check.* Except as provided in Appendix P of this part, the certificate holder must develop a pre-departure check tailored to their specific operation.

(1) The certificate holder must complete a pre-departure service check immediately before each ETOPS flight.

(2) At a minimum, this check must—

(i) Verify the condition of all ETOPS Significant Systems;

(ii) Verify the overall status of the airplane by reviewing applicable maintenance records; and

(iii) Include an interior and exterior inspection to include a determination of engine and APU oil levels and consumption rates.

(3) An appropriately certificated mechanic that is ETOPS Qualified must accomplish and certify by signature, ETOPS specific tasks. A certificated mechanic, with an airframe and powerplant rating, who is ETOPS Qualified must certify by signature, that the ETOPS pre-departure service check has been completed.

(c) *Limitations on dual maintenance.*

(1) Except as specified in paragraph (c)(2), the certificate holder may not perform scheduled or unscheduled maintenance during the same maintenance visit on more than one ETOPS Significant System listed in the ETOPS maintenance document, if the improper maintenance could result in the failure of an ETOPS Significant System.

(2) In the event an unforeseen circumstance prevents the certificate holder from complying with paragraph (c)(1) of this section, the certificate holder may perform maintenance on more than one ETOPS Significant System provided:

(i) The maintenance action on each ETOPS Significant System is performed by a different technician, or

(ii) The maintenance action on each ETOPS Significant System is performed by the same technician under the direct supervision of a second qualified individual; and

(iii) For either paragraph (c)(2)(i) or (ii) of this section, a qualified individual conducts a ground verification test and any in-flight verification test required under the program developed pursuant to paragraph (d) of this section.

(d) *Verification program.* The certificate holder must develop and maintain a program for the resolution of discrepancies that will ensure the effectiveness of maintenance actions taken on ETOPS Significant Systems. The verification program must identify potential problems and verify satisfactory corrective action. The verification program must include ground verification and in-flight verification policy and procedures. The certificate holder must establish procedures to indicate clearly who is going to initiate the verification action and what action is necessary. The verification action may be performed on an ETOPS revenue flight provided the verification action is documented as satisfactorily completed upon reaching the ETOPS Entry Point.

(e) *Task identification.* The certificate holder must identify all ETOPS-specific tasks. An appropriately certificated mechanic that is ETOPS Qualified must accomplish and certify by signature that the ETOPS-specific task has been completed.

(f) *Centralized maintenance control procedures.* The certificate holder must develop and maintain procedures for centralized maintenance control for ETOPS.

(g) *Parts control program.* The certificate holder must develop an ETOPS parts control program to ensure the proper identification of parts used to maintain the configuration of airplanes used in ETOPS.

(h) *Reliability program.* The certificate holder must have an ETOPS reliability program. This program must be the certificate holder's existing reliability program or its Continuing Analysis and Surveillance System (CASS) supplemented for ETOPS. This program must be event-oriented and include procedures to report the events listed below, as follows:

(1) The certificate holder must report the following events within 72 hours of the occurrence to its certificate holding district office (CHDO):

(i) IFSDs, except planned IFSDs performed for flight training.

(ii) Diversions and turnbacks for failures, malfunctions, or defects associated with any airplane or engine system.

(iii) Uncommanded power or thrust changes or surges.

(iv) Inability to control the engine or obtain desired power or thrust.

(v) Inadvertent fuel loss or unavailability, or uncorrectable fuel imbalance in flight.

(vi) Failures, malfunctions or defects associated with ETOPS Significant Systems.

(vii) Any event that would jeopardize the safe flight and landing of the airplane on an ETOPS flight.

(2) The certificate holder must investigate the cause of each event listed in paragraph (h)(1) of this section and submit findings and a description of corrective action to its CHDO. The report must include the information specified in § 121.703(e). The corrective action must be acceptable to its CHDO.

(i) *Propulsion system monitoring.* (1) If the IFSD rate (computed on a 12-month rolling average) for an engine installed as part of an airplane-engine combination exceeds the following values, the certificate holder must do a comprehensive review of its operations

to identify any common cause effects and systemic errors. The IFSD rate must be computed using all engines of that type in the certificate holder's entire fleet of airplanes approved for ETOPS.

(i) A rate of 0.05 per 1,000 engine hours for ETOPS up to and including 120 minutes.

(ii) A rate of 0.03 per 1,000 engine hours for ETOPS beyond 120-minutes up to and including 207 minutes in the North Pacific Area of Operation and up to and including 180 minutes elsewhere.

(iii) A rate of 0.02 per 1,000 engine hours for ETOPS beyond 207 minutes in the North Pacific Area of Operation and beyond 180 minutes elsewhere.

(2) Within 30 days of exceeding the rates above, the certificate holder must submit a report of investigation and any necessary corrective action taken to its CHDO.

(j) *Engine condition monitoring.* (1) The certificate holder must have an engine condition monitoring program to detect deterioration at an early stage and to allow for corrective action before safe operation is affected.

(2) This program must describe the parameters to be monitored, the method of data collection, the method of analyzing data, and the process for taking corrective action.

(3) The program must ensure that engine-limit margins are maintained so that a prolonged engine-inoperative diversion may be conducted at approved power levels and in all expected environmental conditions without exceeding approved engine limits. This includes approved limits for items such as rotor speeds and exhaust gas temperatures.

(k) *Oil-consumption monitoring.* The certificate holder must have an engine oil consumption monitoring program to ensure that there is enough oil to complete each ETOPS flight. APU oil consumption must be included if an APU is required for ETOPS. The operator's oil consumption limit may not exceed the manufacturer's recommendation. Monitoring must be continuous and include oil added at each ETOPS departure point. The program must compare the amount of oil added at each ETOPS departure point with the running average consumption to identify sudden increases.

(l) *APU in-flight start program.* If the airplane type certificate requires an APU but does not require the APU to run during the ETOPS portion of the flight, the certificate holder must develop and maintain a program acceptable to the FAA for cold soak in-flight start-and-run reliability.

(m) *Maintenance training.* For each airplane-engine combination, the certificate holder must develop a maintenance training program that provides training adequate to support ETOPS. It must include ETOPS specific training for all persons involved in ETOPS maintenance that focuses on the special nature of ETOPS. This training must be in addition to the operator's maintenance training program used to qualify individuals to perform work on specific airplanes and engines.

(n) *Configuration, maintenance, and procedures (CMP) document.* If an airplane-engine combination has a CMP document, the certificate holder must use a system that ensures compliance with the applicable FAA-approved document.

(o) *Procedural changes.* Each substantial change to the maintenance or training procedures that were used to qualify the certificate holder for ETOPS, must be submitted to the CHDO for review. The certificate holder cannot implement a change until its CHDO notifies the certificate holder that the review is complete.

■ 25. Amend § 121.415 by adding paragraph (a)(4) to read as follows:

§ 121.415 Crewmember and dispatcher training requirements.

(a) * * *

(4) After February 15, 2008, training for crewmembers and dispatchers in their roles and responsibilities in the certificate holder's passenger recovery plan, if applicable.

* * * * *

■ 26. Amend § 121.565 by revising paragraphs (a), (b) introductory text, (b)(2) and (c) to read as follows:

§ 121.565 Engine inoperative: Landing; reporting.

(a) Except as provided in paragraph (b) of this section, whenever an airplane engine fails or whenever an engine is shutdown to prevent possible damage, the pilot in command must land the airplane at the nearest suitable airport, in point of time, at which a safe landing can be made.

(b) If not more than one engine of an airplane that has three or more engines fails or is shut down to prevent possible damage, the pilot-in-command may proceed to an airport that the pilot selects if, after considering the following, the pilot makes a reasonable decision that proceeding to that airport is as safe as landing at the nearest suitable airport:

* * * * *

(2) The altitude, weight, and useable fuel at the time that the engine is shutdown.

* * * * *

(c) The pilot-in-command must report each engine shutdown in flight to the appropriate ground radio station as soon as practicable and must keep that station fully informed of the progress of the flight.

* * * * *

■ 27. Add § 121.624 to read as follows:

§ 121.624 ETOPS Alternate Airports.

(a) No person may dispatch or release an airplane for an ETOPS flight unless enough ETOPS Alternate Airports are listed in the dispatch or flight release such that the airplane remains within the authorized ETOPS maximum diversion time. In selecting these ETOPS Alternate Airports, the certificate holder must consider all adequate airports within the authorized ETOPS diversion time for the flight that meet the standards of this part.

(b) No person may list an airport as an ETOPS Alternate Airport in a dispatch or flight release unless, when it might be used (from the earliest to the latest possible landing time)—

(1) The appropriate weather reports or forecasts, or any combination thereof, indicate that the weather conditions will be at or above the ETOPS Alternate Airport minima specified in the certificate holder's operations specifications; and

(2) The field condition reports indicate that a safe landing can be made.

(c) Once a flight is en route, the weather conditions at each ETOPS Alternate Airport must meet the requirements of § 121.631 (c).

(d) No person may list an airport as an ETOPS Alternate Airport in the dispatch or flight release unless that airport meets the public protection requirements of § 121.97(b)(1)(ii).

■ 28. Revise § 121.625 to read as follows:

§ 121.625 Alternate Airport weather minima.

Except as provided in § 121.624 for ETOPS Alternate Airports, no person may list an airport as an alternate in the dispatch or flight release unless the appropriate weather reports or forecasts, or any combination thereof, indicate that the weather conditions will be at or above the alternate weather minima specified in the certificate holder's operations specifications for that airport when the flight arrives.

■ 29. Amend § 121.631 by redesignating paragraphs (c) and (d) as paragraphs (f) and (g), respectively, and adding

paragraphs (c), (d), and (e) to read as follows:

§ 121.631 Original dispatch or flight release, redispatch or amendment of dispatch or flight release.

* * * * *

(c) No person may allow a flight to continue beyond the ETOPS Entry Point unless—

(1) Except as provided in paragraph (d) of this section, the weather conditions at each ETOPS Alternate Airport required by § 121.624 are forecast to be at or above the operating minima for that airport in the certificate holder's operations specifications when it might be used (from the earliest to the latest possible landing time); and

(2) All ETOPS Alternate Airports within the authorized ETOPS maximum diversion time are reviewed and the flight crew advised of any changes in conditions that have occurred since dispatch.

(d) If paragraph (c)(1) of this section cannot be met for a specific airport, the dispatch or flight release may be amended to add an ETOPS Alternate Airport within the maximum ETOPS diversion time that could be authorized for that flight with weather conditions at or above operating minima.

(e) Before the ETOPS Entry Point, the pilot in command for a supplemental operator or a dispatcher for a flag operator must use company communications to update the flight plan if needed because of a re-evaluation of aircraft system capabilities.

■ 30. Add § 121.633 to read as follows:

§ 121.633 Considering time-limited systems in planning ETOPS alternates.

(a) For ETOPS up to and including 180 minutes, no person may list an airport as an ETOPS Alternate Airport in a dispatch or flight release if the time needed to fly to that airport (at the approved one-engine inoperative cruise speed under standard conditions in still air) would exceed the approved time for the airplane's most limiting ETOPS Significant System (including the airplane's most limiting fire suppression system time for those cargo and baggage compartments required by regulation to have fire-suppression systems) minus 15 minutes.

(b) For ETOPS beyond 180 minutes, no person may list an airport as an ETOPS Alternate Airport in a dispatch or flight release if the time needed to fly to that airport:

(1) at the all engine operating cruise speed, corrected for wind and temperature, exceeds the airplane's most limiting fire suppression system time minus 15 minutes for those cargo and baggage compartments required by regulation to have fire suppression systems (except as provided in paragraph (c) of this section), or

(2) at the one-engine-inoperative cruise speed, corrected for wind and temperature, exceeds the airplane's most limiting ETOPS Significant System time (other than the airplane's most limiting fire suppression system time minus 15 minutes for those cargo and baggage compartments required by regulation to have fire-suppression systems).

(c) For turbine-engine powered airplanes with more than two engines, the certificate holder need not meet paragraph (b)(1) of this section until February 15, 2013.

■ 31. Add § 121.646 to read as follows:

§ 121.646 En-route fuel supply: flag and supplemental operations.

(a) No person may dispatch or release for flight a turbine-engine powered airplane with more than two engines for a flight more than 90 minutes (with all engines operating at cruise power) from an Adequate Airport unless the following fuel supply requirements are met:

(1) The airplane has enough fuel to meet the requirements of § 121.645(b);

(2) The airplane has enough fuel to fly to the Adequate Airport—

(i) Assuming a rapid decompression at the most critical point;

(ii) Assuming a descent to a safe altitude in compliance with the oxygen supply requirements of § 121.333; and

(iii) Considering expected wind and other weather conditions.

(3) The airplane has enough fuel to hold for 15 minutes at 1500 feet above field elevation and conduct a normal approach and landing.

(b) No person may dispatch or release for flight an ETOPS flight unless, considering wind and other weather conditions expected, it has the fuel otherwise required by this part and enough fuel to satisfy each of the following requirements:

(1) Fuel to fly to an ETOPS Alternate Airport.

(i) Fuel to account for rapid decompression and engine failure. The airplane must carry the greater of the following amounts of fuel:

(A) Fuel sufficient to fly to an ETOPS Alternate Airport assuming a rapid decompression at the most critical point followed by descent to a safe altitude in compliance with the oxygen supply requirements of § 121.333 of this chapter;

(B) Fuel sufficient to fly to an ETOPS Alternate Airport (at the one-engine-inoperative cruise speed) assuming a rapid decompression and a simultaneous engine failure at the most critical point followed by descent to a safe altitude in compliance with the oxygen requirements of § 121.133 of this chapter; or

(C) Fuel sufficient to fly to an ETOPS Alternate Airport (at the one engine inoperative cruise speed) assuming an engine failure at the most critical point followed by descent to the one engine inoperative cruise altitude.

(ii) Fuel to account for errors in wind forecasting. In calculating the amount of fuel required by paragraph (b)(1)(i) of this section, the certificate holder must increase the actual forecast wind speed by 5% (resulting in an increase in headwind or a decrease in tailwind) to account for any potential errors in wind forecasting. If a certificate holder is not using the actual forecast wind based on a wind model accepted by the FAA, the airplane must carry additional fuel equal to 5% of the fuel required for paragraph (b)(1)(i) of this section, as reserve fuel to allow for errors in wind data.

(iii) Fuel to account for icing. In calculating the amount of fuel required by paragraph (b)(1)(i) of this section (after completing the wind calculation in paragraph (b)(1)(ii) of this section), the certificate holder must ensure that the airplane carries the greater of the following amounts of fuel in anticipation of possible icing during the diversion:

(A) Fuel that would be burned as a result of airframe icing during 10 percent of the time icing is forecast (including the fuel used by engine and wing anti-ice during this period).

(B) Fuel that would be used for engine anti-ice, and if appropriate wing anti-ice, for the entire time during which icing is forecast.

(iv) Fuel to account for engine deterioration. In calculating the amount of fuel required by paragraph (b)(1)(i) of this section (after completing the wind calculation in paragraph (b)(1)(ii) of this section), the airplane also carries fuel equal to 5% of the fuel specified above, to account for deterioration in cruise fuel burn performance unless the certificate holder has a program to monitor airplane in-service deterioration to cruise fuel burn performance.

(2) Fuel to account for holding, approach, and landing. In addition to the fuel required by paragraph (b)(1) of this section, the airplane must carry fuel sufficient to hold at 1500 feet above field elevation for 15 minutes upon reaching an ETOPS Alternate Airport

and then conduct an instrument approach and land.

(3) Fuel to account for APU use. If an APU is a required power source, the certificate holder must account for its fuel consumption during the appropriate phases of flight.

■ 32. Amend § 121.687 by adding paragraph (a)(6) to read as follows:

§ 121.687 Dispatch release: Flag and domestic operations.

(a) * * *

(6) For each flight dispatched as an ETOPS flight, the ETOPS diversion time for which the flight is dispatched.

* * * * *

■ 33. Amend § 121.689 by adding paragraph (a)(8) to read as follows:

§ 121.689 Flight release form: Supplemental operations.

(a) * * *

(8) For each flight released as an ETOPS flight, the ETOPS diversion time for which the flight is released.

* * * * *

■ 34. Add Appendix P to read as follows:

Appendix P to Part 121—Requirements for ETOPS and Polar Operations

The FAA approves ETOPS in accordance with the requirements and limitations in this appendix.

Section I. *ETOPS Approvals: Airplanes with Two engines.*

(a) *Propulsion system reliability for ETOPS.* (1) Before the FAA grants ETOPS operational approval, the operator must be able to demonstrate the ability to achieve and maintain the level of propulsion system reliability, if any, that is required by § 21.4(b)(2) of this chapter for the ETOPS-approved airplane-engine combination to be used.

(2) Following ETOPS operational approval, the operator must monitor the propulsion system reliability for the airplane-engine combination used in ETOPS, and take action as required by § 121.374(i) for the specified IFSD rates.

(b) *75 Minutes ETOPS*—(1) *Caribbean/Western Atlantic Area.* The FAA grants approvals to conduct

ETOPS with maximum diversion times up to 75 minutes on Western Atlantic/Caribbean area routes as follows:

(i) The FAA reviews the airplane-engine combination to ensure the absence of factors that could prevent safe operations. The airplane-engine combination need not be type-design-approved for ETOPS; however, it must have sufficient favorable experience to demonstrate to the Administrator a level of reliability appropriate for 75-minute ETOPS.

(ii) The certificate holder must comply with the requirements of § 121.633 for time-limited system planning.

(iii) The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.

(iv) The certificate holder must comply with the maintenance program requirements of § 121.374, except that a pre-departure service check before departure of the return flight is not required.

(2) *Other Areas.* The FAA grants approvals to conduct ETOPS with maximum diversion times up to 75 minutes on other than Western Atlantic/Caribbean area routes as follows:

(i) The FAA reviews the airplane-engine combination to ensure the absence of factors that could prevent safe operations. The airplane-engine combination need not be type-design-approved for ETOPS; however, it must have sufficient favorable experience to demonstrate to the Administrator a level of reliability appropriate for 75-minute ETOPS.

(ii) The certificate holder must comply with the requirements of § 121.633 for time-limited system planning.

(iii) The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.

(iv) The certificate holder must comply with the maintenance program requirements of § 121.374.

(v) The certificate holder must comply with the MEL in its operations specifications for 120-minute ETOPS.

(c) *90-minutes ETOPS (Micronesia).* The FAA grants approvals to conduct ETOPS with maximum diversion times up to 90 minutes on Micronesian area routes as follows:

(1) The airplane-engine combination must be type-design approved for ETOPS of at least 120-minutes.

(2) The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.

(3) The certificate holder must comply with the maintenance program requirements of § 121.374, except that a pre-departure service check before departure of the return flight is not required.

(4) The certificate holder must comply with the MEL requirements in its operations specifications for 120-minute ETOPS.

(d) *120-minute ETOPS.* The FAA grants approvals to conduct ETOPS with maximum diversion times up to 120 minutes as follows:

(1) The airplane-engine combination must be type-design-approved for ETOPS of at least 120 minutes.

(2) The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.

(3) The certificate holder must comply with the maintenance program requirements of § 121.374.

(4) The certificate holder must comply with the MEL requirements for 120-minute ETOPS.

(e) *138-Minute ETOPS.* The FAA grants approval to conduct ETOPS with maximum diversion times up to 138 minutes as follows:

(1) *Operators with 120-minute ETOPS approval.* The FAA grants 138-minute ETOPS approval as an extension of an existing 120-minute ETOPS approval as follows:

(i) The authority may be exercised only for specific flights for which the 120-minute diversion time must be exceeded.

(ii) For these flight-by-flight exceptions, the airplane-engine combination must be type-design-approved for ETOPS up to at least 120 minutes. The capability of the airplane's time-limited systems may not be less than 138 minutes calculated in accordance with § 121.633.

(iii) The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.

(iv) The certificate holder must comply with the maintenance program requirements of § 121.374.

(v) The certificate holder must comply with minimum equipment list (MEL) requirements in its operations specifications for ''beyond 120 minutes ETOPS''. Operators without a ''beyond 120-minute ETOPS'' MEL may apply to AFS–200 through their certificate holding district office for a modified MEL which satisfies the master MEL policy for system/component relief in ETOPS beyond 120 minutes.

(vi) The certificate holder must conduct training for maintenance, dispatch, and flight crew personnel regarding differences between 138-minute ETOPS authority and its previously-approved 120-minute ETOPS authority.

(2) *Operators with existing 180-minute ETOPS approval.* The FAA grants approvals to conduct 138-minute ETOPS (without the limitation in paragraph (e)(1)(i) of section I of this appendix) to certificate holders with existing 180-minute ETOPS approval as follows:

(i) The airplane-engine combination must be type-design-approved for ETOPS of at least 180 minutes.

(ii) The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.

(iii) The certificate holder must comply with the maintenance program requirements of § 121.374.

(iv) The certificate holder must comply with the MEL requirements for ''beyond 120 minutes ETOPS.''

(v) The certificate holder must conduct training for maintenance, dispatch and flight crew personnel for differences between 138-minute ETOPS diversion approval and its previously approved 180-minute ETOPS diversion authority.

(f) *180-minute ETOPS.* The FAA grants approval to conduct ETOPS with diversion times up to 180 minutes as follows:

(1) For these operations the airplane-engine combination must be type-design-approved for ETOPS of at least 180 minutes.

(2) The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.

(3) The certificate holder must comply with the maintenance program requirements of § 121.374.

(4) The certificate holder must comply with the MEL requirements for ''beyond 120 minutes ETOPS.''

(g) *Greater than 180-minute ETOPS.* The FAA grants approval to conduct ETOPS greater than 180 minutes. The following are requirements for all operations greater than 180 minutes.

(1) The FAA grants approval only to certificate holders with existing 180-minute ETOPS operating authority for the airplane-engine combination to be operated.

(2) The certificate holder must have previous ETOPS experience satisfactory to the Administrator.

(3) In selecting ETOPS Alternate Airports, the operator must make every effort to plan ETOPS with maximum diversion distances of 180 minutes or less, if possible. If conditions necessitate using an ETOPS Alternate Airport beyond 180 minutes, the route may be flown only if the requirements for the specific operating area in paragraph (h) or (i) of section I of this appendix are met.

(4) The certificate holder must inform the flight crew each time an airplane is proposed for dispatch for greater than 180 minutes and tell them why the route was selected.

(5) In addition to the equipment specified in the certificate holder's MEL for 180-minute ETOPS, the following systems must be operational for dispatch:

(i) The fuel quantity indicating system.

(ii) The APU (including electrical and pneumatic supply and operating to the APU's designed capability).

(iii) The auto throttle system.

(iv) The communication system required by § 121.99(d) or § 121.122(c), as applicable.

(v) One-engine-inoperative auto-land capability, if flight planning is predicated on its use.

(6) The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.

(7) The certificate holder must comply with the maintenance program requirements of § 121.374.

(h) *207-minute ETOPS in the North Pacific Area of Operations.* (1) The FAA grants approval to conduct ETOPS with maximum diversion times up to 207 minutes in the North Pacific Area of Operations as an extension to 180-minute ETOPS authority to be used on an exception basis. This exception may be used only on a flight-by-flight basis when an ETOPS Alternate Airport is not available within 180 minutes for reasons such as political or military concerns; volcanic activity; temporary airport conditions; and airport weather below dispatch requirements or other weather related events.

(2) The nearest available ETOPS Alternate Airport within 207 minutes diversion time must be specified in the dispatch or flight release.

(3) In conducting such a flight the certificate holder must consider Air Traffic Service's preferred track.

(4) The airplane-engine combination must be type-design-approved for ETOPS of at least 180 minutes. The approved time for the airplane's most limiting ETOPS significant system and most limiting cargo-fire suppression time for those cargo and baggage compartments required by regulation to have fire-suppression systems must be at least 222 minutes.

(5) The certificate holder must track how many times 207-minute authority is used.

(i) *240-minute ETOPS in the North Polar Area, in the area north of the NOPAC, and in the Pacific Ocean north of the equator.* (1) The FAA grants approval to conduct 240-minute ETOPS authority with maximum diversion times in the North Polar Area, in the area north of the NOPAC area, and the Pacific Ocean area north of the equator as an extension to 180-minute ETOPS authority to be used on an exception basis. This exception may be used only on a flight-by-flight basis when an ETOPS Alternate Airport is not available within 180 minutes. In that case, the nearest available ETOPS Alternate Airport within 240 minutes diversion time must be specified in the dispatch or flight release.

(2) This exception may be used in the North Polar Area and in the area north of NOPAC only in extreme conditions particular to these areas such as volcanic activity, extreme cold weather at en-route airports, airport weather below dispatch requirements, temporary airport conditions, and other weather related events. The criteria used by the certificate holder to decide that extreme weather precludes using an airport must be established by the certificate holder, accepted by the FAA, and published in the certificate holder's manual for the use of dispatchers and pilots.

(3) This exception may be used in the Pacific Ocean area north of the equator only for reasons such as political or military concern, volcanic activity, airport weather below dispatch requirements, temporary airport conditions and other weather related events.

(4) The airplane-engine combination must be type design approved for ETOPS greater than 180 minutes.

(j) *240-minute ETOPS in areas South of the equator.* (1) The FAA grants approval to conduct ETOPS with maximum diversion times of up to 240 minutes in the following areas:

(i) Pacific oceanic areas between the U.S. West coast and Australia, New Zealand and Polynesia.

(ii) South Atlantic oceanic areas.

(iii) Indian Ocean areas.

(iv) Oceanic areas between Australia and South America.

(2) The operator must designate the nearest available ETOPS Alternate Airports along the planned route of flight.

(3) The airplane-engine combination must be type-design-approved for ETOPS greater than 180 minutes.

(k) *ETOPS beyond 240 minutes.* (1) The FAA grants approval to conduct ETOPS with diversion times beyond 240 minutes for operations between specified city pairs on routes in the following areas:

(i) The Pacific oceanic areas between the U.S. west coast and Australia, New Zealand, and Polynesia;

(ii) The South Atlantic oceanic areas;

(iii) The Indian Oceanic areas; and

(iv) The oceanic areas between Australia and South America, and the South Polar Area.

(2) This approval is granted to certificate holders who have been operating under 180-minute or greater ETOPS authority for at least 24 consecutive months, of which at least 12 consecutive months must be under 240-minute ETOPS authority with the airplane-engine combination to be used.

(3) The operator must designate the nearest available ETOPS alternate or alternates along the planned route of flight.

(4) For these operations, the airplane-engine combination must be type-design-approved for ETOPS greater than 180 minutes.

Section II. *ETOPS Approval: Passenger-carrying Airplanes With More Than Two Engines.*

(a) The FAA grants approval to conduct ETOPS, as follows:

(1) Except as provided in § 121.162, the airplane-engine combination must be type-design-approved for ETOPS.

(2) The operator must designate the nearest available ETOPS Alternate Airports within 240 minutes diversion time (at one-engine-inoperative cruise speed under standard conditions in still air). If an ETOPS alternate is not available within 240 minutes, the operator must designate the nearest available ETOPS Alternate Airports along the planned route of flight.

(3) The MEL limitations for the authorized ETOPS diversion time apply.

(i) The Fuel Quantity Indicating System must be operational.

(ii) The communications systems required by § 121.99(d) or § 121.122(c) must be operational.

(4) The certificate holder must operate in accordance with the ETOPS authority as contained in its operations specifications.

Section III. *Approvals for operations whose airplane routes are planned to traverse either the North Polar or South Polar Areas.*

(a) Except for intrastate operations within the State of Alaska, no certificate holder may operate an aircraft in the North Polar Area or South Polar Area, unless authorized by the FAA.

(b) In addition to any of the applicable requirements of sections I and II of this appendix, the certificate holder's operations specifications must contain the following:

(1) The designation of airports that may be used for en-route diversions and the requirements the airports must meet at the time of diversion.

(2) Except for supplemental all-cargo operations, a recovery plan for passengers at designated diversion airports.

(3) A fuel-freeze strategy and procedures for monitoring fuel freezing.

(4) A plan to ensure communication capability for these operations.

(5) An MEL for these operations.

(6) A training plan for operations in these areas.

(7) A plan for mitigating crew exposure to radiation during solar flare activity.

(8) A plan for providing at least two cold weather anti-exposure suits in the aircraft, to protect crewmembers during outside activity at a diversion airport with extreme climatic conditions. The FAA may relieve the certificate holder from this requirement if the season of the year makes the equipment unnecessary.

PART 135—OPERATING REQUIREMENTS; COMMUTER AND ON DEMAND OPERATION AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 35. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 36. Add § 135.98 to read as follows:

§ 135.98 Operations in the North Polar Area.

After February 15, 2008, no certificate holder may operate an aircraft in the region north of 78° N latitude (''North Polar Area''), other than intrastate operations wholly within the state of Alaska, unless authorized by the FAA. The certificate holder's operation specifications must include the following:

(a) The designation of airports that may be used for en-route diversions and the requirements the airports must meet at the time of diversion.

(b) Except for all-cargo operations, a recovery plan for passengers at designated diversion airports.

(c) A fuel-freeze strategy and procedures for monitoring fuel freezing for operations in the North Polar Area.

(d) A plan to ensure communication capability for operations in the North Polar Area.

(e) An MEL for operations in the North Polar Area.

(f) A training plan for operations in the North Polar Area.

(g) A plan for mitigating crew exposure to radiation during solar flare activity.

(h) A plan for providing at least two cold weather anti-exposure suits in the aircraft, to protect crewmembers during outside activity at a diversion airport with extreme climatic conditions. The FAA may relieve the certificate holder from this requirement if the season of the year makes the equipment unnecessary.

■ 37. Amend § 135.345 by removing the word ''and'' from the end of paragraph (a)(7), redesignating paragraph (a)(8) as (a)(10), and by adding new paragraphs (a)(8) and (a)(9) to read as follows:

§ 135.345 Pilots: Initial, transition, and upgrade ground training.

* * * * *

(a) * * *

(8) ETOPS, if applicable;

(9) After February 15, 2008, passenger recovery plan for any passenger-carrying operation (other than intrastate operations wholly within the state of Alaska) in the North Polar area; and

* * * * *

■ 38. Add § 135.364 to read as follows:

§ 135.364 Maximum flying time outside the United States.

(a) After February 15, 2008, no certificate holder may operate an airplane, other than an all-cargo airplane with more than two engines, on a planned route that exceeds 180 minutes flying time (at the one-engine-inoperative cruise speed under standard conditions in still air) from an Adequate Airport outside the continental United States unless the operation is approved by the FAA in accordance with Appendix G of this part, Extended Operations (ETOPS).

(b) For the purposes of this section Adequate Airport means an airport that an airplane operator may list with approval from the FAA because that airport meets the requirements of §§ 135.385, 135.387, 135.393, 135.395, 135.219 and 135.221, as applicable.

■ 39. Amend § 135.411 by adding paragraph (d) to read as follows:

§ 135.411 Applicability.

* * * * *

(d) A certificate holder who elects to operate in accordance with § 135.364 must maintain its aircraft under paragraph (a)(2) of this section and the additional requirements of Appendix G of this part.

■ 40. Add appendix G to read as follows:

Appendix G to Part 135—Extended Operations (ETOPS)

G135.1 *Definitions.*

G135.1.1 *Adequate Airport* means an airport that an airplane operator may list with approval from the FAA because that airport meets the landing limitations of § 135.385 or is a military airport that is active and operational.

G135.1.2 *ETOPS Alternate Airport* means an adequate airport that is designated in a dispatch or flight release for use in the event of a diversion during ETOPS. This definition applies to flight planning and does not in any way limit the authority of the pilot in command during flight.

G135.1.3 *ETOPS Entry Point* means the first point on the route of an ETOPS flight, determined using a one-engine inoperative cruise speed under standard conditions in still air, that is more than 180 minutes from an adequate airport.

G135.1.4 *ETOPS Qualified Person* means a person, performing maintenance for the certificate holder, who has satisfactorily completed the certificate holder's ETOPS training program.

G135.2 *Requirements.*

G135.2.1 *General.* After February 15, 2008, no certificate holder may operate an airplane, other than an all-cargo airplane with more than two engines, outside the continental United States more than 180 minutes flying time (at the one engine inoperative cruise speed under standard conditions in still air) from an airport described in § 135.364 unless—

(a) The certificate holder receives ETOPS approval from the FAA;

(b) The operation is conducted in a multi-engine transport category turbine-powered airplane;

(c) The operation is planned to be no more than 240 minutes flying time (at the one engine inoperative cruise speed under standard conditions in still air) from an airport described in § 135.364; and

(d) The certificate holder meets the requirements of this appendix.

G135.2.2 *Required certificate holder experience prior to conducting ETOPS.*

Before applying for ETOPS approval, the certificate holder must have at least 12 months experience conducting international operations (excluding Canada and Mexico) with multi-engine transport category turbine-engine powered airplanes. The certificate holder may consider the following experience as international operations:

(a) Operations to or from the State of Hawaii.

(b) For certificate holders granted approval to operate under part 135 or part 121 before February 15, 2007, up to 6 months of domestic operating experience and operations in Canada and Mexico in multi-engine transport category turbojet-powered airplanes may be credited as part of the required 12 months of international experience required by paragraph G135.2.2(a) of this appendix.

(c) ETOPS experience with other aircraft types to the extent authorized by the FAA.

G135.2.3 *Airplane requirements.* No certificate holder may conduct ETOPS in an airplane that was manufactured after February 17, 2015 unless the airplane meets the standards of § 25.1535.

G135.2.4 *Crew information requirements.* The certificate holder must ensure that flight crews have in-flight access to current weather and operational information needed to comply with § 135.83, § 135.225, and § 135.229. This includes information on all ETOPS Alternate Airports, all destination alternates, and the destination airport proposed for each ETOPS flight.

G135.2.5 *Operational Requirements.*

(a) No person may allow a flight to continue beyond its ETOPS Entry Point unless—

(1) The weather conditions at each ETOPS Alternate Airport are forecast to be at or above the operating minima in the certificate holder's operations specifications for that airport when it might be used (from the earliest to the latest possible landing time), and

(3) All ETOPS Alternate Airports within the authorized ETOPS maximum diversion time are reviewed for any changes in conditions that have occurred since dispatch.

(b) In the event that an operator cannot comply with paragraph G135.2.5(a)(1) of this appendix for a specific airport, another ETOPS Alternate Airport must be substituted within the maximum ETOPS diversion time that could be authorized for that flight with weather conditions at or above operating minima.

(c) Pilots must plan and conduct ETOPS under instrument flight rules.

(d) *Time-Limited Systems.*

(1) Except as provided in paragraph G135.2.5(d)(3) of this appendix, the time required to fly the distance to each ETOPS Alternate Airport (at the all-engines-operating cruise speed, corrected for wind

and temperature) may not exceed the time specified in the Airplane Flight Manual for the airplane's most limiting fire suppression system time required by regulation for any cargo or baggage compartments (if installed), minus 15 minutes.

(2) Except as provided in G135.2.5(d)(3) of this appendix, the time required to fly the distance to each ETOPS Alternate Airport (at the approved one-engine-inoperative cruise speed, corrected for wind and temperature) may not exceed the time specified in the Airplane Flight Manual for the airplane's most time limited system time (other than the airplane's most limiting fire suppression system time required by regulation for any cargo or baggage compartments), minus 15 minutes.

(3) A certificate holder operating an airplane without the Airplane Flight Manual information needed to comply with paragraphs G135.2.5(d)(1) and (d)(2) of this appendix, may continue ETOPS with that airplane until February 17, 2015.

G135.2.6 *Communications Requirements.*

(a) No person may conduct an ETOPS flight unless the following communications equipment, appropriate to the route to be flown, is installed and operational:

(1) Two independent communication transmitters, at least one of which allows voice communication.

(2) Two independent communication receivers, at least one of which allows voice communication.

(3) Two headsets, or one headset and one speaker.

(b) In areas where voice communication facilities are not available, or are of such poor quality that voice communication is not possible, communication using an alternative system must be substituted.

G135.2.7 *Fuel Requirements.* No person may dispatch or release for flight an ETOPS flight unless, considering wind and other weather conditions expected, it has the fuel otherwise required by this part and enough fuel to satisfy each of the following requirements:

(a) Fuel to fly to an ETOPS Alternate Airport—(1) Fuel to account for rapid decompression and engine failure. The airplane must carry the greater of the following amounts of fuel:

(i) Fuel sufficient to fly to an ETOPS Alternate Airport assuming a rapid decompression at the most critical point followed by descent to a safe altitude in compliance with the oxygen supply requirements of § 135.157,

(ii) Fuel sufficient to fly to an ETOPS Alternate Airport (at the one-engine-inoperative cruise speed under standard conditions in still air) assuming a rapid decompression and a simultaneous engine failure at the most critical point followed by descent to a safe altitude in compliance with the oxygen requirements of § 135.157; or

(iii) Fuel sufficient to fly to an ETOPS Alternate Airport (at the one-engine-inoperative cruise speed under standard conditions in still air) assuming an engine failure at the most critical point followed by descent to the one engine inoperative cruise altitude.

(b) *Fuel to account for errors in wind forecasting.* In calculating the amount of fuel required by paragraph G135.2.7(a)(1) of this appendix, the certificate holder must increase the actual forecast wind speed by 5% (resulting in an increase in headwind or a decrease in tailwind) to account for any potential errors in wind forecasting. If a certificate holder is not using the actual forecast wind based on a wind model accepted by the FAA, the airplane must carry additional fuel equal to 5% of the fuel required by paragraph G135.2.7(a) of this appendix, as reserve fuel to allow for errors in wind data.

(c) *Fuel to account for icing.* In calculating the amount of fuel required by paragraph G135.2.7(a)(1) of this appendix, (after completing the wind calculation in G135.2.7(a)(2) of this appendix), the certificate holder must ensure that the airplane carries the greater of the following amounts of fuel in anticipation of possible icing during the diversion:

(1) Fuel that would be burned as a result of airframe icing during 10 percent of the time icing is forecast (including the fuel used by engine and wing anti-ice during this period).

(2) Fuel that would be used for engine anti-ice, and if appropriate wing anti-ice, for the entire time during which icing is forecast.

(d) *Fuel to account for engine deterioration.* In calculating the amount of fuel required by paragraph G135.2.7(a)(1) of this appendix (after completing the wind calculation in paragraph G135.2.7(a)(2) of this appendix), the certificate holder must ensure the airplane also carries fuel equal to 5% of the fuel specified above, to account for deterioration in cruise fuel burn performance unless the certificate holder has a program to monitor airplane in-service deterioration to cruise fuel burn performance.

(e) *Fuel to account for holding, approach, and landing.* In addition to the fuel required by paragraph G135.2.7 (a) of this appendix, the airplane must carry fuel sufficient to hold at 1500 feet above field elevation for 15 minutes upon reaching the ETOPS Alternate Airport and then conduct an instrument approach and land.

(f) *Fuel to account for APU use.* If an APU is a required power source, the certificate holder must account for its fuel consumption during the appropriate phases of flight.

G135.2.8 *Maintenance Program Requirements.* In order to conduct an ETOPS flight under § 135.364, each certificate holder must develop and comply with the ETOPS maintenance program as authorized in the certificate holder's operations specifications for each two-engine airplane-engine combination used in ETOPS. This provision does not apply to operations using an airplane with more than two engines. The certificate holder must develop this ETOPS maintenance program to supplement the maintenance program currently approved for the operator. This ETOPS maintenance program must include the following elements:

(a) *ETOPS maintenance document.* The certificate holder must have an ETOPS maintenance document for use by each person involved in ETOPS. The document must—

(1) List each ETOPS Significant System,

(2) Refer to or include all of the ETOPS maintenance elements in this section,

(3) Refer to or include all supportive programs and procedures,

(4) Refer to or include all duties and responsibilities, and

(5) Clearly state where referenced material is located in the certificate holder's document system.

(b) *ETOPS pre-departure service check.* The certificate holder must develop a pre-departure check tailored to their specific operation.

(1) The certificate holder must complete a pre-departure service check immediately before each ETOPS flight.

(2) At a minimum, this check must:

(i) Verify the condition of all ETOPS Significant Systems;

(ii) Verify the overall status of the airplane by reviewing applicable maintenance records; and

(iii) Include an interior and exterior inspection to include a determination of engine and APU oil levels and consumption rates.

(3) An ETOPS qualified person must accomplish all ETOPS required items specified in the ETOPS pre-departure service check and certify by signature that the check has been completed.

(c) *Limitations on dual maintenance.* (1) Except as specified in paragraph (c)(2) of this appendix, the certificate holder may not perform scheduled or unscheduled maintenance during the same maintenance visit on one or more ETOPS significant system listed in the ETOPS maintenance document, if the improper maintenance of the systems could result in the failure of an ETOPS significant system.

(2) In the event an unforeseen circumstance prevents the certificate holder from complying with paragraph G135.2.8 (c)(1) of this appendix, the certificate holder may perform maintenance on more than one ETOPS significant system provided it:

(i) Has maintenance action on each ETOPS significant system performed by a different technician, or

(ii) Has maintenance action on each ETOPS Significant System performed by the same technician under the direct supervision of a second qualified individual; and

(iii) Conducts a ground verification test and any in-flight verification test required under the program developed pursuant to paragraph G135.2.8 (d) of this appendix.

(d) *Verification program.* The certificate holder must develop a program for the resolution of discrepancies that will ensure the effectiveness of maintenance actions taken on ETOPS Significant Systems. The verification program must identify potential problems and verify satisfactory corrective action. The verification program must include ground verification and in-flight verification policy and procedures. The certificate holder must establish procedures to clearly indicate who is going to initiate the verification action and what action is necessary. The verification action may be performed on an ETOPS revenue flight provided the verification action is documented as satisfactorily completed upon reaching the ETOPS entry point.

(e) *Task identification.* The certificate holder must identify all ETOPS-specific tasks. An ETOPS qualified person must accomplish and certify by signature that the ETOPS-specific task has been completed.

(f) *Centralized maintenance control procedures.* The certificate holder must develop procedures for centralized maintenance control for ETOPS.

(g) *ETOPS parts control program.* The certificate holder must develop an ETOPS parts control program to ensure the proper identification of parts used to maintain the configuration of airplanes used in ETOPS.

(h) *Enhanced Continuing Analysis and Surveillance System (E–CASS) program.* A certificate holder's existing CASS must be enhanced to include all elements of the ETOPS maintenance program. In addition to the reporting requirements of § 135.415 and § 135.417, the program includes reporting procedures, in the form specified in § 135.415(e), for the following significant events detrimental to ETOPS within 72 hours of the occurrence to the certificate holding district office (CHDO):

(1) IFSDs, except planned IFSDs performed for flight training.

(2) Diversions and turnbacks for failures, malfunctions, or defects associated with any airplane or engine system.

(3) Uncommanded power or thrust changes or surges.

(4) Inability to control the engine or obtain desired power or thrust.

(5) Inadvertent fuel loss or unavailability, or uncorrectable fuel imbalance in flight.

(6) Failures, malfunctions or defects associated with ETOPS Significant Systems.

(7) Any event that would jeopardize the safe flight and landing of the airplane on an ETOPS flight.

(i) *Propulsion system monitoring.*

The certificate holder, in coordination with the CHDO, must—

(1) Establish criteria as to what action is to be taken when adverse trends in propulsion system conditions are detected, and

(2) Investigate common cause effects or systemic errors and submit the findings to the CHDO within 30 days.

(j) *Engine condition monitoring.*

(1) The certificate holder must establish an engine-condition monitoring program to detect deterioration at an early stage and to allow for corrective action before safe operation is affected.

(2) This program must describe the parameters to be monitored, the method of data collection, the method of analyzing data, and the process for taking corrective action.

(3) The program must ensure that engine limit margins are maintained so that a prolonged engine-inoperative diversion may be conducted at approved power levels and in all expected environmental conditions without exceeding approved engine limits. This includes approved limits for items such as rotor speeds and exhaust gas temperatures.

(k) *Oil consumption monitoring.* The certificate holder must develop an engine oil consumption monitoring program to ensure that there is enough oil to complete each ETOPS flight. APU oil consumption must be included if an APU is required for ETOPS. The operator's consumption limit may not exceed the manufacturer's recommendation. Monitoring must be continuous and include oil added at each ETOPS departure point. The program must compare the amount of oil added at each ETOPS departure point with the running average consumption to identify sudden increases.

(l) *APU in-flight start program.* If an APU is required for ETOPS, but is not required to run during the ETOPS portion of the flight, the certificate holder must have a program acceptable to the FAA for cold soak in-flight start and run reliability.

(m) *Maintenance training.* For each airplane-engine combination, the certificate holder must develop a maintenance training program to ensure that it provides training adequate to support ETOPS. It must include ETOPS specific training for all persons involved in ETOPS maintenance that focuses on the special nature of ETOPS. This training must be in addition to the operator's maintenance training program used to qualify individuals for specific airplanes and engines.

(n) *Configuration, maintenance, and procedures (CMP) document.* The certificate holder must use a system to ensure compliance with the minimum requirements set forth in the current version of the CMP document for each airplane-engine combination that has a CMP.

(o) *Reporting.* The certificate holder must report quarterly to the CHDO and the airplane and engine manufacturer for each airplane authorized for ETOPS. The report must provide the operating hours and cycles for each airplane.

G135.2.9 *Delayed compliance date for all airplanes.* A certificate holder need not comply with this appendix for any airplane until February 15, 2008.

Issued in Washington, DC on January 4, 2007.

Marion C. Blakey,

Administrator.

[FR Doc. 07–39 Filed 1–8–07; 2:00 pm]

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Part III

Department of Labor

Employment and Training Administration

20 CFR Part 604

Unemployment Compensation—Eligibility; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 604

RIN 1205–AB41

Unemployment Compensation—Eligibility

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (Department) is issuing this Final Rule to implement the requirements of the Social Security Act (SSA) and the Federal Unemployment Tax Act (FUTA) that limit a State's payment of unemployment compensation (UC) only to individuals who are able and available (A&A) for work. This rule applies to all State UC laws and programs.

DATES: *Effective Date:* This Final Rule is effective February 15, 2007.

FOR FURTHER INFORMATION CONTACT: Gerard Hildebrand, Office of Workforce Security, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4518, Washington, DC 20210. Telephone: (202) 693–3038 (voice) (this is not a toll-free number); 1–800–326–2577 (TDD); facsimile: (202) 693–2874; e-mail: *hildebrand.gerard@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 22, 2005, the Department published a Notice of Proposed Rulemaking (NPRM) concerning the A&A requirement at 70 FR 42474. The Department invited comments through September 20, 2005.

II. General Discussion of the Final Rule

The Department and its predecessors (the Social Security Board and the Federal Security Agency) have consistently interpreted provisions of Federal UC law, contained in the SSA and the FUTA, to require that States, as a condition of participation in the Federal-State UC program, limit the payment of UC to individuals who are A&A. As explained in the NPRM, the UC program is designed to provide temporary wage insurance for individuals who are unemployed due to a lack of suitable work. The Federal A&A rules implement this design by testing whether the fact that an individual did not work for any week was involuntary due to the unavailability of suitable work. Although this interpretation is longstanding, it has never been comprehensively addressed in a rule in the Code of Federal Regulations (CFR).

The A&A requirement is implicit in the structure and purpose of the SSA and the FUTA, and Congress has repeatedly adopted, acquiesced in, and relied on the Department's interpretation that Federal UC law includes an A&A requirement. Nevertheless, because the A&A requirement is not explicitly stated in Federal law or the CFR, some confusion exists regarding the validity of the A&A requirement as well as its scope and application.

This confusion became especially clear in rulemakings that created and then removed the Birth and Adoption UC (BAA–UC) regulation, which permitted States to pay UC to new parents who stopped work following the birth or adoption of a child. *See* 65 FR 37210 (June 13, 2000) for the BAA–UC Final Rule, and 68 FR 58540 (Oct. 9, 2003) for the final rule removing the BAA–UC rule. In both rulemakings, commenters argued that there are no specific A&A requirements set out in Federal law and that Congress expressly rejected A&A requirements. In the course of these rulemakings, it also became clear that misconceptions existed about the application and scope of the Federal A&A requirement. For example, misconceptions existed about why the Department permitted individuals to be treated as A&A in certain situations. The Department discussed these situations in detail at 68 FR 58540, 58543–58545 (Oct. 9, 2003). As another example, some commenters viewed an active work search as a necessary component of the A&A requirement. However, this is not the Department's position.

As a result of this confusion, the Department issued an NPRM clearly setting forth its interpretation of the A&A requirement and is now issuing this Final Rule. This Final Rule does not regulate other areas of the UC program, such as monetary entitlement or disqualifications for such actions as voluntarily quitting employment. This Final Rule also does not address Federal labor laws (such as minimum wage or overtime laws) or disability nondiscrimination laws (such as the Section 504 of the Rehabilitation Act of 1973), which might affect the administration of the A&A requirement.

III. Summary of the Comments and Regulatory Changes

Comments Received on the Proposed Rule

The Department received 25 pieces of correspondence commenting on the NPRM by the close of the comment period. Thirteen comments were from State UC agencies. Five comments were from business or employer interest groups, and seven comments were from worker advocacy groups. The Department considered all timely comments and included them in the rulemaking record. One late comment was not considered.

These comments are discussed below in the Discussion of Comments. Also discussed below are all substantive changes made to the rule that stem from the comments received. Non-substantive changes are not discussed.

Discussion of Comments

Need for Rule. Several commenters supported the rule. One of these supporters noted that ''Although the 'A&A' test has always been a Federal requirement, the absence of any clear, readily available and legally binding statement articulating this policy has encouraged many inappropriate'' legislative proposals. Another supporter stated that ''In recent years, we have seen legislation introduced in a number of States, which we believe to be in violation of the longstanding interpretation of the eligibility rules under FUTA. This proposed rule will greatly clarify the situation for the States * * *.''

Conversely, several commenters stated that the rule was either not necessary, or that the Department failed to specify any controversy or confusion over the validity of the A&A requirement, aside from issues related to the BAA–UC regulation. Nonetheless, one of these commenters did acknowledge that there is a ''difference of opinion between the Department and some commentators'' concerning the existence and nature of the A&A requirement.

The Department believes that the commenters' divergence of opinion on this matter serve to reinforce its view that rulemaking is necessary to put any doubt about its position to rest and to avoid controversies regarding the existence and nature of a Federal A&A requirement.

Individuals with Disabilities. Several commenters suggested the rule address the making of a ''reasonable accommodation'' under the Americans with Disabilities Act for individuals with disabilities. The principal reason

the Department undertook the creation of the rule was to eliminate confusion about the existence and nature of the A&A requirement in Federal UC law. This limited purpose was noted in the NPRM at 70 FR 42474: ''This rule also does not address federal labor laws * * * or disability nondiscrimination laws * * *'' In addition, the Department's regulations at 29 CFR part 32 already place obligations on States regarding nondiscrimination on the basis of disability. Determining whether an individual with a disability is A&A under the rule is a case-by-case determination. The Department believes that program letters rather than a regulation are better vehicles for applying general nondiscrimination obligations to case-by-case State determinations on whether an individual with a disability is A&A. Therefore, no change is made to the rule as a result of these comments.

Minimum Requirement and State Flexibility. Several commenters viewed the rule as restricting State flexibility in ways that would adversely affect eligibility. For example, one commenter stated that, ''As currently written, the standards actively restrict or discourage States from taking steps to make the UI system accessible to the changing workforce, including individuals who are domestic violence survivors, who must seek work on a part-time basis * * * '' This commenter went on to state ''that the proposed regulations * * * may serve to restrict UI coverage and deal a serious blow to State laws currently in effect that have expanded coverage to previously underserved categories of workers.'' Conversely, one commenter suggested that the rule be clarified to more clearly state that it creates only minimum requirements.

Although the Department agrees that States should retain wide latitude in crafting their UC laws, it also believes that State laws must assure that an individual's unemployment for any week is involuntary due to the unavailability of suitable work. This requirement protects the integrity of the UC program and the State's unemployment fund. The Department believes that the rule provides States with considerable flexibility because it merely provides that States must require an individual to meet a minimum test of A&A.

More specifically, nothing in the rule requires that a State apply a single A&A test to all individuals. As a result, States continue to have the flexibility to apply a more liberal A&A test to victims of domestic violence than to other individuals. All that is required is that the individual meet the rule's minimum A&A test.

Concerning part-time work, the proposed rule established a very broad test of availability: an individual may be considered available if the ''individual is available for any work for all *or a portion* of the week claimed,'' as long as the individual is not withdrawing from the labor market. 70 FR 42474, 42481 (emphasis added); § 604.5(a)(1). Similar language exists for the ''able'' requirement. *See* 70 FR 42474, 42481; § 604.4(a). The language referring to ''a portion of the week'' recognizes that an individual may be eligible if ''A&A'' only for part-time work. Accordingly, the Department has not changed the proposed rule as a result of these comments regarding State flexibility.

Concerning the comment that the rule should more clearly state that it creates only a minimum requirement, the Department believes the proposed rule was clear in its statement that it ''does not limit the States' ability to impose additional able and available requirements that are consistent with applicable Federal laws.'' 70 FR 42474, 42481; § 604.3(c). Accordingly, the Department has not changed the proposed rule as a result of this comment.

Work Search. Several commenters stated that conducting an active search for work is a necessary component of availability and should be addressed in future rulemakings. The Department agrees that, as a policy matter, States should require an active search for work, but does not agree that the suggested rulemaking is appropriate. The Department's contemporaneous interpretation of the original SSA in 1935 was that Federal law does not require a work search for the regular UC program.

Thereafter, in the early 1980's, Congress examined the issue of work search in the UC program. This examination did not result in a search for work requirement for the regular UC program. Instead, it resulted in the creation of a ''sustained and systematic'' search for work requirement only for the Federal-State extended benefits program. Pub. L. 96–499, § 1024(a) (1980) (amending the Federal-State Extended Unemployment Compensation Act of 1970 § 202(a)(3), tit. II at § 202(a)(3)(E)). Therefore, the Department believes that Congress is well aware of the Department's longstanding interpretation that there is no Federal work search requirement and has not chosen to add a work search requirement. Any work search requirement would need to be legislated by Congress.

Labor Market Attachment. Several commenters objected to the requirement that A&A be tested in terms of whether the individual has withdrawn from the labor market as discussed in §§ 604.4(a) and 604.5(a)(1)–(2) . Specifically, these commenters averred that this ''withdrawal'' test imposed a new and more rigid standard for A&A and suitable work cases than had previously existed. Commenters also expressed concerns that application of the ''withdrawal'' test would result in States denying UC to an individual even though no ''suitable'' work is available in the labor market, which would be inconsistent with one of the Department's stated rationales for this rulemaking in that UC should be paid for a lack of ''suitable'' work.

The Department does not believe that this test is new, rigid, or would require a denial of UC where no ''suitable'' work is available. Several commenters claiming the test was new stated that it was a departure from a Departmental issuance from 1962. However, as noted in the preamble to the proposed rule, that issuance actually provided for the labor market test described in the proposed rule:

> ''The availability requirement means that the claimant must be available for suitable work which is ordinarily performed in his chosen locality in sufficient amount to constitute a substantial labor market for his services. A claimant does not satisfy the requirement by being available for an insignificant amount of work. Ordinarily, for example, a concert pianist in a rural area who limits his availability to concert work in that area is not available for enough suitable work to meet the requirement.''

70 FR 42474, 42476 (July 22, 2005) (quoting U.S. Department of Labor, Bureau of Employment Security, Unemployment Insurance Legislative Policy—Recommendations for State Legislation 1962 (October 1962)).

The Department believes the ''withdrawal'' test balances the need to assure genuine attachment by the individual to the labor market—which is what the A&A requirement is testing—with the need to recognize that, due to labor market fluctuations, work in the individual's usual and customary occupation may not be available at any given time. In fact, contrary to the commenters' assertions, the ''withdrawal'' test provides the States with greater flexibility as it permits States to pay UC to individuals who have A&A restrictions, such as limiting availability to part-time work, as long as the restrictions do not amount to a withdrawal from the labor market. Without this ''withdrawal'' test, individuals with *any* restrictions would

be denied and the regulation would be rigid, as the commenters assert.

The proposed and final rule at § 604.3(b) emphasizes the minimal nature of the ''withdrawal'' test by stating that:

> Whether an individual is able to work and available for work * * * will be tested by determining whether the individual is offering services for which a labor market exists. This does not mean that job vacancies must exist, only that, at a minimum, the type of services the individual is able and available to perform is generally performed in the labor market.

Under this test, if the services offered by an individual are restricted to the point that the services are not generally performed in the labor market (that is, the individual has withdrawn from the labor market), then the individual is unemployed as a result of those restrictions and is not eligible for UC. Those restrictions on services could be for any number of reasons, such as hours of availability, the distance the individual is willing to commute, or what types of jobs the individual is willing or able to accept. Holding an individual unavailable due to such restrictions is neither novel nor inconsistent with the notion that UC is for individuals who are involuntarily unemployed due to lack of suitable work. At the same time, as noted, the ''withdrawal'' test provides flexibility as it permits payment of benefits to individuals who place some restrictions on their availability, but who have not withdrawn from the labor market.

The Department also notes that the rule does not require a denial of UC simply because no ''suitable'' work was available at a particular time. As noted, the rule balances the need to assure genuine attachment to the labor force with labor market conditions that cause a lack of work in the individual's usual and customary occupation. Thus, on the one hand, jobs of the type that the individual is making him or herself available for must be performed in the labor market, even if no new job openings currently exist. On the other hand, if the individual restricts his or her availability to jobs for which there is no labor market, the individual is not available.

The proposed and final rule at § 604.5(a)(2) affords further flexibility by providing that what is ''suitable'' is determined under State law. This provision allows the State to take into consideration the education and training of the individual, among other factors.

What a State law may not do, however, is to define ''suitable'' work in such a way that it permits the individual to limit his or her availability in a way that constitutes a withdrawal from the labor market. To emphasize this point, § 604.5(a)(2) of the proposed rule has been changed from ''The individual limits his or her availability to work which is suitable for such individual as determined under the State UC law, provided such limitation does not constitute a withdrawal from the labor market'' to ''The individual limits his or her availability to work which is suitable for such individual as determined under the State UC law, provided the State law definition of suitable work does not permit the individual to limit his or her availability in such a way that the individual has withdrawn from the labor market.''

Availability and Illness. A State comment addressed the proposed rule's provision at § 604.4(b), which permits an individual to be considered ''able'' to work if the ''individual has previously demonstrated his or her ability to work and availability for work following the most recent separation from employment,'' unless the individual has refused an offer of suitable work due to such illness or injury. This commenter noted the lack of a parallel provision in the ''available for work'' section of the rule and questioned whether this meant the individual, although considered ''able to work,'' must be denied for not being available for work. The Department did not intend this individual to be denied for not being available for work. As a result of this comment, § 604.5(g) of the Final Rule allows a State to find an individual available for work if it finds that the individual is able to work under § 604.4(b), despite the individual's illness or injury. Further, as a result of this change, § 604.5(g) of the proposed rule was re-designated to § 604.5(h) in this Final Rule.

Aliens. Section 604.5(f) of the proposed rule provided that to be considered available for work for a week (and thus potentially eligible for UC for that week), an ''alien must be legally authorized to work that week in the United States by the appropriate agency of the United States government.'' Several commenters requested that specific situations involving alien eligibility be addressed in the Final Rule, notably regarding aliens with H–1B visas. Since legislation and Federal regulations governing alien status and work authorization frequently change, the Department believes it unwise to specify in Part 604 which classes of aliens have work authorization and may therefore be found legally available for work. Rather, the Department will issue program letters relaying information on alien work authorization from the United States Citizenship and Immigration Service. Accordingly, no change is made to the rule as a result of this comment. The Department did delete unnecessary language, however.

Finally, the Department put a number of the provisions of the regulatory text into the active voice and substituted ''must'' for ''shall'' in several places. These changes are purely stylistic; the Department intends no substantive change in meaning of the amended provisions.

IV. Administrative Information

Executive Order 12866

The Department has determined that this Final Rule is a ''significant regulatory action'' within the meaning of Executive Order 12866 because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order at section 3(f)(4). Accordingly, the Final Rule has been submitted to, and reviewed by, the Office of Management and Budget (OMB).

However, the Department has determined that this Final Rule is not ''economically significant'' because it does not have an annual effect on the economy of $100 million or more. The Department has also determined that the Final Rule has no adverse material impact upon the economy and that it does not materially alter the budgeting impact of entitlements, grants, user fees or loan programs, or the rights and obligations of recipients. This Final Rule implements the A&A requirements of the program consistent with the authorizing legislation and serves to codify longstanding program interpretations.

Further, the Department has evaluated the rule and found it consistent with the regulatory philosophy and principles set forth in Executive Order 12866, which governs agency rulemaking. Although it impacts States and State UC agencies, it does not adversely affect them in a material way. The rule limits a State's payment of UC only to individuals who are A&A for work, and all State laws currently contain A&A requirements.

Executive Order 13132

The Department reviewed this rule in accordance with Executive Order 13132, and determined that the rule may have Federalism implications. To this end, organizations representing State elected officials were contacted. These organizations expressed no concerns. About one-half of the comments received were from individual State

agencies. The Department believes this Final Rule adequately addresses the concerns expressed in those comments.

Executive Order 12988

The Department drafted and reviewed this regulation according to Executive Order 12988 on Civil Justice Reform, and it does not unduly burden the Federal court system. The Department drafted the rule to minimize litigation and provide a clear legal standard for affected conduct. The Department has reviewed this Final Rule carefully to eliminate drafting errors and ambiguities.

Unfunded Mandates Reform Act of 1995 and Executive Order 12875

The Department reviewed this rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. The Department has determined that this Final Rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the Department has not prepared a budgetary impact statement.

Paperwork Reduction Act

This regulatory action contains no information collection requirements.

Regulatory Flexibility Act/SBREFA

We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification under the Regulatory Flexibility Act (RFA) at 5 U.S.C. 605(b), that this proposed rule will not have a significant economic impact on a substantial number of small entities. Under the RFA, no regulatory flexibility analysis is required when the rule ''will not * * * have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). A small entity is defined as a small business, small not-for-profit organization, or small governmental jurisdiction. 5 U.S.C. 601(3)–(5). Therefore, the definition of the term ''small entity'' does not include States, State UC agencies, or individuals.

This Final Rule codifies a longstanding interpretation for determining eligibility for unemployed individuals. This Final Rule, therefore, governs an entitlement program administered by the States and not by small governmental jurisdictions. In addition, the entitlement program offers benefits to unemployed individuals and does not directly affect the small entities as defined by the RFA. Therefore, the Department certifies that this Final Rule will not have a significant impact on a substantial number of small entities and, as a result, no regulatory flexibility analysis is required.

In addition, the Department certifies that this Final Rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996 (SBREFA). Under section 804 of SBREFA, a major rule is one that is an ''economically significant regulatory action'' within the meaning of Executive Order 12866. The Department certifies that, because this Final Rule is not an economically significant rule under Executive Order 12866, it also is not a major rule under SBREFA.

Effect on Family Life

The Department certifies that this rule was assessed in accordance with Pub. L. 105–277, 112 Stat. 2681, and that the rule does not adversely affect the well-being of the nation's families.

List of Subjects in 20 CFR Part 604

Employment and Training Administration, Labor, and Unemployment Compensation.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at 17.225, Unemployment Insurance.

Emily Stover DeRocco,

Assistant Secretary of Labor, Employment and Training Administration.

■ For the reasons set forth in this preamble, Chapter V of Title 20, Code of Federal Regulations, is amended by adding a new Part 604 to read as follows:

PART 604—REGULATIONS FOR ELIGIBILITY FOR UNEMPLOYMENT COMPENSATION

Sec.

604.1 Purpose and scope.
604.2 Definitions.
604.3 Able and available requirement—general principles.
604.4 Application—ability to work.
604.5 Application—availability for work.
604.6 Conformity and substantial compliance.

Authority: 42 U.S.C. 1302(a); 42 U.S.C. 503(a)(2) and (5); 26 U.S.C. 3304(a)(1) and (4); 26 U.S.C. 3306(h); 42 U.S.C. 1320b–7(d); Secretary's Order No. 4–75 (40 FR 18515); and Secretary's Order No. 14–75 (November 12, 1975).

§ 604.1 Purpose and Scope.

The purpose of this Part is to implement the requirements of Federal UC law that limit a State's payment of UC to individuals who are able to work and available for work. This regulation applies to all State UC laws and programs.

§ 604.2 Definitions.

(a) *Department* means the United States Department of Labor.

(b) *FUTA* means the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.*

(c) *Social Security Act* means the Social Security Act, 42 U.S.C. 501 *et seq.*

(d) *State* means a State of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(e) *State UC agency* means the agency of the State charged with the administration of the State's UC law.

(f) *State UC law* means the law of a State approved under Section 3304(a), FUTA (26 U.S.C. 3304(a)).

(g) *Unemployment Compensation (UC)* means cash benefits payable to individuals with respect to their unemployment.

(h) *Week of unemployment* means a week of total, part-total or partial unemployment as defined in the State's UC law.

§ 604.3 Able and available requirement—general principles.

(a) A State may pay UC only to an individual who is able to work and available for work for the week for which UC is claimed.

(b) Whether an individual is able to work and available for work under paragraph (a) of this section must be tested by determining whether the individual is offering services for which a labor market exists. This requirement does not mean that job vacancies must exist, only that, at a minimum, the type of services the individual is able and available to perform is generally performed in the labor market. The State must determine the geographical scope of the labor market for an individual under its UC law.

(c) The requirement that an individual be able to work and available for work applies only to the week of unemployment for which UC is claimed. It does not apply to the reasons for the individual's separation from employment, although the separation may indicate the individual was not able to work or available for work during the week the separation occurred. This Part does not address the authority of States to impose disqualifications with respect to separations. This Part does not limit the States' ability to impose additional able

and available requirements that are consistent with applicable Federal laws.

§ 604.4 Application—ability to work.

(a) A State may consider an individual to be able to work during the week of unemployment claimed if the individual is able to work for all or a portion of the week claimed, provided any limitation on his or her ability to work does not constitute a withdrawal from the labor market.

(b) If an individual has previously demonstrated his or her ability to work and availability for work following the most recent separation from employment, the State may consider the individual able to work during the week of unemployment claimed despite the individual's illness or injury, unless the individual has refused an offer of suitable work due to such illness or injury.

§ 604.5 Application—availability for work.

(a) *General application.* A State may consider an individual to be available for work during the week of unemployment claimed under any of the following circumstances:

(1) The individual is available for any work for all or a portion of the week claimed, provided that any limitation placed by the individual on his or her availability does not constitute a withdrawal from the labor market.

(2) The individual limits his or her availability to work which is suitable for such individual as determined under the State UC law, provided the State law definition of suitable work does not permit the individual to limit his or her availability in such a way that the individual has withdrawn from the labor market. In determining whether the work is suitable, States may, among other factors, take into consideration the education and training of the individual, the commuting distance from the individual's home to the job, the previous work history of the individual (including salary and fringe benefits), and how long the individual has been unemployed.

(3) The individual is on temporary lay-off and is available to work only for the employer that has temporarily laid-off the individual.

(b) *Jury service.* If an individual has previously demonstrated his or her availability for work following the most recent separation from employment and is appearing for duty before any court under a lawfully issued summons during the week of unemployment claimed, a State may consider the individual to be available for work. For such an individual, attendance at jury duty may be taken as evidence of continued availability for work. However, if the individual does not appear as required by the summons, the State must determine if the reason for non-attendance indicates that the individual is not able to work or is not available for work.

(c) *Approved training.* A State must not deny UC to an individual for failure to be available for work during a week if, during such week, the individual is in training with the approval of the State agency. However, if the individual fails to attend or otherwise participate in such training, the State must determine if the reason for non-attendance or non-participation indicates that the individual is not able to work or is not available for work.

(d) *Self-Employment Assistance.* A State must not deny UC to an individual for failure to be available for work during a week if, during such week, the individual is participating in a self-employment assistance program and meets all the eligibility requirements of such self-employment assistance program.

(e) *Short-time compensation.* A State must not deny UC to an individual participating in a short-time compensation (also known as worksharing) program under State UC law for failure to be available for work during a week, but such individual will be required to be available for his or her normal workweek.

(f) *Alien status.* To be considered available for work in the United States for a week, the alien must be legally authorized to work that week in the United States by the appropriate agency of the United States government. In determining whether an alien is legally authorized to work in the United States, the State must follow the requirements of section 1137(d) of the SSA (42 U.S.C. 1320b-7(d)), which relate to verification of and determination of an alien's status.

(g) *Relation to ability to work requirement.* A State may consider an individual available for work if the State finds the individual able to work under § 604.4(b) despite illness or injury.

(h) *Work search.* The requirement that an individual be available for work does not require an active work search on the part of the individual. States may, however, require an individual to be actively seeking work to be considered available for work, or States may impose a separate requirement that the individual must actively seek work.

§ 604.6 Conformity and substantial compliance.

(a) *In general.* A State's UC law must conform with, and the administration of its law must substantially comply with, the requirements of this regulation for purposes of certification under:

(1) Section 3304(c) of the FUTA (26 U.S.C. 3304(c)), with respect to whether employers are eligible to receive credit against the Federal unemployment tax established by section 3301 of the FUTA (26 U.S.C. 3301), and

(2) Section 302 of the SSA (42 U.S.C. 502), with respect to whether a State is eligible to receive Federal grants for the administration of its UC program.

(b) *Resolving Issues of Conformity and Substantial Compliance.* For the purposes of resolving issues of conformity and substantial compliance with the requirements of this regulation, the following provisions of 20 CFR 601.5 apply:

(1) Paragraph (b) of this section, pertaining to informal discussions with the Department of Labor to resolve conformity and substantial compliance issues, and

(2) Paragraph (d) of this section, pertaining to the Secretary of Labor's hearing and decision on conformity and substantial compliance.

(c) *Result of Failure to Conform or Substantially Comply.*

(1) *FUTA Requirements.* Whenever the Secretary of Labor, after reasonable notice and opportunity for a hearing to the State UC agency, finds that the State UC law fails to conform, or that the State or State UC agency fails to comply substantially, with the requirements of the FUTA, as implemented in this regulation, then the Secretary of Labor shall make no certification under such act to the Secretary of the Treasury for such State as of October 31 of the 12-month period for which such finding is made. Further, the Secretary of Labor must notify the Governor of the State and such State UC agency that further payments for the administration of the State UC law will not be made to the State.

(2) *SSA Requirements.* Whenever the Secretary of Labor, after reasonable notice and opportunity for a hearing to the State UC agency, finds that the State UC law fails to conform, or that the State or State UC agency fails to comply substantially, with the requirements of title III, SSA (42 U.S.C. 501–504), as implemented in this regulation, then the Secretary of Labor must notify the Governor of the State and such State UC agency that further payments for the administration of the State UC law will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, the

Department of Labor will not make further payments to such State.

[FR Doc. E7–155 Filed 1–12–07; 8:45 am]

BILLING CODE 4510–30–P

Federal Register

Tuesday,
January 16, 2007

Part IV

The President

Presidential Determination No. 2007–7 of December 7, 2006—Presidential Determination on Sanctions Against North Korea for Detonation of a Nuclear Explosive Device

Presidential Determination No. 2007–9 of December 15, 2006—Suspension of Limitations Under the Jerusalem Embassy Act

Presidential Determination No. 2007–10 of December 29, 2006—Eligibility of Vietnam To Receive Defense Articles and Defense Services Under the Foreign Assistance Act of 1961 and the Arms Export Control Act

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2007–7 of December 7, 2006

Presidential Determination on Sanctions Against North Korea for Detonation of a Nuclear Explosive Device

Memorandum for the Secretary of State

In accordance with section 102(b) (1) of the Arms Export Control Act and section 129 of the Atomic Energy Act, I hereby determine that North Korea, a non-nuclear-weapon state, detonated a nuclear explosive device on October 9, 2006. The relevant agencies and instrumentalities of the United States Government are hereby directed to take the necessary actions to impose on North Korea the sanctions described in section 102(b) (2) of the Arms Export Control Act, as amended (22 U.S.C. 2799aa–1), and section 129 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2158).

You are authorized and directed to transmit this determination to the appropriate committees of the Congress and to arrange for its publication in the **Federal Register**.

THE WHITE HOUSE,
Washington, December 7, 2006.

[FR Doc. 07–133
Filed 1–12–07; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2007–9 of December 15, 2006

Suspension of Limitations Under the Jerusalem Embassy Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the ''Act''), I hereby determine that it is necessary to protect the national security interests of the United States to suspend for a period of 6 months the limitations set forth in section 3(b) and 7(b) of the Act. My Administration remains committed to beginning the process of moving our Embassy to Jerusalem.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the **Federal Register**.

This suspension shall take effect after transmission of this determination and report to the Congress.

THE WHITE HOUSE,
Washington, December 15, 2006.

[FR Doc. 07–134
Filed 1–12–07; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2007–10 of December 29, 2006

Eligibility of Vietnam To Receive Defense Articles and Defense Services Under the Foreign Assistance Act of 1961 and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a) (1) of the Arms Export Control Act, as amended, I hereby find that the furnishing of defense articles and defense services to Vietnam will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish it in the **Federal Register**.

THE WHITE HOUSE,
Washington, December 29, 2006.

[FR Doc. 07–135
Filed 1–12–07; 8:45 am]
Billing code 4710–10–P

Federal Register

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Part V

The President

Proclamation 8099—Martin Luther King, Jr., Federal Holiday, 2007

Proclamation 8100—Religious Freedom Day, 2007

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Presidential Documents

Title 3—

The President

Proclamation 8099 of January 11, 2007

Martin Luther King, Jr., Federal Holiday, 2007

By the President of the United States of America

A Proclamation

On the Martin Luther King, Jr., Federal Holiday, Americans honor the memory of a man who stirred the conscience of a Nation. We also recommit ourselves to the dream to which Dr. King devoted his life—an America where the dignity of every person is respected; where people are judged not by the color of their skin, but by the content of their character; and where the hope of a better tomorrow is in every neighborhood.

When Martin Luther King, Jr., came to our Nation's Capital in the summer of 1963, he came to inspire America and to call on our citizens to live up to the principles of our founding. His dream spread a message of hope, justice, and brotherhood that took hold in the hearts of men and women across our great land, and it continues to speak to millions here at home and around the world.

We honor Martin Luther King, Jr., and remember his strength of character and his leadership. We also remember the work that still remains. America has come a long way since Dr. King's time, yet our journey to justice is not complete. There is still a need for all Americans to hear the power and hope of Dr. King's enduring words so that we can hasten the day when his dream is made real. Last year, I was proud to sign the ''Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.'' This Act renewed the 1965 bill that reaffirmed our belief that all men are created equal, broke the segregationist lock on the ballot box, and helped bring an excluded community into the center of American democracy. Our Nation will continue to build on the legal equality championed by Dr. King and all the heroes of the civil rights movement, and we will continue our work to protect the promise of our Declaration and guarantee the rights of every citizen.

As we observe Dr. King's birthday, let us honor his legacy and go forward with confidence as a Nation united, committed to destroying discrimination, and dedicated to extending the full blessings of liberty and opportunity to all Americans.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, January 15, 2007, as the Martin Luther King, Jr., Federal Holiday. I encourage all Americans to observe this special day with appropriate civic, community, and service programs and activities in honor of Dr. King's life and legacy.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of January, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 07–160
Filed 1–12–07; 11:33 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8100 of January 11, 2007

Religious Freedom Day, 2007

By the President of the United States of America

A Proclamation

On Religious Freedom Day, we commemorate the passage of the 1786 Virginia Statute for Religious Freedom, authored by Thomas Jefferson, and we celebrate the First Amendment's protection of religious freedom.

Across the centuries, people have come to America seeking to worship the Almighty freely. Today, our citizens profess many different faiths, and we welcome every religion. Yet people in many countries live without the freedom to worship as they choose and some face persecution for their beliefs. My Administration is working with our friends and allies around the globe to advance common values and spread the blessings of liberty to every corner of the world. Freedom is a gift from the Almighty, written in the heart and soul of every man, woman, and child, and we must continue to promote the importance of religious freedom at home and abroad.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 16, 2007, as Religious Freedom Day. I call on all Americans to reflect on the great blessing of religious liberty, endeavor to preserve this freedom for future generations, and commemorate this day with appropriate events and activities in their schools, places of worship, neighborhoods, and homes.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of January, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 07–161

Filed 1–12–07; 11:33 am]

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To make a conforming amendment to the Federal Deposit Insurance Act with respect to examinations of certain insured depository institutions, and for other purposes. (Jan. 11, 2007; 120 Stat. 3561)

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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46 Parts:			
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500–End	(869–060–00192–1)	25.00	Oct. 1, 2006
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.

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