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Rules and Regulations

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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 HOMELAND SECURITY

Office of the Secretary

6 CFR Part 11

44 CFR Part 11

[Docket No. DHS–2006–0009]

RIN 1601–AA23

Collection of Non-Tax Debts Owed to the Department of Homeland Security

AGENCY: Office of the Secretary, DHS.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes the Department of Homeland Security's debt collection regulations to conform to the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, the Federal Claims Collection Standards, and other laws applicable to the collection of non-tax debts owed to the Department of Homeland Security. This rule also promulgates regulations governing the offset of the Department of Homeland Security-issued payments to collect debts owed to other Federal agencies.

DATES: This interim final rule is effective January 30, 2007. Written comments may be submitted to the Department of Homeland Security on or before March 1, 2007.

ADDRESSES: You may submit comments, identified by *DHS–2006–0009,* by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 866–466–5370.
- *Mail:* Department of Homeland Security, Office of Financial Management, Mail Stop 0200, 245 Murray Lane, SW., Bldg 410, Washington, DC 20528.
- *Hand Delivery / Courier:* Office of Financial Management, Department of Homeland Security, Mail Stop 0200, 245 Murray Lane, SW., Bldg 410, Washington, DC 20528–0200.

FOR FURTHER INFORMATION CONTACT: Jean D. Francis, telephone number 202–447–5199. This is not a toll free call.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. The Department of Homeland Security (DHS) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

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.*

II. Background

This interim final rule implements the DHS debt collection regulations to conform to the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749 (Oct. 25, 1982), as amended by the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321, 1358 (Apr. 26, 1996), the Federal Claims Collection Standards, 31 CFR parts 900 through 904, Debt Collection Authorities Under the Debt Collection Improvement Act of 1996, 31 CFR part 285, and other laws applicable to the collection of non-tax debt owed to the Government.

This interim final rule provides procedures for the collection of non-tax debts owed to DHS. This rule adopts the Government-wide debt collection standards promulgated by the Departments of the Treasury and Justice, known as the Federal Claims Collection Standards (FCCS), as revised on November 22, 2000 (65 FR 70390; 31 CFR parts 900–904), and supplements the FCCS by prescribing procedures consistent with the FCCS, as necessary and appropriate for DHS operations. DHS components may, but are not required to, promulgate additional policies and procedures consistent with this regulation, the FCCS, and other applicable Federal laws, policies, and procedures. This regulation also provides the procedures for the collection of debts owed to other Federal agencies when a request for offset is received by DHS.

This interim final rule does not apply to the collection of tax debts under the Internal Revenue Code of 1986, as amended, 26 U.S.C., and regulations, policies and procedures issued by the Internal Revenue Service. This regulation also does not apply to the collection of debts, by administrative offset, arising under the tariff laws of the United States, including, for example, duty bills, penalties, user fees, and liquidated damages, which are governed by the Tariff Act of 1930, as amended, 19 U.S.C., nor to the collection of debts, nor procedures thereof, excepted by 31 CFR parts 900 through 904.

Nothing in this regulation precludes the use of collection remedies not contained in this regulation. For example, DHS may collect unused travel advances through offset of an employee's pay under 5 U.S.C. 5705. DHS and other Federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law.

Part 11, Subpart A, addresses the general provisions applicable to the collection of non-tax debts owed to DHS, including all its components. As stated in section 11.1 of this rule, nothing in this regulation requires DHS to duplicate notices or administrative proceedings required by contract, this regulation or other laws or regulations. Thus, for example, DHS is not required to provide a debtor with two hearings on the same issue merely because DHS uses two different collection tools, each of which requires that the debtor be provided with a hearing.

This regulation describes the procedures to be followed by DHS when collecting debts owed to DHS. Among other things, this regulation specifically

adopts the due process procedures of the FCCS. DHS is required to follow due process when using offset (administrative, tax refund and salary) to collect a debt, when garnishing a debtor's wages, or before reporting a debt to a credit bureau. DHS is required to provide debtors with notice of the amount and type of debt, the intended collection action to be taken, how a debtor may pay the debt or make alternate repayment arrangements, how a debtor may review documents related to the debt, how a debtor may dispute the debt, and the consequences to the debtor if the debt is not paid. Notices may be sent by first-class mail and, if not returned by the United States Postal Service, DHS may presume that the notice was received.

This regulation also explains the use of offset procedures and the circumstances under which DHS may waive interest, penalties, and administrative costs. This regulation also incorporates procedures for several collection remedies authorized by the Debt Collection Improvement Act of 1996 (DCIA), such as administrative wage garnishment and barring delinquent debtors from obtaining additional Federal loan assistance. This regulation further authorizes suspension or termination of debt collection, and explains when DHS refers claims to the Department of Justice.

Finally, this regulation prescribes the procedures for offset by DHS of debts owed to other federal agencies.

III. Procedural Requirements

A. Administrative Procedure Act

DHS has determined that implementation of this rule without prior notice and the opportunity for public comment is warranted because this rule is one of agency procedure and practice and therefore is exempt from notice and comment rulemaking requirements under the Administrative Procedure Act (APA) at 5 U.S.C. 553(b)(A) and (B). DHS, nonetheless, invites public comment and will consider any proposals to improve these rules.

Additionally, good cause exists to make this rule effective upon publication. This interim final rule parallels the existing operational regulations of other cabinet-level agencies to effectuate the collection of non-tariff and non-tax debts to implement 31 U.S.C. 3711. Similar rules are already applied by DHS components that were transferred to DHS from the Departments of Justice, Treasury, and Transportation, as well as the Federal Emergency Management Agency. This interim final rule establishes uniform procedures throughout DHS. Since this rule parallels existing, long-standing rules that have already been subject to APA notice and comment procedures, we believe that publishing this rule with the usual notice and comment procedures is unnecessary. Further, making this rule effective upon publication will permit DHS components to utilize uniform debt collection tools immediately. Accordingly, the Department has determined that prior notice and public comment procedures would be impracticable and unnecessary pursuant to 5 U.S.C. 553(b)(B).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) mandates that an agency conduct an RFA analysis when an agency is ''required by section 553 * * *, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States * * *.'' 5 U.S.C. 603(a). RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). DHS has determined that good cause exists under 5 U.S.C. 553(b)(B) to exempt this rule from the notice and comment requirements of 5 U.S.C. 553(b). Therefore no RFA analysis under 5 U.S.C. 603 is required for this rule.

C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Small Business Regulatory Enforcement Act of 1996

This rule is not a major rule, as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the United States economy of $100 million or more, result in a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Paperwork Reduction Act of 1995

This interim rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

F. Executive Order 12866

DHS has determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. DHS states, however, that it does not believe that adopting the standardized procedures for debt collection for those components that currently do not have debt collection procedures, and standardizing the debt collection procedures for those components of DHS that currently have applicable debt collection procedures will not have an annual effect on the economy of $100 million or more, nor will the rules have other adverse economic effects.

List of Subjects

6 CFR Part 11

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Government employee, Hearing and appeal procedures, Pay administration, Salaries, Wages.

44 CFR Part 11

Claims, Government employees, Income taxes, Reporting and recordkeeping, Wages.

Authority and Issuance

■ For the reasons set forth above, 6 CFR and 46 CFR part 11 are amended as follows.

6 CFR Chapter 1—Department of Homeland Security, Office of the Secretary

■ 1. Part 11 is added to read as follows:

PART 11—CLAIMS

Subpart A—Debt Collection

Sec.

11.1 General application.
11.2 Definitions.
11.3 Demand for payment.
11.4 Collection by administrative offset.
11.5 Administrative wage garnishment.
11.6 Reporting debts.
11.7 Private collection agencies.
11.8 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges.
11.9 Collection in installments.
11.10 Interest, penalty charges, and administrative costs.
11.11 Compromise.
11.12 Suspending or terminating collection activity.
11.13 Referrals to the Department of Justice.
11.14 Receipt of offset requests by other Federal agencies.
11.15 Applying the debt against DHS payments.

Authority: 5 U.S.C. 301, 5514; 26 U.S.C. 6402, 31 U.S.C. 3701, 3711, 3716, 3717, 3718, 3720A, 3720B, 3720D; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 et seq.).

§ 11.1 General application.

(a) *Application of Debt Collection Standards.* The provisions of 31 CFR parts 285, 900–904, as amended by the Secretary of the Treasury and the Attorney General, are applicable to debts and debt procedures within the jurisdiction of the Department of Homeland Security.

(b) *Authority.* The Chief Financial Officer of the Department of Homeland Security is delegated authority to administer this subpart and to redelegate authority under this subpart.

(c) *Application to DHS.* This subpart provides procedures for the collection of DHS debts, and for collection of other debts owed to the United States when a request for offset of a DHS payment is received by the DHS from another federal agency. This subpart applies to all of DHS, including all of its components. It applies to the DHS when collecting a DHS debt, to persons who owe DHS debts, and to Federal agencies requesting offset of a payment issued by the DHS as a payment agency (including salary payments to DHS employees).

(d) *Exclusions.* This subpart does not apply to debt arising from taxation under the Internal Revenue Act of 1986, as amended, or to any debt excepted from the FCCS, 31 CFR parts 900 through 904.

(e) *Non-exclusive procedure or remedy.* Nothing in this subpart precludes collection or disposition of any debt under statutes and regulations other than those described in this subpart. To the extent that the provisions of laws or other regulations apply, including the remission or mitigation of fines, penalties, forfeitures and debts arising under the tariff laws of the United States, DHS components are authorized to collect debts under those laws and regulations. DHS components and other Federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law.

(f) *Additional policies and procedures.* DHS components may, but are not required to, promulgate additional policies and procedures consistent with this subpart and other applicable Federal law, policies, and procedures.

(g) *Duplication not required.* Nothing in this subpart requires DHS to duplicate notices or administrative proceedings required by contract, this subpart, or other laws or regulations.

(h) *No private rights created.* This subpart does not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall the failure of any DHS component to comply with any of the provisions of this subpart or 31 CFR parts 285, 900–904 be a defense to the collection of any debt or enforcement of any other law.

§ 11.2 Definitions.

In addition to the definitions provided in 31 CFR parts 285, 900–904, as used in this subpart:

(a) *Department of Homeland Security* or *DHS* means the United States Department of Homeland Security and includes the Secretary and any DHS entity which reports directly or indirectly to the Secretary.

(b) *DHS debt* means a debt owed to DHS by a person.

(c) *Secretary* means the Secretary of Homeland Security.

§ 11.3 Demand for payment.

(a) *Notice requirements.* Generally, before DHS starts the collection actions described in this subpart, DHS sends a written notice to the debtor under 31 CFR 901.2. The notice provided under this section includes notice of any and all actions DHS may take to offset the debt, including any notices required under 31 CFR parts 285, 900–904.

(b) *Exceptions to notice requirements.* DHS may omit from any notice to a debtor any provision that is not legally required given the collection remedies to be applied to a particular debt.

§ 11.4 Collection by administrative offset.

(a) *General Provisions for Offset.* DHS will collect debts by administrative offset pursuant to 31 CFR parts 900–904.

(b) *Centralized Offset through the Treasury Offset Program.* DHS adopts the provisions of 31 CFR 901.3.

(c) *Non-centralized Offset for DHS Debts.* When centralized offset is not available or appropriate, DHS may collect delinquent DHS debts through non-centralized offset. In these cases, DHS may offset a payment internally or make a request directly to a Federal payment agency to offset a payment owed to the debtor. Before requesting a payment authorizing agency to conduct a non-centralized administrative offset, DHS will provide the debtor with the due process set forth in 31 CFR 901.3(b)(4) and the notice requirements of 31 CFR 901.2 (unless the due process and notice requirements are not required under that part). DHS will provide the payment authorizing agency written certification that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that DHS has fully complied with its regulations concerning administrative offset.

(d) *Hearing Procedures for Federal Employees.* (1) *Request for a hearing.* A Federal employee who has received a notice that his or her DHS debt will be collected by means of salary offset may request a hearing concerning the existence or amount of the debt. The Federal employee also may request a hearing concerning the amount proposed to be deducted from the employee's pay each pay period. The employee must send any request for hearing, in writing, to the office designated in the notice described in section 11.4(c). The request must be received by the designated office on or before the 15th calendar day following the employee's receipt of the notice. The employee must sign the request and specify whether an oral or paper hearing is requested. If an oral hearing is requested, the employee must explain why the matter cannot be resolved by review of the documentary evidence alone. All travel expenses incurred by the Federal employee in connection with an in-person hearing will be borne by the employee.

(2) *Failure to submit timely request for hearing.* If the employee fails to submit a request for hearing within the time period described in paragraph (d)(1) of this section, the employee will have waived the right to a hearing, and salary offset may be initiated. However, DHS should accept a late request for hearing if the employee can show that the late request was the result of circumstances beyond the employee's control or because of a failure to receive actual notice of the filing deadline.

(3) *Hearing official.* DHS must obtain the services of a hearing official who is not under the supervision or control of the Secretary. The DHS Chief Financial Officer will coordinate DHS efforts to obtain the services of a hearing official.

(4) *Notice of hearing.* After the employee requests a hearing, the designated hearing official informs the employee of the form of the hearing to be provided. For oral hearings, the notice sets forth the date, time and location of the hearing. For paper hearings, the notice provides the employee the date by which he or she should submit written arguments to the designated hearing official. The hearing official gives the employee reasonable time to submit documentation in support of the employee's position. The hearing official schedules a new hearing date if requested by both parties. The hearing official gives both parties

reasonable notice of the time and place of a rescheduled hearing.

(5) *Oral hearing.* The hearing official conducts an oral hearing if he or she determines the matter cannot be resolved by review of documentary evidence alone (for example, when an issue of credibility or veracity is involved). The hearing need not take the form of an evidentiary hearing, but may be conducted in a manner determined by the hearing official, including but not limited to:

(i) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses and argument;

(ii) Informal meetings with an interview of the employee by the hearing official; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(6) *Paper hearing.* If the hearing official determines an oral hearing is not necessary, he or she makes the determination based upon a review of the available written record, including any documentation submitted by the employee in support of his or her position.

(7) *Failure to appear or submit documentary evidence.* In the absence of good cause shown (for example, excused illness), if the employee fails to appear at an oral hearing or fails to submit documentary evidence as required for a paper hearing, the employee waives the right to a hearing, and salary offset may be initiated. Further, the employee is deemed to admit the existence and amount of the debt as described in the notice of intent to offset. If a DHS representative does not appear at an oral hearing, the hearing official shall proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentary evidence submitted by both parties.

(8) *Burden of proof.* DHS has the initial burden to prove the existence and amount of the debt. Thereafter, if the employee disputes the existence or amount of the debt, the employee must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the employee may present evidence that the proposed terms of the repayment schedule are unlawful, would cause a financial hardship to the employee, or that collection of the debt may not be pursued due to operation of law.

(9) *Record.* The hearing official maintains a summary record of any hearing provided by this subpart. Witnesses testify under oath or affirmation in oral hearings.

(10) *Date of decision.* The hearing official issues a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing but not later than 60 days after the date on which the request for hearing was received by DHS. If the employee requests a delay in the proceedings, the deadline for the decision may be postponed by the number of days by which the hearing was postponed. When a decision is not timely rendered, DHS waives penalties applied to the debt for the period beginning with the date the decision is due and ending on the date the decision is issued.

(11) *Content of decision.* The written decision includes:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The hearing official's decision is final.

(f) *Waiver not precluded.* Nothing in this subpart precludes an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory authority.

(g) *Salary offset process.* (1) *Determination of disposable pay.* The Chief Financial Officer consults with the appropriate DHS payroll office to determine the amount of a DHS employee's disposable pay and will implement salary offset when requested to do so by a DHS component or another federal agency. If the debtor is not employed by DHS, the agency employing the debtor will determine the amount of the employee's disposable pay and implement salary offset upon request.

(2) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15 percent of a debtor's disposable pay, as follows:

(i) If the amount of the debt is equal to or less than 15 percent of the disposable pay, such debt generally is collected in one lump sum payment; or

(ii) Installment deductions are made over a period of no greater than the anticipated period of employment. An installment deduction will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount or the creditor agency has determined that smaller deductions are appropriate based on the employee's ability to pay.

(3) *Final salary payment.* After the employee has separated either voluntarily or involuntarily from the payment agency, the payment agency may make a lump sum deduction exceeding 15 percent of disposable pay from any final salary or other payments pursuant to 31 U.S.C. 3716 in order to satisfy a debt.

(h) *Payment agency's responsibilities.* (1) As required by 5 CFR 550.1109, if the employee separates from the payment agency from which DHS requested salary offset, the payment agency must certify the total amount of its collection and notify DHS and the employee of the amounts collected. If the payment agency is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar payments, it must provide written notification to the agency responsible for making such retirement payments that the debtor owes a debt, the amount of the debt, and that DHS has complied with the provisions of this section. DHS must submit a properly certified claim to the new payment agency before the collection can be made.

(2) If the employee is already separated from employment and all payments due from his or her former payment agency have been made, DHS may request that money due and payable to the employee from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar funds, is administratively offset to collect the debt. Generally, DHS will collect such monies through the Treasury Offset Program as described in this section.

(3) When an employee transfers to another agency, DHS should resume collection with the employee's new payment agency in order to continue salary offset.

§ 11.5 Administrative wage garnishment.

DHS may collect debts from a debtor's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D under the procedures established in 31 CFR 285.11.

§ 11.6 Reporting debts.

DHS will report delinquent debts to credit bureaus and other automated databases in accordance with 31 U.S.C. 3711(e), 31 CFR 901.4, and the Office of Management and Budget Circular A–129, ''Policies for Federal Credit Programs and Non-tax Receivables,'' which may be found at *http://*

www.fms.treas.gov/debt. At least sixty (60) days prior to reporting a delinquent debt to a consumer reporting agency, DHS sends a notice to the debtor in accordance with 6 CFR 11.3. DHS may authorize the Treasury Department's Financial Management Service to report to credit bureaus those delinquent debts that have been transferred to the Financial Management Service for administrative offset.

§ 11.7 Private collection agencies.

DHS will transfer delinquent DHS debts to the Treasury Department's Financial Management Service to obtain debt collection services provided by private collection agencies.

§ 11.8 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges.

The authority to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to DHS is delegated to the Chief Financial Officer.

§ 11.9 Collection in installments.

DHS may accept payment of a DHS debt in regular installments, in accordance with the provisions of 31 CFR 901.8 and policies and procedures adopted by the Chief Financial Officer (CFO). The CFO will consult the Office of General Counsel regarding a legally enforceable written agreement from the debtor.

§ 11.10 Interest, penalty charges, and administrative costs.

(a) *Assessment and notice.* DHS shall assess interest, penalties and administrative costs on DHS debts in accordance with 31 U.S.C. 3717 and 31 CFR 901.9. Administrative costs of processing and handling a delinquent debt shall be determined by DHS.

(b) *Waiver of interest, penalties, and administrative costs.* DHS may waive interest, penalties, and administrative costs, or any portion thereof, under the criteria in the FCCS, or when it determines the collection of these charges would be against equity and good conscience or not in the best interests of the United States. The authority to waive interest, penalties and administrative costs is delegated to the Chief Financial Officer. The DHS Chief Financial Officer shall issue written guidance on maintaining records of waivers.

(c) *Accrual during suspension of debt collection.* Interest and related charges will not accrue during the period a hearing official does not render a timely decision.

§ 11.11 Compromise.

DHS may compromise a debt in accordance with the provisions of 31 CFR part 902. The Chief Financial Officer is authorized to compromise debts owed to DHS. No debt over $10,000 may be compromised without the concurrence of the Office of the General Counsel.

§ 11.12 Suspending or terminating collection activity.

DHS will suspend or terminate collection activity, or discharge indebtedness, in accordance with 31 CFR part 903. The Chief Financial Officer is delegated authority to suspend or terminate collection activity, or to discharge indebtedness regarding debts owed to DHS, but for any such action involving a debt over $10,000, the Chief Financial Officer must obtain the concurrence of the Office of the General Counsel. The Chief Financial Officer is authorized to act on behalf of the Secretary in selling a debt, and in determining whether or not it is in the best interests of the United States to do so.

§ 11.13 Referrals to the Department of Justice.

Referrals of debts to the Department of Justice for collection will be by the General Counsel.

§ 11.14 Receipt of offset requests by other Federal agencies.

Other Federal agencies send non-centralized offset requests to DHS at: U.S. Department of Homeland Security, Attn: Chief Financial Officer, Mail Stop 0200, Washington, DC 20528–0200. Those agencies must comply with 31 CFR 901.3 when forwarding the requests to DHS. DHS does not review the merits of the creditor agency's determination with regard to the existence or the amount of the debt. When two or more agencies are seeking offsets from payments made to the same person, or when two or more debts are owed to a single creditor agency, DHS may determine the order in which the debts will be collected or whether one or more debts should be collected by offset simultaneously. For the purposes of this section, debts owed to DHS generally take precedence over debts owed to other agencies, but DHS may pay a debt to another agency prior to collecting for DHS. DHS determines the order of debt collection based upon the best interests of the United States.

§ 11.15 Applying the debt against DHS payments.

(a) *Notice to the Debtor.* DHS sends a written notice to the debtor indicating a certified debt claim was received from the creditor agency, the amount of the debt claimed to be owed by the creditor agency, the estimated date the offset will begin (if more than one payment), and the amount of the deduction(s). For employees, DHS generally begins deductions from pay at the next officially established pay interval. Deductions continue until DHS knows the debt is paid in full or until otherwise instructed by the creditor agency. Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency. If a DHS employee retires or resigns, or if his or her employment ends before collection of the debt is complete, DHS continues to offset, under 31 U.S.C. 3716, up to 100% of an employee's subsequent payments until the debt is paid or otherwise resolved. Such payments include a debtor's final salary payment, lump-sum leave payment, and other payments payable to the debtor by DHS. See 31 U.S.C. 3716 and 5 CFR 550.1104(l) and 550.1104(m). If the employee is separated from DHS before the debt is paid in full, DHS will certify to the creditor agency the total amount of its collection. If DHS is aware the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employee Retirement System, or other similar payments, DHS provides written notice to the agency making such retirement payments that the debtor owes a debt (including the amount) and that the provisions of 5 CFR 550.1109 have been fully complied with. The creditor agency is responsible for submitting a certified claim to the agency responsible for making such payments before collection may begin. Generally, creditor agencies will collect such monies through the Treasury Offset Program as described in section 11.4.

(b) *Notice to the debtor.* DHS provides to the debtor a copy of any notices sent to the creditor agency under this subpart.

(c) *Transfer of employee debtor to another Federal agency.* If an employee debtor transfers to another Federal agency before the debt is paid in full, DHS notifies the creditor agency and provides it a certification of the total amount of its collection on the debt. The creditor agency is responsible for submitting a certified claim to the debtor's new employing agency before collection may begin.

* * * * *

44 CFR Chapter 1—Federal Emergency Management Agency, Department of Homeland Security

Subchapter A—General

PART 11—[AMENDED]

■ 2. The authority citation for part 11 continues to read as follows:

Authority: 31 U.S.C. 3701 *et seq.*

Subpart C—[Removed]

■ 3. Subpart C, consisting of §§ 11.30 through 11.65, is removed and reserved.

Dated: January 24, 2007.

Michael Chertoff,

Secretary.

[FR Doc. 07–387 Filed 1–25–07; 2:42 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25988; Directorate Identifier 2006–NM–113–AD; Amendment 39–14884; AD 2007–01–12]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 and 900, and Falcon 900EX Airplanes; and Model Falcon 2000 and Falcon 2000EX Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Dassault Model Mystere-Falcon 50 and 900, and Falcon 900EX airplanes; and Model Falcon 2000 and Falcon 2000EX airplanes. This AD requires an inspection of the identification plates of the outboard slats to determine the type of identification plates and the part numbers. For certain airplanes, this AD also requires a revision to the Limitations and Normal Procedures sections of the airplane flight manual to provide procedures for operation in icing conditions; and replacement of the anti-icing manifold with an anti-icing manifold of the correct type design if necessary. For certain airplanes, this AD also requires related investigative and corrective actions if necessary. This AD results from a finding that the outboard slats for Model Mystere-Falcon 50 airplanes have been erroneously authorized, in limited cases, as interchangeable for use on Model Mystere-Falcon 900 and Falcon 900EX airplanes; and Model Falcon 2000 and Falcon 2000EX airplanes. We are issuing this AD to prevent failure of the anti-icing manifold of the outboard slats, which could result in loss of control of the airplane.

DATES: This AD becomes effective March 6, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 6, 2007.

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

Contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Dassault Model Mystere-Falcon 50 and 900, and Falcon 900EX airplanes; and Model Falcon 2000 and Falcon 2000EX airplanes. That NPRM was published in the **Federal Register** on October 5, 2006 (71 FR 58755). That NPRM proposed to require an inspection of the identification plates of the outboard slats to determine the type of identification plates and the part numbers. For certain airplanes, that NPRM also proposed to require a revision to the Limitations and Normal Procedures sections of the airplane flight manual to provide procedures for operation in icing conditions; and replacement of the anti-icing manifold with an anti-icing manifold of the correct type design if necessary. For certain airplanes, that NPRM also proposed to require related investigative and corrective actions if necessary.

Comments

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

Request To Incorporate by Reference During the NPRM Rulemaking Phase

The Modification and Replacement Parts Association (MARPA) states that, typically, ADs are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporated by reference into a public document, such as an AD, it loses its private, protected status and becomes a public document. MARPA adds that if a service document is used as a mandatory element of compliance, it should not simply be referenced, but should be incorporated into the regulatory document; by definition, public laws must be public, which means they cannot rely upon private writings.

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

Request To Publish Service Information Online

MARPA adds that incorporated by reference service documents should be made available to the public by publication in the Docket Management System (DMS), keyed to the action that incorporates them. MARPA notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals; traditionally, ''affected individuals'' means aircraft owners and

operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts under section 21.303 (''Replacement and modification parts'') of the Federal Aviation Regulations (14 CFR 21.303). MARPA adds that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper. Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument and published in DMS.

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

Conclusion

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

Costs of Compliance

This AD affects about 637 airplanes of U.S. registry. The required inspection takes about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $101,920, or $160 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–01–12 Dassault Aviation: Amendment 39–14884. Docket No. FAA–2006–25988; Directorate Identifier 2006–NM–113–AD.

Effective Date

(a) This AD becomes effective March 6, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

Dassault model—	Serial Nos.—
Mystere-Falcon 50 airplanes.	2 through 344 inclusive.
Mystere-Falcon 900 airplanes.	1 through 202 inclusive.
Falcon 900EX airplanes.	1 through 96 inclusive and 98 through 154 inclusive.
Falcon 2000 airplanes	1 through 223 inclusive.
Falcon 2000EX airplanes.	1 through 69 inclusive.

Unsafe Condition

(d) This AD results from a finding that the outboard slats for Model Mystere-Falcon 50 airplanes have been erroneously authorized, in limited cases, as interchangeable for use on Model Mystere-Falcon 900, and Falcon 900EX airplanes; and Model Falcon 2000 and Falcon 2000EX airplanes. We are issuing this AD to prevent failure of the anti-icing manifold of the outboard slats, which could result in loss of control of the airplane.

Compliance

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

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the service bulletins identified in Table 2 of this AD, as applicable. Although the service bulletins referenced in Table 2 of this AD specify to submit certain information to the manufacturer, this AD does not include that requirement.

TABLE 2.—SERVICE BULLETINS

Dassault Service Bulletin—	Dated—	For model—	For the actions specified in—
F2000–331	January 30, 2006	Falcon 2000 airplanes	Paragraph (h) of this AD.

TABLE 2.—SERVICE BULLETINS—Continued

Dassault Service Bulletin—	Dated—	For model—	For the actions specified in—
F2000EX–91	January 30, 2006	Falcon 2000EX airplanes	Paragraph (h) of this AD.
F50–475	January 30, 2006	Mystere-Falcon 50 airplanes	Paragraph (g) of this AD.
F50–478	January 30, 2006	Mystere-Falcon 50 airplanes	Paragraph (g)(2) of this AD.
F900–370	January 30, 2006	Mystere-Falcon 900 airplanes	Paragraph (h) of this AD.
F900EX–273	January 30, 2006	Falcon 900EX airplanes	Paragraph (h) of this AD.

Inspection and Corrective Actions for Model Mystere-Falcon 50 Airplanes

(g) For Model Mystere-Falcon 50 airplanes: Within 330 flight hours or 7 months after the effective date of this AD, whichever occurs first, inspect the identification plates of the outboard slats to determine the type of identification plates and the part numbers (P/Ns), in accordance with the applicable service bulletin. A review of airplane maintenance records is acceptable in lieu of the inspection if the type of identification plate and the part numbers of the outboard slats can be determined conclusively from that review. If a ''type 3'' identification plate is installed and mentions ''REP,'' ''WILMINGTON,'' ''LITTLE ROCK,'' or any other repair station, or if the conformity of the slat with the airplane's type design cannot be positively confirmed, before further flight, do a ''go-no-go'' diameter check of the air distribution holes of the manifold using a drill bit shank, in accordance with the applicable service bulletin. If the drill bit shank can be inserted through the air distribution holes of the manifold, or if a ''type 1'' identification plate is installed and inscribed with P/N FGFB134XX or P/N FGFB144XX, or if a slat has multiple identification plates and the vertical field of the most recent plate is inscribed with ''F900'' or ''MF900,'' do the actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Before further flight after the inspection required by paragraph (g) of this AD: Revise the Limitations and Normal Procedures sections of the Dassault Mystere-Falcon 50 Airplane Flight Manual (AFM), DTM813, to include the information in Dassault Temporary Change (TC) 61, dated January 27, 2006, as specified in the TC; or revise the Limitations and Normal Procedures sections of the Dassault Mystere-Falcon 50EX AFM, FM813EX, to include the information in Dassault TC 75, dated January 27, 2006, as specified in the TC; as applicable. These TCs introduce procedures for operation in icing conditions. Operate the airplane according to the limitations and procedures in the applicable TC.

Note 1: This may be done by inserting a copy of TC 61 or TC 75 in the AFM, as applicable. When the TC has been included in the general revisions of the AFM, the general revisions may be inserted in the AFM, provided that the relevant information in the general revision is identical to that in TC 61 or TC 75, as applicable.

(2) Within 1,530 flight hours after accomplishing the inspection required by paragraph (g) of this AD: Replace the anti-icing manifold with an anti-icing manifold of the correct type design, by accomplishing all of the actions specified in the applicable service bulletin, except as provided by paragraph (f) of this AD. Accomplishing the replacement terminates the requirements of paragraph (g)(1) of this AD. After the replacement has been done, the AFM limitation required by paragraph (g)(1) of this AD may be removed from the AFM.

Inspection and Replacement for Certain Airplanes

(h) For Model Mystere-Falcon 900 and Falcon 900EX airplanes, and Model Falcon 2000 and Falcon 2000EX airplanes: Within 330 flight hours or 7 months after the effective date of this AD, whichever occurs first, inspect the identification plates of the outboard slats to determine the type of identification plates and the part numbers, and do all related investigative and corrective actions, by accomplishing all of the actions specified in the service bulletin, as applicable, except as provided by paragraph (f) of this AD. Do all applicable related investigative and corrective actions before further flight. A review of airplane maintenance records is acceptable in lieu of the inspection if the type of identification plate and the part numbers of the outboard slats can be determined conclusively from that review.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) European Aviation Safety Agency (EASA) airworthiness directive 2006–0037, dated February 1, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use the service information identified in Table 3 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

Service information	Revision level	Date
Dassault Service Bulletin F2000–331	Original	January 30, 2006.
Dassault Service Bulletin F2000EX–91	Original	January 30, 2006.
Dassault Service Bulletin F50–475	Original	January 30, 2006.
Dassault Service Bulletin F50–478	Original	January 30, 2006.
Dassault Service Bulletin F900–370	Original	January 30, 2006.
Dassault Service Bulletin F900EX–273	Original	January 30, 2006.
Dassault Temporary Change 61 to the Dassault Mystere-Falcon 50 Airplane Flight Manual, DTM813	Original	January 27, 2006.
Dassault Temporary Change 75 to the Dassault Mystere-Falcon 50EX Airplane Flight Manual, FM813EX.	Original	January 27, 2006.

(The issue date on the second page of Dassault Temporary Change 61 is incorrect; instead of January 27, 2005, that date should be January 27, 2006.) The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to*http://www.archives.gov/federal_register/*

code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on December 26, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1204 Filed 1–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26217; Directorate Identifier 2006–NM–209–AD; Amendment 39–14886; AD 2007–01–14]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model DHC–8–400 series airplanes. This AD requires revising the Airworthiness Limitations Items (ALI) of the maintenance requirements manual to require additional inspection requirements of the maintenance requirements manual for certain principal structural elements (PSEs) related to fuselage cutouts and to reduce an inspection threshold for an existing ALI task on the aft entry door. This AD results from data obtained from the manufacturer's fatigue testing. We are issuing this AD to detect and correct fatigue cracking of certain PSEs, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective March 6, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 6, 2007.

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

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 256–7525; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier Model DHC–8–400 series airplanes. That NPRM was published in the **Federal Register** on November 2, 2006 (71 FR 64482). That NPRM proposed to require revising the Airworthiness Limitations Items (ALI) of the maintenance requirements manual to require additional inspection requirements of the maintenance requirements manual for certain principal structural elements (PSEs) related to fuselage cutouts and to reduce an inspection threshold for an existing ALI task on the aft entry door.

Comments

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

Conclusion

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

Costs of Compliance

This AD affects about 21 airplanes of U.S. registry. The required actions take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of this AD for U.S. operators is $1,680, or $80 per airplane.

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–01–14 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–14886. FAA–2006–26217; Directorate Identifier 2006–NM–209–AD.

Effective Date

(a) This AD becomes effective March 6, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400 series airplanes, serial numbers 4001, 4003, 4004, 4006, and 4008 through 4126 inclusive, certificated in any category.

Unsafe Condition

(d) This AD results from data obtained from the manufacturer's fatigue testing. We are issuing this AD to detect and correct fatigue cracking of certain principal structural elements, which could result in reduced structural integrity of the airplane.

Compliance

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

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529–1.

Maintenance Requirements Manual Revision

(f) Within 60 days after the effective date of this AD, revise the Airworthiness Limitations Items (ALI), Part 2, Section 2, of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, by incorporating the information in Bombardier Q400 Dash 8 Temporary Revisions (TR) ALI–53, dated February 16, 2006; and ALI–54, dated March 27, 2006. Thereafter, except as provided in paragraph (g) of this AD, no alternative structural inspection intervals may be approved for the fuselage and doors as specified in the TRs.

Note 2: The actions required by paragraph (f) of this AD may be done by inserting copies of TR ALI–53, dated February 16, 2006, and TR ALI–54, dated March 27, 2006; into the ALI, Part 2, Section 2, of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. When TRs ALI–53 and ALI–54 have been included in the general revisions of the maintenance requirements manual, the general revisions may be inserted into the maintenance requirements manual, provided the relevant information in the general revision is identical to that in TRs ALI–53 and ALI–54.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) Canadian airworthiness directive CF–2006–10, dated May 12, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Bombardier Q400 Dash 8 Temporary Revision ALI–53, dated February 16, 2006, to the Airworthiness Limitations Items, Part 2, Section 2, of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7; and Bombardier Q400 Dash 8 Temporary Revision ALI–54, dated March 27, 2006, to the Airworthiness Limitations Items, Part 2, Section 2, of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 26, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1209 Filed 1–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25079; Directorate Identifier 2006–NM–065–AD; Amendment 39–14885; AD 2007–01–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310–300 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A310–300 airplanes. This AD requires replacing the existing non-return valve (NRV) of the auxiliary center tanks (ACTs) of the fuel system with a new, improved NRV. This AD results from a report that it was not possible to transfer fuel from ACTs 1 and 2 during flight, and no electronic centralized aircraft monitor warnings were triggered. Investigation revealed a faulty static inverter and blown fuse, resulting in failure of certain fueling bus bars and subsequent failure of the automatic ACT fuel transfer. We are issuing this AD to prevent these failures, combined with failure of the NRV to close. If the NRV is open during flight, the fuel supply to the engines may be reduced during cross-feed operation to the extent that fuel starvation could occur and result in engine flameout.

DATES: This AD becomes effective March 6, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 6, 2007.

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

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A310–300 airplanes. That NPRM was published in the **Federal Register** on June 20, 2006 (71 FR 35400). That NPRM proposed to require replacing the existing non-return valve (NRV) of the auxiliary center tanks (ACTs) of the fuel system with a new, improved NRV.

Comments

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

Request To Clarify Applicability

Airbus asks that the applicability specified in paragraph (c) of the NPRM be clarified. Airbus states that the applicability excludes airplanes on which Airbus Modification 8928 was embodied during production. Airbus has the following reservations:

During production, Airbus Modification 8928 could be embodied either ''completely'' or ''partially.'' This means that, for airplanes on which the modification was partially embodied, NRV part number (P/N) C23AE0103s could be fitted in the outer tanks and other positions; any combination of P/Ns C23AE0102s and C23AE0103s could be fitted and operators could claim full accomplishment of the modification. However, this exception is fully valid for airplanes on which Airbus Modification 8928 has been completely embodied. As a ''safety principle'' Airbus recommends excluding airplanes on which Airbus Modification 8928 has been completely embodied (i.e., Airbus Model A310–300 airplanes, with manufacturer serial numbers 0636 through 0706 inclusive).

Airbus also states that, as specified in the applicability of the French airworthiness directive, the AD is applicable to airplanes equipped with ACTs, or provisioned to receive ACTs. Airbus notes that airplanes equipped with provisions for ACTs on which either Airbus (production) Modifications 6918 and 6919 or 6918, 6919, and 8339 have been installed could also be fitted with NRVs having P/N C23AE0102.

We agree that the applicability specified in paragraph (c) of this AD should be clarified, and we have included additional information which we determined would add further clarity regarding the possible installation of a NRV, as identified by Airbus. We have changed the applicability as follows: ''This AD applies to Airbus Model A310–304, –308, –324, and –325 airplanes, certificated in any category; equipped with one or more auxiliary center tanks (ACTs); on which either Airbus (production) Modifications 6918 and 6919 or 6918, 6919, and 8339 have been installed; except those on which Airbus Modification 8928 has been done in production.''

Request To Incorporate-by-Reference the Relevant Service Information

The Modification and Replacement Parts Association (MARPA) states that the NPRM references two documents for accomplishing the specified actions. MARPA adds that neither of these documents is incorporated by reference in the NPRM pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. MARPA notes that because the service information is not incorporated by reference, it has copyright protection against duplication and distribution by anyone, including the U.S. Government. MARPA adds that when an otherwise private document is incorporated by reference into a public document, such as an AD, it loses its protections and becomes a public document. MARPA believes that mandatory reference to a private document in order to comply with a rule is fatally flawed, unless the private document is incorporated by reference, thereby making it public. MARPA believes that public laws, by definition, should be public, which means they cannot rely upon private writings for compliance. MARPA asks that all service documents required for accomplishing the mandated work be incorporated by reference.

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

In regard to the commenter's request that service documents be made available to the public by publication in the **Federal Register,** we agree that incorporation by reference was authorized to reduce the volume of material published in the **Federal Register** and the Code of Federal Regulations. However, as specified in the **Federal Register** Document Drafting Handbook, the Director of the OFR decides when an agency may incorporate material by reference. As the commenter is aware, the OFR files documents for public inspection on the workday before the date of publication of the rule at its office in Washington, D.C. As stated in the Federal Register Document Drafting Handbook, when documents are filed for public inspection, anyone may inspect or copy file documents during the OFR's hours of business. Further questions regarding publication of documents in the **Federal Register** or incorporation by reference should be directed to the OFR.

Request To Publish Service Information in the Docket Management System (DMS)

MARPA states that service documents incorporated by reference should be made available to the public by publication in the DMS, keyed to the action that incorporates those documents. MARPA adds that under the aforementioned authorities, incorporation by reference is a technique used to reduce the size of the **Federal Register** when the information is already available to the affected individuals. MARPA adds that, traditionally, ''affected individuals'' means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that, a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing, and/or servicing alternatively certified parts under section 21.303 (''Replacement and modification parts'') of the Federal Aviation Regulations (14 CFR 21.303). MARPA notes that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper.

Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument and published in DMS.

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

Request To Reference Parts Manufacturer Approval (PMA) Parts

MARPA states that type certificate holders in their service documents universally ignore the possible existence of PMA parts. According to MARPA, this is especially true with foreign manufacturers where the concept may not exist or be implemented in the country of origin. MARPA states that frequently the service bulletin upon which an AD is based will require the removal of a certain part number and the installation of a different part number as a corrective action. MARPA states that this practice runs afoul of 14 CFR 21.303, which permits the development, certification, and installation of alternatively certified parts (PMA). MARPA states that mandating the installation of a certain part number to the exclusion of all other parts is not a favored general practice. According to MARPA, such action has the dual effect of preventing, in some cases, the installation of perfectly good parts, while at the same time prohibiting the development of new parts permitted under 14 CFR 21.303. MARPA states that such a prohibition runs the risk of taking the AD out of the realm of safety and into the world of economics since prohibiting the development, sale, and use of a perfectly airworthy part has nothing to do with safety. MARPA adds that courts could easily construe such actions as being outside the statutory basis of the AD (safety), and thus unenforceable. MARPA adds that courts are reluctant to find portions of rule unenforceable since they lack the knowledge and authority to rewrite requirements, and are generally inclined to void the entire rule.

We do not agree to change the AD to permit installation of any equivalent PMA parts so that it is not necessary for an operator to request approval of an alternative method of compliance (AMOC) in order to install an ''equivalent'' PMA part. Whether an alternative part is ''equivalent'' in adequately resolving the unsafe condition can only be determined on a case-by-case basis based on a complete understanding of the unsafe condition. We are not currently aware of any such parts. Our policy is that, in order for operators to replace a part with one that is not specified in the AD, they must request an AMOC. This is necessary so that we can make a specific determination that an alternative part is or is not susceptible to the same unsafe condition.

In response to MARPA's statement regarding a practice that ''runs afoul of 14 CFR 21.303,'' under which the FAA issues PMAs, this statement appears to reflect a misunderstanding of the relationship between ADs and the certification procedural regulations of part 21 of the Federal Aviation Regulations (14 CFR part 21). Those regulations, including section 21.303 of the Federal Aviation Regulations (14 CFR 21.203), are intended to ensure that aeronautical products comply with the applicable airworthiness standards. But ADs are issued when, notwithstanding those procedures, we become aware of unsafe conditions in these products or parts. Therefore, an AD takes precedence over design approvals when we identify an unsafe condition, and mandating installation of a certain part number in an AD is not at variance with section § 21.303.

The AD provides a means of compliance for operators to ensure that the identified unsafe condition is addressed appropriately. For an unsafe condition attributable to a part, the AD normally identifies the replacement parts necessary to obtain that compliance. As stated in section 39.7 of the Federal Aviation Regulations (14 CFR 39.7), ''Anyone who operates a product that does not meet the requirements of an applicable AD is in violation of this section.'' Unless an operator obtains approval for an AMOC, replacing a part with one not specified by the AD would make the operator subject to an enforcement action and result in a civil penalty. We have not changed the AD in this regard.

Request To Allow Use of PMA Parts

MARPA reiterates paragraph 9.a.(4) of draft FAA Order 8040.2 and notes that the draft order states that replacement or installation of certain parts could have replacement parts approved under 14 CFR 21.303 based on a finding of identicality. MARPA adds that any parts approved and installed under this regulation should be subject to the actions of the AD and included in the applicability. MARPA states that the NPRM does not appear to have considered this aspect; and it should be adjusted to give due consideration to the possible existence of alternatively certified parts before issuance. MARPA asserts that the service documents referred to in the NPRM require the installation of a specific ''new and improved'' parts to the exclusion of all other parts; which predicated the following comments. MARPA has, on numerous occasions, objected to the Transport Airplane Directorate's (TAD's) practice of mandating the installation of a certain part as the sole method of compliance with an AD. MARPA's belief has been, and remains, that such practice violates 14 CFR 21.303 by enjoining the installation of approved parts, while simultaneously prohibiting the development of other parts, both of which were not intended by Congress. MARPA disagrees with TAD's general response, which has been that MARPA simply does not understand that ADs take precedence over all other statutory requirements. MARPA suggests that we adopt language used in ADs issued by directorates other than the TAD, which specifies installing an ''FAA-approved equivalent part number'' or ''airworthy parts.'' MARPA, therefore, requests that we revise the NPRM to allow use of PMA parts.

MARPA adds that, in the past, the TAD addressed this issue by requiring an AMOC to use a PMA part, when it had been determined that the OEM part is defective; that action appears to defy logic. MARPA states that when a PMA is granted, a part is approved for installation and it cannot be ''unapproved'' by any action without cause; a defective OEM part is not cause for invalidating a PMA when the PMA part is not defective; this is not addressed in the AD.

We do not agree to revise this AD. The NPRM did not address PMA parts, as provided in draft FAA Order 8040.2, because the Order was only a draft that was out for comment at the time. After issuance of the NPRM, the Order was revised and issued as FAA Order 8040.5 with an effective date of September 29, 2006. FAA Order 8040.5 does not address PMA parts in ADs. We acknowledge the need to ensure that unsafe PMA parts are identified and addressed in MCAI-related ADs. We are currently examining all aspects of this issue, including input from industry. Once we have made a final determination, we will consider how our policy regarding PMA parts in ADs needs to be revised. We consider that to

delay this AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to the AD in this regard.

Conclusion

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

Costs of Compliance

This AD affects about 11 airplanes of U.S. registry. The replacement will take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Required parts will cost about $368 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $4,928, or $448 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–01–13 Airbus: Amendment 39–14885. Docket No. FAA–2006–25079; Directorate Identifier 2006–NM–065–AD.

Effective Date

(a) This AD becomes effective March 6, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A310–304, –308, –324, and –325 airplanes, certificated in any category; equipped with one or more auxiliary center tanks (ACTs); on which either Airbus (production) Modifications 6918 and 6919 or 6918, 6919, and 8339 have been installed; except those on which Airbus Modification 8928 has been done in production.

Unsafe Condition

(d) This AD results from a report that it was not possible to transfer fuel from ACTs 1 and 2 during flight, and no electronic centralized aircraft monitor warnings were triggered. Investigation revealed a faulty static inverter and blown fuse, resulting in failure of certain fueling bus bars and subsequent failure of the automatic ACT fuel transfer. We are issuing this AD to prevent these failures, combined with failure of the non-return valve (NRV) to close. If the NRV is open during flight, the fuel supply to the engines may be reduced during cross-feed operation to the extent that fuel starvation could occur and result in engine flameout.

Compliance

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

Replacement

(f) Within 15,000 flight hours after the effective date of this AD: Replace the existing NRV with a new, improved NRV by doing all the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–28–2158, dated September 1, 2005.

Note 1: The Airbus service bulletin refers to Lucas Air Equipment Service Bulletin C23AE01–28–01, Revision 1, dated July 20, 1994, as an additional source of service information for replacing the NRV.

Parts Installation

(g) As of the effective date of this AD, no person may install, on any airplane, a NRV having part number C23AE0102, unless it has been modified according to paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) French airworthiness directive F–2005–197, dated December 7, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus Service Bulletin A310–28–2158, dated September 1, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 26, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1208 Filed 1–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23907; Airspace Docket No. 06–AEA–03]

Establishment of Class E Airspace; Ridgway, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule; correction.

SUMMARY: This action establishes Class E airspace at Ridgway Landing Zone, Ridgway, PA. Development of an Area Navigation (RNAV), Helicopter Point in Space Approach, for the Ridgway Landing Zone, Ridgway, PA, has made this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach to the Ridgway Landing Zone. This is a correction to a final rule published on October 17, 2006. 71 FR 60817.

This final rule corrects the spelling of ''Ridgeway'' to ''Ridgway''

DATES: *Effective Date:* 0901 UTC November 23, 2006. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On March 13, 2006 a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E airspace extending upward from 700 feet Above Ground Level (AGL) for an RNAV, Helicopter Point in Space Approach to the Ridgway Landing Zone, Ridgway, PA, was published in the **Federal Register**. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before May 13, 2006. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9N, dated September 1, 2005 and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting Instrument Flight Rules (IFR) operations at the Ridgway landing Zone, Ridgway, PA.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA PA E5 Ridgway, PA (New)

Ridgway Landing Zone Point in Space Coordinates.
(Lat. 41°25′07″ N., long. 78°45′09″ W.)

That airspace extending upward from 700 feet above the surface within a 6 mile radius of a Point in Space for the SIAP serving the Ridgway Land Zone, Ridgway, PA.

* * * * *

Issued in Jamaica, New York on December 21, 2006.

Mark D. Ward,

Manager, FAA, Eastern Service Center.

[FR Doc. 07–297 Filed 1–29–07; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–55160; File No. S7–10–04]

Regulation NMS

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance dates.

SUMMARY: The Commission is extending for a limited period of time three of the future compliance dates for Rule 610 and Rule 611 of Regulation NMS (''Rule 610'' and ''Rule 611,'' respectively) under the Securities Exchange Act of 1934 (''Exchange Act''). Rule 610 requires fair and non-discriminatory access to quotations, establishes a limit on access fees, and requires each national securities exchange and national securities association to adopt, maintain, and enforce written rules that prohibit their members from engaging in a pattern or practice of displaying quotations that lock or cross protected quotations. Rule 611 requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by other trading centers, subject to an applicable exception. The Commission is extending the three compliance dates to give automated trading centers additional time to complete the rollout

of their new or modified trading systems.

DATES: The effective date for Rule 610 and Rule 611 remains August 29, 2005. Three compliance dates for different functional stages of compliance with Rule 610 and Rule 611 have been extended as set forth in section I of this release, beginning with the ''Trading Phase Date,'' as defined in section I of this release, which has been extended from February 5, 2007 to March 5, 2007. The effective date for this release is January 30, 2007.

FOR FURTHER INFORMATION CONTACT: Raymond Lombardo, Special Counsel, at (202) 551–5615, or David Liu, Special Counsel, at (202) 551–5645, Division of Market Regulation, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION:

I. Discussion

In June 2005, the Commission published its release adopting Regulation NMS.[1] The adopted regulatory requirements include: (1) New Rule 610, which addresses access to markets and locking or crossing quotations; (2) new Rule 611, which provides intermarket protection against trade-throughs (*i.e.,* trades at inferior prices) for certain displayed quotations that are automated and accessible; and (3) an amendment to the joint industry plans for disseminating market information to the public that modifies the formulas for allocating plan revenues to the self-regulatory organization (''SRO'') participants in the plans (''Allocation Amendment'').

Given the new regulatory framework created by Regulation NMS and the desire of investors and other market participants for more automated and efficient trading services, many SROs have announced major revisions of their trading systems. The SROs and other securities industry participants have been working to comply with the new NMS regulatory requirements. In May 2006, the Commission extended the original compliance dates for Rules 611 and 610 to a series of five dates for phased-in compliance that incorporated the major functional steps required to achieve full implementation of Regulation NMS.[2] The extended dates were as follows:

October 16, 2006 (''Specifications Date''): Final date for publication on Internet Web sites of applicable SROs (*i.e.,* the exchange for SRO trading facilities and the NASD for ADF participants) of final technical specifications for interaction with Regulation NMS-compliant trading systems of all automated trading centers (both SRO trading facilities and ADF participants) that intend to qualify their quotations for trade-through protection under Rule 611 during the Pilots Stocks Phase and All Stocks Phase (as defined below).

February 5, 2007 (''Trading Phase Date''): Final date for full operation of Regulation NMS-compliant trading systems of all automated trading centers (both SRO trading facilities and ADF participants) that intend to qualify their quotations for trade-through protection under Rule 611 during the Pilots Stocks Phase and All Stocks Phase (as defined below). The period from February 5, 2007 till May 21, 2007 was the ''Trading Phase.''

May 21, 2007 (''Pilot Stocks Phase Date''): Start of full industry compliance with Rule 610 and Rule 611 for 250 NMS stocks (100 NYSE stocks, 100 Nasdaq stocks, and 50 Amex stocks). The period from May 21, 2007 till July 9, 2007 was the ''Pilot Stocks Phase.''

July 9, 2007 (''All Stocks Phase Date''): Start of full industry compliance with Rule 610 and Rule 611 for all remaining NMS stocks. The period from July 9, 2007 till October 8, 2007 was the ''All Stocks Phase.''

October 8, 2007 (''Completion Date''): Completion of phased-in compliance with Rule 610 and Rule 611.

In addition, the Commission, by separate order, exempted the SRO participants in the joint industry market data plans from compliance with the Allocation Amendment until April 1, 2007.[3]

The revised compliance dates were designed to provide additional time for the SROs to develop and install their new trading systems, as well as to give all securities industry participants an enhanced opportunity to complete their compliance preparations in the least disruptive and most cost-effective manner possible. Recently, the New York Stock Exchange,[4] a major U.S. equity market, requested a four-week extension of the Trading Phase Date. The NYSE stated that, due to delays in the rollout schedule for its Hybrid Market, the NYSE would not be in a position to comply with the requirements for ''automated quotations,'' as defined in Rule 600(b)(3) of Regulation NMS, until the end of February 2007. The NYSE believed that continuing with the scheduled implementation of Rule 611, without appropriate testing and quality assurance for the NYSE trading systems, would jeopardize best execution for investors and put the securities industry and investors at risk.

The Commission agrees that implementing Regulation NMS without full participation by a major market such as the NYSE would jeopardize the smooth functioning of the U.S. equity markets. It therefore has decided to extend the Trading Phase Date until March 5, 2007. To reflect the extended Trading Phase Date and avoid coinciding with major trading days in June 2007, the Commission also has decided to extend the Pilot Stocks Phase Date until July 9, 2007, and the All Stocks Phase Date until August 20, 2007. In contrast, the Specifications Date of October 16, 2006 has already passed and is not affected by this release. In addition, the Completion Date of October 8, 2007 remains unchanged.

Accordingly, the future compliance dates for Rule 610 and Rule 611, as revised by this release, are as follows:

Trading Phase Date: March 5, 2007. The revised Trading Phase now will extend from March 5, 2007 till July 9, 2007.

Pilot Stocks Phase Date: July 9, 2007. The revised Pilot Stocks Phase now will extend from July 9, 2007 till August 20, 2007.

All Stocks Phase Date: August 20, 2007. The revised All Stocks Phase now will extend from August 20, 2007 till October 8, 2007.

Completion Date: October 8, 2007.

In addition, the April 1, 2007 date for SRO participants in the joint-industry market data plans to comply with the Allocation Amendment is not affected by this release and remains April 1, 2007.

II. Conclusion

For the reasons cited above, the Commission, for good cause, finds that notice and solicitation of comment regarding the extension of the compliance dates set forth herein are impractical, unnecessary, or contrary to the public interest.[5] All industry

[1] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''NMS Release'').

[2] Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006) (''Extension Release'').

[3] Securities Exchange Act Release No. 53828 (May 18, 2006) (order exempting SROs from compliance with the Allocation Amendment until April 1, 2007).

[4] *See* letter from Mary Yeager, Assistant Secretary, New York Stock Exchange to Nancy Morris, Secretary, Commission, dated January 8, 2007.

[5] *See* Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (''APA'') (an agency may dispense with prior notice and comment when it finds, for good cause, that notice

Continued

participants will receive substantial additional time to comply with Rule 610 and Rule 611 beyond the compliance dates originally set forth in the NMS Release, as modified by the Extension Release. In addition, the Commission recognizes that industry participants urgently need notice of the extended compliance dates so that they do not expend unnecessary time and resources in meeting the previous compliance dates. Providing immediate effectiveness upon publication of this release will allow industry participants to adjust their implementation plans accordingly.[6]

By the Commission.

Dated: January 24, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1384 Filed 1–29–07; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Part 725

RIN 1215–AB60

Regulations Implementing the Black Lung Benefits Act of 1969, as Amended

AGENCY: Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule eliminates the procedural requirement that the Department's administrative law judges include the parties' names in decisions and orders issued in Black Lung Benefits Act claims. The Department is revising the rule to give the Office of Administrative Law Judges more flexibility in captioning these decisions. This will allow the Department the flexibility to limit the amount of personal information about black lung claimants that is included in published final decisions.

DATES: Effective January 30, 2007.

FOR FURTHER INFORMATION CONTACT: James L. DeMarce, Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, 202–693–0046.

SUPPLEMENTARY INFORMATION: The current version of § 725.477(b) has been in effect since 1978. The regulation requires the Department of Labor's Office of Administrative Law Judges to include, among other things, the ''names of the parties'' in decisions and orders issued under the Black Lung Benefits Act, as amended, 30 U.S.C. 901–944. Coal miners or their survivors who have filed claims for benefits are parties to the claim; thus, their names are included in the decision and order. Given the nature of black lung benefits claims, the decision and order frequently contains a variety of personal information about the miner and his or her survivors and dependents. In virtually every case, this information includes detailed medical assessments of the miner's physical condition, including the miner's medical history, physical examination and objective test findings, medical treatment records, and hospitalization records. In certain cases, a miner's or survivor's financial records and the names, birthdates, and medical histories of dependents may also be disclosed.

For many years, publication of these decisions was not widespread. Although available for public inspection through the Office of Administrative Law Judges, only a small percentage of decisions were published in commercial legal reporters, such as the Black Lung Reporter. But beginning in November 1996, Congress required agencies to publish final adjudicatory decisions on the Internet (or in other electronic form). *See* 5 U.S.C. 552(a)(2). Accordingly, the Office of Administrative Law Judges now posts all final decisions on the Department of Labor's Web site. As a result, these decisions are now readily accessible to the public. By removing from § 725.477(b) the requirement that parties' names be included in decisions, the revised rule affords the Office of Administrative Law Judges the flexibility to adopt procedures, as it deems necessary, that both ensure public access to its decisions and eliminate the link between individual claimants and their medical and financial information necessarily disclosed in those decisions.

Finally, the revision to § 725.477(b) conforms the Black Lung Benefits Act regulations to the rules governing decisions issued by the Office of Administrative Law Judges under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.*, as well as decisions issued by the Benefits Review Board and the Employees' Compensation Appeals Board, two other Department of Labor adjudicatory bodies. Neither the Longshore Act regulations nor the regulations governing decisions issued by the two Boards require that the parties' names be included in the decisions rendered. *See* 20 CFR 501.6 (Employees' Compensation Appeals Board); 20 CFR 702.348 (Longshore Act); 20 CFR 802.404 (Benefits Review Board).

Rulemaking Analyses

Administrative Procedure Act

Section 553 of the Administrative Procedure Act exempts ''rules of agency organization, procedure, or practice.'' from proposed rulemaking (*i.e.*, notice-and-comment rulemaking). 5 U.S.C. 553(b)(3)(A). The Department's revision to § 725.477(b) pertains solely to the Department's formatting of decisions and orders and makes no change to a substantive standard. Accordingly, the Department has determined that this revision need not be published as a proposed rule under 5 U.S.C. 553(b). For the same reason, the Department has determined that there is good cause, within the meaning of 5 U.S.C. 553(d)(3), to make the revision effective upon publication.

Regulatory Flexibility Act

Because the Department has concluded that this action is not subject to the Administrative Procedure Act's proposed rulemaking requirements, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act(5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

This action is not subject to sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA, Pub. L. 104–4) because the Department has determined that the revision is not subject to the Administrative Procedure Act's proposed rulemaking requirements. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate as described in sections 203 and 204 of UMRA.

Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Executive Order 12866

This action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)).

and comment are ''impractical, unnecessary, or contrary to the public interest'').

[6] The compliance date extensions set forth in this release are effective upon publication in the **Federal Register.** Section 553(d)(1) of the APA allows effective dates that are less than 30 days after publication for a ''substantive rule which grants or recognizes an exemption or relieves a restriction.'' 5 U.S.C. 553(d)(1).

Executive Order 13132

This action will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as described in Executive Order 13132 (64 FR 43255 (Aug. 10, 1999)).

List of Subjects in 20 CFR Part 725

Administrative practice and procedure, Black lung benefits, Claims, Health care, Lung diseases, Miners, Mines, Workers' compensation.

■ For the reasons set forth in the preamble, 20 CFR Part 725 is amended as set forth below:

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

■ 1. The authority citation for part 725 continues to read as follows:

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 *et seq.*, 921, 932, 936; 33 U.S.C. 901 *et seq.*, 42 U.S.C. 405, Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

■ 2. Amend § 725.477(b) by revising the first sentence to read as follows:

§ 725.477 Form and contents of decision and order.

* * * * *

(b) A decision and order shall contain a statement of the basis of the order, findings of fact, conclusions of law, and an award, rejection or other appropriate paragraph containing the action of the administrative law judge, his or her signature and the date of issuance * * *.

Signed at Washington, DC, this 25th day of January, 2007.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards Administration.

Shelby Hallmark,

Director, Office of Workers' Compensation Programs.

[FR Doc. E7–1432 Filed 1–29–07; 8:45 am]

BILLING CODE 4510–CK–P

PEACE CORPS

22 CFR Part 304

RIN 0420–AA20

Claims Against Government Under Federal Tort Claims Act

AGENCY: Peace Corps.

ACTION: Fina rule and comment request.

SUMMARY: The Peace Corps is revising its regulations concerning claims filed under the Federal Tort Claims Act. These changes update Peace Corps' address, as well as authority cited in the regulation. Revisions also identify a new policy under which the Chief Financial Officer, rather than the Director of the Peace Corps, will have authority to approve claims for amounts under $5000.

DATES: This final rule is effective on March 16, 2007 without further action, unless adverse comment is received by Peace Corps by March 1, 2007. If adverse comment is received, Peace Corps will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments by e-mail to *sglasow@peacecorps.gov*. Include Rin 0420–AA20 in the subject line of the message. You may also submit comments by mail to Suzanne Glasow, Office of the General Counsel, Peace Corps, Suite 8200, 1111 20th Street, NW., Washington, DC 20526. Contact Suzanne Glasow for copies of comments.

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Associat General Counsel, 202–692–2150, *sglasow@peacecorps.gov*.

SUPPLEMENTARY INFORMATION: The revisions to the rules include updates to cited authority and Peace Corps' address. In addition, claims for less than $5000 will no longer require approval from the head of the agency. The Chief Financial Officer will be the designee of the head of the agency for such claims. The head of the agency will continue to have approval authority for all claims of $5000 or more.

Section-by-Section Analysis

Section 304.1 Scope; Definitions

Subpart (c) is amended to reflect the fact that 31 FR 16616 is no longer a thorough representation of the contents of 28 CFR part 14. The language of this section will be revised by deleting 31 FR 16616, and referring only to 28 CFR part 14.

Section 304.2 Administrative Claim; When Presented; Appropriate Peace Corps Office

Subpart (a) is amended to include Peace Corps' current address, 1111 20th Street, NW., Washington, DC 20526.

Section 304.7 Authority To Adjust, Determine, Comprise, and Settle Claims

This section is revised to state that the Chief Financial Officer has the authority to adjust, determine, compromise, and settle claims for less than $5,000 under section 2672 of title 28, United States Code. The Director of the Peace Corps retains authority for all claims of $5,000 or more.

Section 304.9 Referral to the Department of Justice

This section is revised to delete the reference to 28 CFR 14.7, which is an obsolete citation.

Executive Order 12866

This regulation has been determined to be nonsignificant within the meaning of Executive Order 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

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

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in Part 304

Claims.

■ Accordingly, under the authority of 22 U.S.C. 2503(b) and 28 U.S.C. 2672, Peace Corps amends the Code of Federal Regulations, Title 22, Chapter III, as follows:

PART 304—CLAIMS AGAINST GOVERNMENT UNDER FEDERAL TORT CLAIMS ACT

■ 1. The authority citation is revised to read as follows:

Authority: 28 U.S.C. 2672; 22 U.S.C. 2503(b); E.O. 12137, as amended.

■ 2. Section 304.1(c) is revised to read as follows:

§ 304.1 Scope; definitions.

* * * * *

(c) This subpart is issued subject to and consistent with applicable regulations on administrative claims under the Federal Tort Claims Act issued by the Attorney General (28 CFR part 14).

* * * * *

■ 3. Section 304.2(b) is revised to read as follows:

§ 304.2 Administrative claim; when presented; appropriate Peace Corps office.

* * * * *

(b) A claimant shall mail or deliver his claim to the General Counsel, Peace Corps, 1111 20th Street, NW., Washington, DC 20526.

■ 4. Section 304.7 is revised to read as follows:

§ 304.7 Authority to adjust, determine, compromise, and settle claims.

The authority to consider, ascertain, adjust, determine, compromise and settle claims of less than $5,000 under 28 U.S.C. 2672, and this subpart, rests with the Chief Financial Officer, as the designee of the head of the agency. For claims under 28 U.S.C. 2672 and this subpart, subject to § 304.8, the Director of the Peace Corps retains authority to consider, ascertain, adjust, determine, compromise and settle claims of $5,000 or more.

■ 5. Section 304.9 is revised to read as follows:

§ 304.9 Referral to the Department of Justice.

When Department of Justice approval or consultation is required under § 304.8, the referral or request shall be transmitted to the Department of Justice by the General Counsel.

Dated: January 19, 2007.

Tyler S. Posey,

General Counsel.

[FR Doc. 07–308 Filed 1–29–07; 8:45 am]

BILLING CODE 6015–01–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 594

Global Terrorism Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is amending the Global Terrorism Sanctions Regulations to define the term ''otherwise associated with'' as used in 31 CFR 594.201 and to amend an explanatory note accompanying that section.

DATES: Effective January 26, 2007.

FOR FURTHER INFORMATION CONTACT: Chief Counsel (Foreign Assets Control), Office of the General Counsel, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2410 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

OFAC administers the Global Terrorism Sanctions Regulations, 31 CFR part 594 (''GTSR''), which implement and interpret Executive Order 13224 of September 23, 2001, in which the President declared a national emergency with respect to grave acts of terrorism and threats of terrorism committed by foreign terrorists and imposed economic sanctions with respect to certain designated individuals and entities. In section 7 of Executive Order 13224, the President authorized the Secretary of the Treasury, in consultation with other relevant Cabinet officials, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of the order. The Secretary of the Treasury has, in turn, authorized the Director of OFAC to take these actions. 31 CFR 594.802. Today, OFAC is amending the GTSR by adding a new section 594.316 which defines the term ''otherwise associated with'' as used in section 594.201(a)(4)(ii). OFAC also is amending Note 3 to section 594.201 to clarify the scope of section 501.807 of this chapter.

The new section 594.316 defines a person ''otherwise associated with'' persons whose property and interests in property are blocked pursuant to section 594.201(a)(1), (a)(2), (a)(3), or (a)(4)(i) to include one who: (1) Owns or controls such persons; or (2) attempts, or conspires with one or more persons, to provide financial, material, or technological support, or financial or other services, to such persons. OFAC recognizes that this definition may include concepts that overlap with existing provisions of section 594.201 (a)(1), (a)(2), (a)(3), or (a)(4)(i). However, in light of the serious danger posed to national security by international terrorism, OFAC has determined that the benefit of greater specificity in its definitions outweighs any concerns with redundancy. In promulgating this definition, OFAC does not mean to imply any limitation on the scope of section 594.201(a)(1), (a)(2), (a)(3), or (a)(4)(i). Finally, as in all programs OFAC administers, these and other designation criteria in the GTSR will be applied in a manner consistent with pertinent Federal law, including, where applicable, the First Amendment to the United States Constitution.

Executive Order 12866, Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

Because the regulations at issue involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

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

List of Subjects in 31 CFR Part 594

Administrative practice and procedure, Banks, Banking, Penalties, Reporting and recordkeeping requirements, Terrorism.

■ For the reasons set forth in the preamble, the Office of Foreign Assets Control amends 31 CFR part 594 as follows:

PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

■ 1. The authority citation for part 594 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 109–177, 120 Stat. 192; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13268, 67 FR 44751; 3 CFR, 2002 Comp., p. 240; E.O. 13284, 64 FR 4075, 3 CFR, 2003 Comp., p. 161.

Subpart B—Prohibitions

■ 2. In § 594.201, revise Note 3 to paragraph (a) to read as follows:

§ 594.201 Prohibited transactions involving blocked property.

(a) * * *

Note 3 to paragraph (a). Section 501.807 of this chapter V sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation pursuant to § 594.201(a) or who wish to assert that the circumstances resulting in designation no longer apply. Similarly, when a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the

transaction believes the funds to have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

* * * * *

Subpart C—General Definitions

■ 3. Add a new § 594.316 to subpart C to read as follows:

§ 594.316 Otherwise associated with.

The term ''to be otherwise associated with,'' as used in § 594.201(a)(4)(ii), means:

(a) To own or control; or

(b) To attempt, or to conspire with one or more persons, to act for or on behalf of or to provide financial, material, or technological support, or financial or other services, to.

Dated: January 25, 2007.

J. Robert McBrien,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 07–416 Filed 1–26–07; 2:24 pm]

BILLING CODE 4811–42–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2005–VA–0017; FRL–8273–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Emission Standards for Consumer Products in the Northern Virginia Volatile Organic Compound Emissions Control Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to the emission standards for consumer products sold and used in the Northern Virginia volatile organic compound (VOC) emissions control area. EPA is approving this SIP revision in accordance with the Clean Air Act (CAA or Act).

EFFECTIVE DATE: This final rule is effective on March 1, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2005–VA–0017. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 31, 2006 (71 FR 5035), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of a new rule, 9 VAC 5 Chapter 40, Consumer Products (9 VAC 5–40–7240 through 9 VAC 5–40–7360); and the amendments to 9 VAC 5–20–21 that incorporate by reference test methods and procedures needed for 9 VAC 5 Chapter 40. The formal SIP revision was submitted by the Virginia Department of Environmental Quality (VADEQ) on October 25, 2005.

II. Summary of SIP Revision

The Virginia consumer products rule, 9 VAC 5 Chapter 40, applies only to sources in the Northern Virginia VOC emissions control area designated in 9 VAC 5–20–206. The rule applies to a person who sells, supplies, offers for sale, or manufactures consumer products on or after July 1, 2005. Also included in the rule are definitions, the VOC content limits, standards and exemptions, innovative products, requirements for waiver requests, administrative requirements for labeling and reporting, test methods for demonstrating compliance, compliance schedules, an alternative control plan, monitoring, and reporting and recordkeeping requirements.

Amendments to 9 VAC 5–20–21 incorporate by reference additional test methods and procedures needed for 9 VAC 5 Chapter 40.

Other specific requirements of 9 VAC 5 Chapter 40, amendments to 9 VAC 5–20–21, and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. On February 2, 2006, EPA received a single comment on its January 31, 2006 NPR. A summary of the comment submitted and EPA's response is provided in Section III of this document.

III. Summary of Public Comments and EPA Responses

Comment: A commenter pointed out that one of its test methods referenced in the State regulation had been revised and renumbered.

Response: The commenter merely points out that one test method that the rule incorporates has been revised and renumbered. The commenter does not request that EPA disapprove the rule, nor allege that the current regulation incorporating the earlier version of the test method is in any way adequate. Therefore, EPA concludes that the information provided by the commenter does not change EPA's proposal to approve the SIP revision.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the

Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding (§ 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a State agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a State audit privilege and immunity law can affect only State enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, State audit privilege or immunity law.

V. Final Action

EPA is approving the Virginia SIP revision submitted on October 25, 2005 for the new regulation, 9 VAC 5 Chapter 40—Consumer Products, and the amendments to 9 VAC 5–20–21 that incorporates by reference test methods and procedures needed for 9 VAC 5 Chapter 40.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air 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 Clean Air 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 a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air 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.*).

B. Submission to Congress and the Comptroller General

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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *April 2, 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 pertaining to the Virginia consumer products rule, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and

recordkeeping requirements, Volatile organic compounds.

Dated: January 18, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

■ 2. Section 52.2420 is amended as follows:

■ a. The table in paragraph (c) is amended by adding an entry for Chapter 40, Part II, Article 50.

■ b. The table in paragraph (e) is amended by adding an entry for ''Documents Incorporated by Reference'' at the end of the table.

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
Chapter 40 Existing Stationary Sources				
*	*	*	*	*
Part II Emission Standards				
*	*	*	*	*
Article 50 Consumer Products (Rule 4–50)				
5–40–7240	Applicability	3/9/05	January 30, 2007 [Insert page number where the document begins].	
5–40–7250	Exemptions	3/9/05	January 30, 2007 [Insert page number where the document begins].	
5–40–7260	Definitions	3/9/05	January 30, 2007 [Insert page number where the document begins].	
5–40–7270	Standard for volatile organic compounds.	3/9/05	January 30, 2007 [Insert page number where the document begins].	
5–40–7280	Alternative control plan (ACP) for consumer products.	3/9/05	January 30, 2007 [Insert page number where the document begins].	
5–40–7290	Innovative Products	3/9/05	January 30, 2007 [Insert page number where the document begins].	
5–40–7300	Administrative requirements	3/9/05	January 30, 2007 [Insert page number where the document begins].	
5–40–7320	Compliance	3/9/05	January 30, 2007 [Insert page number where the document begins].	
5–40–7330	Compliance schedules	3/9/05	January 30, 2007 [Insert page number where the document begins].	
5–40–7340	Test methods and procedures	3/9/05	January 30, 2007 [Insert page number where the document begins].	
5–40–7350	Monitoring	3/9/05	January 30, 2007 [Insert page number where the document begins].	
5–40–7360	Notification, records and reporting.	3/9/05	January 30, 2007 [Insert page number where the document begins].	
*	*	*	*	*

* * * * * (e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional Explanation
* *	*	*	*	* *
Documents Incorporated by Reference.	Northern Virginia VOC Emissions Control Area designated in 9 VAC 5–20–206.	10/25/05	January 30, 2007 [Insert page number where the document begins].	State effective date is 3/9/05 9 VAC 5–20–21, Sections E.1.a.(16)., E.4.a.(18) through a.(20), E.6.a, E.11.a.(3), E.12.a.(5) through a.(8), E.14.a. and E.14.b.

[FR Doc. E7–1337 Filed 1–29–07; 8:45 am]
BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 2007–01; FTR Case 2006–304;Docket 2007–0002, Sequence 1]

RIN 3090–AI31

Federal Travel Regulation; FTR Case 2006-304, Privately Owned Automobile Mileage Reimbursement

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the Federal Travel Regulation (FTR), by amending the mileage reimbursement rate for use of a privately owned automobile (POA) on official travel to reflect current costs of operation as determined in cost studies conducted by the General Services Administration (GSA). The governing regulation is revised to increase the mileage allowance for the cost of operating a privately owned automobile from $0.445 to $0.485 per mile. The FTR and any corresponding documents may be accessed at GSA's website at *http://www.gsa.gov/ftr*.

DATES: *Effective Date*: February 1, 2007.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (VIR), Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Umeki G. Thorne, Program Analyst, Office of Governmentwide Policy, Travel Management Policy, at (202) 208–7636. Please cite FTR Amendment 2007–01; FTR case 2006–304.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to 5 U.S.C. 5707(b), the Administrator of General Services has the responsibility to establish the privately owned vehicle (POV) mileage reimbursement rates. Separate rates are set for airplanes, automobiles (including trucks), and motorcycles. In order to set these rates, GSA is required to conduct periodic investigations, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, of the cost of travel and the operation of POVs to employees while engaged on official business. As required, GSA has conducted an investigation of the costs of operating a POA and is reporting the cost per mile determination. The results of the investigation have been reported to Congress and a copy of the report appears as an attachment to this document. The report is being published to comply with the requirements of the law. GSA's cost studies show the Administrator of General Services has determined the per mile operating costs of $0.485 for automobiles. As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of $0.485 per mile effective January 1, 2007. The cost of operating a privately owned airplane and motorcycle remain unchanged.

B. Executive Order 12866

This regulation is excepted from the definition of ''regulation'' or ''rule'' under Section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, was not subject to review under Section 6(b) of that Executive Order.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment as per the exemption specified in 5 U.S.C. 553(a)(2); therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the Federal Travel Regulation do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 301–10

Government employees, Travel and transportation expenses.

Dated: January 18, 2007

Lurita Doan,

Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR part 301–10 as set forth below:

PART 301–10—TRANSPORTATION EXPENSES

■ 1. The authority citation for 41 CFR part 301–10 continues to read as follows:

Authority: 5 U.S.C. 5707, 40 U.S.C. 121(c); 49 U.S.C. 40118, Office of Management and Budget Circular No. A–126, ''Improving the Management and Use of Government Aircraft.'' Revised May 22, 1992.

■ 2. Revise section 301–10.303, privately owned automobile entry in the table, to read as follows:

§ 301–10.303 What am I reimbursed when use of a POV is determined by my agency to be advantageous to the Government?

For use of a	Your reimbursement is
* * * * *	* * * * *
Privately owned automobile	[1] $0.485
* * * * *	* * * * *

[1] Per mile.

Attachment to Preamble—Report To Congress On The Costs Of Operating Privately Owned Vehicles

5 U.S.C. 5707(b)(1)(A) requires that the Administrator of General Services, in consultation with the Secretary of Defense, the Secretary of Transportation, and representatives of Government employee organizations, conduct periodic investigations of the cost of travel and operation of privately owned vehicles (POVs) (airplanes, automobiles, and motorcycles) to Government employees while on official travel, and report the results to the Congress at least once a year. 5 U.S.C. 5707(b)(2)(B) further requires that the Administrator of General Services determine the average, actual cost per mile for the use of each type of POV based on the results of the cost investigation. Such figures must be reported to the Congress within 5 working days after the cost determination has been made in accordance with 5 U.S.C. 5707(b)(2)(C).

Pursuant to the requirements of 5 U.S.C. 5707(b)(1)(A), the General Services Administration (GSA), in consultation with the Secretary of Defense, the Secretary of Transportation, and representatives of Government employee organizations, conducted an investigation of the cost of operating a privately owned automobile (POA). As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for POAs of $0.485 effective January 1, 2007. As required, GSA is reporting the results of the investigation and the cost per mile determination. Based on cost studies conducted by GSA, I have determined the per-mile operating costs of a POA to be $0.485 for POAs. Reimbursement for the use of a privately owned airplane and privately owned motorcycle remains unchanged.

This report to Congress on the cost of operating POAs will be published in the **Federal Register.**

[FR Doc. E7–1443 Filed 1–30–07; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 061124307–7013–02; I.D. 112106A]

RIN 0648–AT65

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

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

ACTION: Final rule.

SUMMARY: This action implements 2007 specifications and management measures for Atlantic mackerel, squid, and butterfish (MSB) and modifies existing management measures. Specifically, it implements trimester quota allocations for the *Loligo* squid fishery and establishes the protocol for an inseason adjustment to increase the mackerel harvest, if landings approach harvest limits. Lastly, this final rule clarifies, updates, and corrects existing regulatory language that is misleading or incorrect. This action promotes the utilization and conservation of the MSB resource.

DATES: Effective March 1, 2007.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.nmfs.gov*. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of the preamble of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, and are also available via the internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, 978- 281–9272, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) appear at 50 CFR part 648, subpart B, and regulations governing foreign fishing appear at 50 CFR part 600, subpart F. This action fulfills NMFS regulatory requirements at §§ 648.21 and 600.516(c) to, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually specify the amounts of the initial optimum yield (IOY), allowable biological catch (ABC), domestic annual harvest (DAH), and domestic annual processing (DAP), as well as, where applicable, the amounts for total allowable level of foreign fishing (TALFF) and joint venture processing (JVP) for the affected species managed under the FMP. The Council adopted 2007 MSB specifications and management measures at its June 2006 and August 2006 meetings and submitted them to NMFS for review and approval. Initial submission was on September 1, 2006, and final submission was on October 31, 2006. A proposed rule for 2007 MSB specifications and management measures was published on December 5, 2006 (71 FR 70493). The public comment period for the proposed rule ended on January 4, 2007. Details concerning the Council's development of these measures were presented in the preamble of the proposed rule and are not repeated here.

Disapproval of Incidental Loligo Squid Possession Limit for the Illex Squid Vessels

In an effort to reduce regulatory discarding and allow for more accurate quantification of the removals of *Loligo* squid taken in the directed *Illex* squid fishery, the Council recommended increasing the incidental *Loligo* squid possession limit for vessels engaged in the directed *Illex* squid fishery. Specifically, during August closures of the *Loligo* squid fishery, *Illex* squid moratorium vessels fishing seaward of the small mesh exemption line (approximately the 50–fm (91–m) depth contour) would have been permitted to possess and land up to 10,000 lb (4.54 mt) of *Loligo* squid, provided they possess a minimum of 10,000 lb (4.54 mt) of *Illex* squid on board. This measure was recommend for 2007 only, and the Council intended to re-assess it for 2008.

NMFS explained at length in the proposed rule that, while it supports the Council's intent to reduce regulatory discarding of *Loligo* squid in the *Illex* squid fishery, it was concerned about its

ability to administer this measure effectively. NMFS presented its concerns and solicited public comment on the measure. After reviewing the public comment, NMFS determined its concerns were warranted, and the measure is not included in this rule.

The incidental *Loligo* squid possession limit for *Illex* squid moratorium vessels during closures of the directed *Loligo* squid fishery continues to be 2,500 lb (1.13 mt) per trip per calendar day.

Final MSB Specifications and Management Measures for the 2007 Fishing Year

This action implements the following MSB specifications and management measures for the 2007 fishing year, which are described in detail below.

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

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

[1] Excludes 510 mt for Research Quota (RQ)
[2] IOY may be increased during the year, but the total ABC will not exceed 186,000 mt.
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.

Atlantic Mackerel

This action specifies the mackerel ABC at 186,000 mt, based on the formula ABC = T - C. T is the yield (238,000 mt) associated with a fishing mortality rate (F) that is equal to the target F (F=0.12); C is the estimated catch of mackerel in Canadian waters (i.e., 52,000 mt) for the upcoming fishing year. Thus, 238,000 mt minus 52,000 mt results in the 2007 mackerel ABC of 186,000 mt. This action also specifies the mackerel IOY at 115,000 mt, a level that can be fully harvested by the domestic fleet, thereby precluding the specification of a TALFF, while allowing the U.S. mackerel industry to expand. Given the trends in landings and the industry's testimony that the fishery is poised for significant growth, NMFS believes that it is reasonable to assume that, in 2007, the commercial fishery will harvest 100,000 mt of mackerel. Therefore, this action specifies the mackerel DAH at 115,000 mt, which is the commercial harvest plus the 15,000 mt anticipated to be harvested by the recreational fishery. Because IOY = DAH, this specification is consistent with the Council's recommendation that the level of IOY should not provide for a TALFF.

As recommended by the Council, this action specifies the mackerel DAP at 100,000 mt and the mackerel JVP at zero. In previous years, the Council recommended a JVP greater than zero because it believed U.S. processors lacked the capability to process the total amount of mackerel that U.S. harvesters could land. However, for the past 2 years, the Council has recommended zero JVP because the surplus between DAH and DAP has been declining as U.S. shore-based processing capacity for mackerel has expanded. In addition, an at-sea processing vessel is expected to participate in the mackerel fishery in 2007. The Council also heard from the industry that the availability of mackerel to the fishery, rather than processing capacity, has curtailed catch in recent years. Based on this information, the Council concluded, and NMFS concurs, that processing capacity is no longer a limiting factor relative to domestic production of mackerel. Consequently, if U.S. harvesters land mackerel in excess of 100,000 mt, should the IOY be adjusted upward, U.S. processors have the capacity and intent to process it.

Inseason Adjustment of the Mackerel IOY

Regulations at § 648.21(e) specify that specifications may be adjusted inseason during the fishing year by the Regional Administrator, in consultation with the Council, by publishing a notice in the **Federal Register** and providing a 30–day public comment period. At the June 2006 Council meeting, in response to recent growth in the domestic harvesting and processing sectors of the mackerel fishery, both the mackerel industry and the Council voiced interest in increasing the 2007 mackerel IOY if landings approach 115,000 mt during the most active part of the fishing year (January-April). However, the mackerel fishing season is short. To facilitate a timely inseason adjustment to the mackerel IOY, if necessary, public comment was solicited as part of the 2007 MSB specifications and this action implements a protocol for an inseason adjustment in 2007. The protocol specifies that, if using landings projections and all other available information the Regional Administrator determines that 70 percent of the Atlantic mackerel IOY will be landed during the 2007 fishing year, to ensure continued fishing opportunities during the 2007 fishing year the Regional Administrator will make available additional quota for a total IOY of 186,000 mt of Atlantic mackerel for harvest during 2007. The NMFS Northeast Fishery Statistic Office (FSO) will summarize mackerel landings from dealer reports on a weekly basis and post this information on the Northeast Regional Office website (*http://www.nero.noaa.gov/*). NMFS staff will closely monitor these landings and industry trends to determine if an inseason adjustment is necessary. Additionally, if an inseason adjustment of the IOY is warranted, the Regional Administrator will notify the Council and the inseason adjustment will be published in the **Federal Register**.

Atlantic Squids

Loligo squid

For 2007, this action specifies the *Loligo* squid Max OY at 26,000 mt; the ABC at 17,000 mt; and the research quota (RQ) for up to 3 percent (510 mt) of the ABC. Two scientific research project proposals requesting *Loligo* squid RQ were recommended for approval and were forwarded to the NOAA Grants Office for award. The *Loligo* squid IOY, DAH, and DAP were adjusted to reflect the RQ, and equal 16,490 mt. The FMP does not authorize the specification of JVP and TALFF for the *Loligo* squid fishery because of the domestic industry's capacity to harvest

and process the IOY for this fishery; therefore, JVP and TALFF are zero.

Distribution of the *Loligo* Squid DAH

For 2007, this action specifies that the *Loligo* squid DAH will be allocated by trimester. Managing the DAH by trimesters, rather than quarters, results in allocations that are the same or higher than the quarterly allocations. Higher allocations may increase the length of time the fishery is open and allow closure projections to be based on more information and, perhaps, to be more accurate. Additionally, managing by trimesters rather than quarters is administratively streamlined because only three, rather than four, closures of the directed fishery could occur during a fishing year. The 2007 trimester allocations are as follows:

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

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

[1] Trimester allocations after 510 mt RQ deduction.

Additionally, for 2007, this action specifies that the directed *Loligo* squid fishery will close when 90 percent of the DAH is harvested in Trimesters I and II, and when 95 percent of the DAH is harvested in Trimester III. It also specifies that any underages from Trimesters I and II will be applied to Trimester III, and any overages from Trimesters I and II will be subtracted from Trimester III.

As was described in the proposed rule, NMFS did not propose one of the Council's recommended measures, that if 45 percent of Trimester II's quota was projected to be landed prior to July 1, then the Regional Administrator would close the directed fishery until July 1, and the fishery would operate under incidental possession limits, because it could not be effectively administered. The quota for Trimester II is small, the fishing activity is likely to be intense during Trimester II, and sizable landings can be made per trip in the *Loligo* squid fishery, therefore, there is little likelihood that such a small quota could be effectively monitored in a time frame to prevent significant underages or overages.

Landing Frequency of Incidental *Loligo* Squid Possession Limit

At its June 2006 meeting, the Council discussed the fact that vessels issued incidental catch permits were making multiple landings per day when the directed *Loligo* squid fishery was open. Therefore, this action clarifies that vessels subject to the incidental *Loligo* squid possession limit may only land once per calendar day, whether the directed *Loligo* squid fishery is open or closed.

Illex squid

This action specifies the *Illex* squid Max OY, IOY, ABC, and DAH at 24,000 mt. The FMP does not authorize the specification of JVP and TALFF for the *Illex* squid fishery because of the domestic fishing industry's capacity to harvest and to process the IOY from this fishery.

Butterfish

This action specifies the butterfish IOY, DAH, and DAP at 1,681 mt, and the ABC at 4,545 mt. Consistent with MSB regulations, this action specifies zero TALFF for butterfish in 2007 because zero TALFF is established for mackerel.

Modifications to Existing Regulatory Language

To clarify that it is appropriate to use the most recent information when developing annual specifications, this action specifies that regulatory language describing the procedure for calculating mackerel ABC (at § 648.21(b)(2)) will describe the reference points and formula, but will not include any values. This makes it clearer that the values from the most recent stock assessment are to be used when calculating mackerel ABC.

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

This action clarifies that the landing frequency for vessels subject to the incidental possession limits for *Loligo* squid, *Illex* squid, and butterfish, specified at § 648.22(c), is once per calendar day. For example, this applies to vessels during closures of the directed *Loligo* squid fishery, that participate in the directed fishery and to vessels issued *Loligo* squid incidental catch throughout the year.

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

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

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

Comments and Responses

NMFS received five comment letters on the proposed 2007 MSB specifications and management measures; one letter was from a state agency, three letters were from industry representatives, and one letter was from an individual. Comments on the FMP that were not specific to the 2007 specifications and management measures described in the proposed rule or that suggest NMFS should implement measures in addition to those described in the proposed rule are not responded to in this final rule. These comments were on such topics as observer coverage and participation of at-sea processors, a limited access program for mackerel, allowing *Loligo* squid quota underages to be applied to quota the next calendar year, and concerns that

the most recent mackerel stock assessment does not accurately reflect the abundance of the stock.

Comment 1: One commenter indicated general support for a reduction of commercial quotas, the use of accurate harvest information to develop quotas, and the need for protection of the public fishery resource.

Response: NMFS acknowledges the importance of the issues raised by the commenter, which relate generally to 2007 MSB specifications and management measures. As specified in the FMP, the Council developed the 2007 MSB specifications and management measures using the best available data regarding the resource and the fishery. Additionally, the 2007 MSB specifications and management measures are consistent with the rules specified in the FMP to promote utilization and conservation of the MSB resource.

Comment 2: Two industry representatives expressed support for the 2007 MSB specifications and management measures. Both commenters are concerned that a reduced mackerel quota does not reflect the abundance of this stock.

Response: While the mackerel ABC is reduced from 335,000 mt in 2006 to 186,000 mt in 2007, the 2007 mackerel IOY and DAH represent status quo. The FMP requires that mackerel ABC be calculated using the formula ABC = T - C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the yield associated with a fishing mortality rate that is equal to the target F. The status of the Atlantic mackerel stock was most recently assessed at the 42nd Stock Assessment Review Committee (SARC) in late 2005. SARC 42 provided new biological reference points (BRP) for Atlantic mackerel, including the target F to be used in establishing the annual quota. The yield associated with the updated target F (0.12) is 238,000 mt. Because Canadian catch of mackerel has been increasing in recent years, the estimate of Canadian catch for 2007 has been increased from the 2006 estimate of 34,000 mt to 52,000 mt. Therefore, the 2007 mackerel ABC of 186,000 mt was calculated by subtracting 52,000 mt from 238,000 mt, as required by the FMP. The Council and NMFS must use the most recent peer-reviewed stock assessment advice to establish ABC.

Comment 3: Another industry representative also expressed concern with the low mackerel quota, specifically a low DAH, and recommended that the DAH be increased to 160,000 mt. The recommendation for increasing the DAH was based on the health of the mackerel stock, the capacity of the industry, the need for additional scientific information for the assessment model, and the need to maximize harvest to best position the U.S. for resource sharing negotiations with Canada.

Response: This action is implementing a protocol for an inseason adjustment of the mackerel IOY. If mackerel are available to the fishery in 2007 and projected landings indicate that 70 percent of the IOY will be landed during the fishing year, the mackerel IOY will be increased up to the ABC (186,000 mt). Therefore, with an inseason adjustment, the potential DAH could be 186,000 mt, higher than recommended by the commenter. In recommending DAH of 115,000 mt, the Council sought to balance its expectations of growth in the mackerel landings with a realistic view of landings in recent years. While growth has occurred, preliminary landings for 2006 were 68,298 mt, so a DAH of 115,000 mt provides great room for expansion.

Comment 4: Three industry representatives and one state agency expressed support for an inseason adjustment of the mackerel IOY, up to the ABC, if landings projections indicate that 70 percent of the IOY will be landed during the fishing year. Two of these industry representatives offered to work with NMFS to monitor landings closely and identify trends that would indicate an adjustment is necessary. Additionally, these industry representatives stressed the importance of speedy implementation of an inseason action, if warranted, to prevent any interruption of the fishery.

Response: NMFS appreciates industry's offer to provide information on landings trends and will work closely with industry to ensure that landings estimations are reliable. If information demonstrates an adjustment is necessary, NMFS will make the adjustment in a manner that will avoid interruption in the fishery as specified in this final rule.

Comment 5: One industry representative expressed support for the proposed measure to increase the incidental *Loligo* squid possession limit for *Illex* squid vessels, fishing seaward of the small mesh exemption line (which approximates the 50–fm (91–m) depth contour), during August closures of the directed *Loligo* squid fishery in 2007. The other comment received on this measure was from a state agency expressing, concern with this measure. In particular, the state agency cautioned that this measure could create a disparate benefit for *Illex* squid vessels by significantly reducing the *Loligo* squid quota available to the directed *Loligo* squid fishery during Trimester III. The state agency was also concerned that no mechanisms were recommended to NMFS to monitor *Illex* squid fishery effort or track where the incidentally harvested *Loligo* squid were caught. Furthermore, the state agency recommended that, should this measure be implemented in 2007, additional management mechanisms were needed, such as a declaration program, vessel monitoring systems, mandatory observer coverage, and/or limited access to the increased possession limit, based on past landing history. The state agency also questioned the rationale for this measure and disagreed that analyses presented in the 2007 MSB Specifications EA demonstrated a significant *Loligo* squid discard issue in the *Illex* squid fishery.

Response: NMFS is also concerned that no mechanisms were recommended by the Council to enable NMFS to effectively administer this measure. Without mechanisms to determine where *Illex* squid moratorium vessels fish for *Loligo* squid and to discourage targeting on *Loligo* squid, NMFS is not able to enforce this measure. Therefore, NMFS disapproved the proposal to increase the incidental *Loligo* squid possession limit for *Illex* squid vessels. Rather, the incidental *Loligo* squid possession limit for *Illex* squid vessels will remain at 2,500 lb (1.13 mt) per trip, with only one trip allowed to be landed per day.

NMFS acknowledges the state agency's comment that analyses presented in the 2007 MSB Specifications EA failed to demonstrate a significant *Loligo* squid discard issue in the *Illex* squid fishery. NMFS notes that additional analyses describing *Loligo* squid discarding in the *Illex* squid fishery have been prepared for consideration in Amendment 9 to the FMP, and these analyses provide addition information about these discards.

Comment 6: One state agency commented that the rationale for trimester allocation of *Loligo* squid quota in 2007 is to help NMFS better monitor *Loligo* squid allocations by creating larger allocations that will likely increase the time the fishery is open, allowing closure projections to be based on more information and, perhaps, be more accurate. The state agency stated that the *Loligo* squid fishery has a history of premature closures and unharvested quota, resulting in economic losses to industry, but that no mechanisms to address this

problem were proposed. Because the state agency believes that the current reporting system needs to be improved, it recommended that NMFS augment the current reporting system with regular dialogues between NMFS and squid dealers.

Response: NMFS is uncertain if the commenter supports or opposes the measure to allocate *Loligo* squid quota by trimester in 2007. NMFS suggests that recommendations for augmenting the current reporting system for the *Loligo* squid fishery should be presented to the Council. NMFS staff work with dealers routinely, in conjunction with their monitoring responsibilities, but timely and accurate submission of data remains the responsibility of the industry.

Comment 7: One industry representative expressed support for the measure to manage the 2007 *Loligo* squid quota by trimesters in 2007. The industry representative stressed that managing the *Loligo* squid quota by trimester is for 2007 only, and that future management of the *Loligo* squid fishery will be dependent upon the performance of the 2007 fishery.

Response: NMFS is implementing a trimester system for 2007.

Comment 8: One industry representative expressed support for the measure to clarify that the landing frequency of the incidental *Loligo* squid possession limit is only once per calendar day, whether the directed *Loligo* squid fishery is open or closed.

Response: NMFS believes this clarification is appropriate and necessary. Additionally, because regulations at § 648.22(c) specify the landing frequency of the incidental possession limits for *Loligo* squid, *Illex* squid, and butterfish, this action will make the same clarification for those species.

Changes From the Proposed Rule

In the proposed rule, regulations increasing the incidental *Loligo* squid possession limit for *Illex* squid vessels were proposed in § 648.22(d). Because NMFS decided that this measure cannot be effectively administered, this action will not add a paragraph (d) to § 648.22.

Classification

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

NMFS, pursuant to section 604 of the Regulatory Flexibility Act, has prepared a FRFA, included in this final rule, in support of the 2007 MSB specifications and management measures. The FRFA describes the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities.

The FRFA incorporates the economic impacts and analysis summarized in the IRFA, a summary of the significant issues raised by the public, and a summary of analyses prepared to support the action (i.e., the EA and the RIR). The contents of these documents are not repeated in detail here. A copy of the IRFA, the RIR, and the EA are available upon request (see ADDRESSES). A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed and final rules and is not repeated here.

Statement of Need for this Action

This action specifies 2007 specifications and management measures for Atlantic mackerel, squid, and butterfish, and modifies existing management measures to improve the monitoring and management of these fisheries.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

A summary of the comments received and NMFS' responses thereto is contained in the preamble and is not repeated here.

Description of Small Entities to Which this Action Will Apply

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

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

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

Description of the Steps the Agency has taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities was Rejected

The mackerel IOY specified in this action (115,000 mt) represents no constraint on vessels in this fishery. This level of landings has not been achieved by vessels in this fishery in recent years. Mackerel landings for 2001–2003 averaged 23,079 mt. Landings in 2004 were 53,781 mt; landings in 2005 were 42,206 mt; and preliminary landings for 2006 were 68,298 mt. Additionally, this action specifies a protocol for an inseason adjustment to increase the IOY up to the ABC (186,000 mt), if landings approach 70 percent of the IOY during the fishing year. Therefore, no reductions in revenues for the mackerel fishery are expected as a result of this action; in fact, an increase in revenues as a result of this action is possible. Based on preliminary 2006 data, the mackerel fishery could increase its landings by 46,702 mt in 2007, if it harvests the entire IOY. In 2005, the last year for which NMFS has complete financial data for this fishery, the average value for mackerel was $261 per mt. Using this value, the mackerel fishery could see an increase in revenues of $12,189,222 as a result of the 2007 IOY (115,000 mt) and an additional increase in revenues of $18,531,000 as a result of the inseason adjustment to increase the IOY up to the ABC (186,000 mt).

The Council analysis evaluated three alternatives for mackerel, and all of them would set IOY at 115,000 mt. This IOY does not represent a constraint on vessels in this fishery, so no impacts on revenues in this fishery are expected as a result of any of these alternatives. The preferred alternative would set the ABC at 186,000 mt. Alternative two (status quo) would set the ABC at 335,000 mt, and alternative three would set the ABC at 204,000 mt. Alternatives two and three were not adopted by the Council because that level of ABC is not consistent with the overfishing definition in the FMP, as updated by the most recent stock assessment. Furthermore, alternatives that would set a higher harvest were not adopted because they proposed harvest levels that were too high in light of social and

economic concerns relating to TALFF. The specification of TALFF would have limited the opportunities for the domestic fishery to expand and, therefore, would have resulted in negative social and economic impacts to both U.S. harvesters and processors. A full discussion of the TALFF issue is included in the preamble to the proposed rule and is not repeated here.

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

For *Loligo* squid, all alternatives would set Max OY at 26,000 mt and ABC, IOY, DAH, and DAP at 17,000 mt. While the annual quota under all alternatives represents status quo, alternatives differ in their allocation of the annual quota. Two alternatives allocate quotas by trimester. Of these, a closure/re-opening provision to ensure quota is available to the directed fishery in July is specified in one alternative but not the other. The third alternative allocates quota by quarters (status quo). This action implements allocation of quota by trimester, without the closure/re-opening provision. Differences in seasonal quota distribution may have distributive effects on seasonal participants in the fishery. Additionally, the proposed incidental *Loligo* squid possession limit for *Illex* squid moratorium vessels (up to 10,000 lb (4.54 mt)) during August could have, under certain conditions, resulted in a reduction in the amount of *Loligo* squid quota available during Trimester III. However, NMFS cannot effectively administer the closure/re-opening measure, therefore, this action does not increase the incidental *Loligo* squid possession limit for *Illex* squid vessels, but maintains it at 2,500 lb (1.13 mt) per trip, limited to one trip per calendar day. All alternatives would result in the same total landings for 2007.

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

For *Illex* squid, three alternatives were considered by the Council. One alternative would set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt, the preferred alternative would set these at 24,000 mt, and the third alternative would set these at 19,000 mt. The alternative with an IOY of 30,000 mt would allow harvest far in excess of recent landings in this fishery. The Council considered this alternative unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid. The alternative with an IOY of 19,000 mt is the most restrictive alternative. To provide for the same level of harvest as in 2006 and to prevent the possibility of negative economic impacts, this action specifies the 2007 *Illex* squid IOY at 24,000 mt.

The butterfish IOY (1,681 mt) specified in this action represents no constraint to vessels relative to the landings in recent years. During the period 2001–2004, butterfish landings averaged 1,535 mt. Compared to the most recent 2 years for which complete information is available, 2004 and 2005, when landings were 538 mt and 393 mt, respectively, this action is not expected to reduce revenues in this fishery, but may increase those revenues. Based on 2005 data, the value of butterfish was $1,803 per mt.

For butterfish, one alternative considered would have set IOY at 5,900 mt, while another would have set it at 9,131 mt. These amounts exceed the landings of this species in recent years. Neither of these alternatives were selected by the Council because they would likely result in overfishing and the additional depletion of the spawning stock biomass of an overfished species. This action specifies a butterfish IOY of 1,681 mt because it is the most restrictive of the three alternatives.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the MSB fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator and are also available from NMFS, Northeast Region (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: January 24, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

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

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

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

* * * * *

■ 3. Section 648.21 is amended as follows:

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

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

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

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

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(b) * * *

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

* * * * *

(2) * * *

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

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

(f) * * *

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

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

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

* * * * *

(g) * * *

(2) * * *

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

* * * * *

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

* * * * *

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

§ 648.22 Closure of the fishery.

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

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

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

* * * * *

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

[FR Doc. E7–1445 Filed 1–29–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 012507A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels 60 Feet (18.3 Meters) Length Overall and Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 feet (18.3 meters (m)) length overall (LOA) and longer using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2007 Pacific cod allowable catch (TAC) specified for catcher vessels using pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 26, 2007, though 1200 hrs, A.l.t., June 10, 2007.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (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 A season allowance of the 2007 Pacific cod TAC allocated to catcher vessels using pot gear in the BSAI is 6,050 metric tons as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 13777, March 17, 2006). See § 679.20(c)(3)(iii), (c)(5), (a)(7)(i)(A), and (a)(7)(i)(C)(*1*)(*iv*).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season allowance of the 2007 Pacific cod TAC allocated to catcher vessels using pot gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 feet (18.3 m) LOA and longer using pot gear in the BSAI. Vessels less than 60 feet (18.3 m) LOA using pot gear in the BSAI may continue to participate in the directed fishery for Pacific cod under a separate Pacific cod allocation to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

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) 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 delay the closure of Pacific cod by catcher vessels 60 feet (18.3 m) LOA and longer using pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 24, 2007.

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.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: January 25, 2007.

James P. Burgess,

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

[FR Doc. 07–391 Filed 1–25–07; 2:20 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 19
Tuesday, January 30, 2007

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

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM/STD–0129]

RIN 1904–AA90

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of extension of comment period for Framework workshop.

SUMMARY: The Department of Energy (DOE) has commenced a rulemaking to amend the existing energy conservation standards for residential water heaters, direct heating equipment, and pool heaters. On November 24, 2006, the DOE published in the **Federal Register** (FR) a notice of public meeting and availability of Framework Document for this rulemaking wherein it indicated that the comment period for this initial phase of the rulemaking closes on January 30, 2007. 71 FR 67825. On January 16, 2007, DOE held an informal public meeting to present its proposed methodologies for conducting the rulemaking, discuss issues relevant to the rulemaking proceeding, and initiate stakeholder interaction and the data collection process. Due to the extensive scope of material and issues raised at the meeting, some stakeholders at the public meeting requested an extension to the comment period. This notice extends the comment period to better provide opportunity for public review and comment on DOE's rulemaking approaches.

DATES: DOE will accept comments until February 13, 2007.

ADDRESSES: DOE will accept comments, data, and information regarding the proposed rule no later than the date provided in the **DATES** section. Any comments submitted must include the docket number EE–2006–STD–0129 and/or Regulatory Information Number (RIN) 1904–AA90. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

2. *E-mail: ResWaterDirectPoolHtrs@ee.doe.gov*. Include the docket number EE–2006–STD–0129 and/or RIN 1904–AA90 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–2945. Please submit one signed original paper copy.

Electronic comments must be submitted in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (ASCII) file format. Avoid the use of special characters or any form of encryption.

Copies of public comments may be examined in the Resource Room of the Appliance Standards Office of the Building Technologies Program, Room 1J–018 in the Forrestal Building at the U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information about visiting the Resource Room. Please note: the DOE's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer servicing rulemakings.

FOR FURTHER INFORMATION CONTACT: Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7892, E-mail: *Mohammed.Khan@ee.doe.gov*; or Francine Pinto, U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mailstop GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7432, E-mail: *Francine.Pinto@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
III. Public Participation

I. Background

Part B of Title III of the Energy Policy and Conservation Act (EPCA) authorizes DOE to establish energy conservation standards for various consumer products including those residential water heaters, direct heating equipment, and pool heaters. (42 U.S.C. 6295(e))

EPCA provides criteria for prescribing new or amended standards for covered products. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) EPCA precludes the Department from adopting any standard that would not result in significant conservation of energy. (42 U.S.C. 6295(o)(3))

Pursuant to EPCA, DOE, on November 24, 2006, published in the **Federal Register** (FR) a notice of public meeting and availability of a Framework Document initiating its rulemaking for residential water heaters, direct heating equipment, and pool heaters. 71 FR 67825. On January 16, 2007, DOE held an informal public meeting to present its proposed methodologies for conducting the rulemaking, discuss issues relevant to the rulemaking proceeding, and initiate stakeholder interaction and the data collection process. Due to the extensive scope of material and issues raised at the public meeting, some stakeholders at the public meeting requested an extension to the comment period to have additional time to develop adequate and complete comments. The Department is however, committed to completing many rulemaking activities, including this one for residential water heaters, direct heating equipment, and pool heaters, by pre-established dates and cannot allow an extension that would potentially jeopardize its ability to meet its schedules.

II. Discussion

The Department recognizes the stakeholders' request for additional time to prepare comments, and because it encourages all stakeholders to provide comment, the Department is extending the comment period to February 13, 2007. The Department believes this additional time allows for the development and completion of stakeholder comments without posing a conflict to the DOE regarding its rulemaking schedules.

III. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this notice no later than the date provided at the beginning of this notice. Comments, data, and information submitted to the Department's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Stakeholders should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting a signed original paper document to the address provided at the beginning of this notice. Comments, data, and information submitted to the Department via mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles (faxes) will be accepted.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from public sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) a date after which such information might no longer be considered confidential; and (7) why disclosure of the information would be contrary to the public interest.

B. Issues on Which DOE Seeks Comment

DOE is interested in receiving comments and views of interested parties concerning its proposed rulemaking methodologies as outlined in the Framework Document and presentation material provided at the January 16, 2007 public meeting. These materials are available at the following Web address: *http://www.eere.energy.gov/buildings/appliance_standards/residential/pool_heaters.html*.

Issued in Washington, DC, on January 25, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E7–1502 Filed 1–29–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–127819–06]

RIN 1545–BF79

TIPRA Amendments to Section 199

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document cancels a public hearing on proposed regulations by cross-reference to temporary regulations relating to the application of section 199, which provides a deduction for income attributable to domestic production activities.

DATES: The public hearing, originally scheduled for February 5, 2007 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Kelly Banks of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–0392 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing that appeared in the **Federal Register** on Thursday, October 19, 2006 (71 FR 61692), announced that a public hearing was scheduled for February 5, 2007, at 10 a.m. in the IRS Auditorium, New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706. Subsequently, a notice of change of location of public hearing was published in the **Federal Register** on Tuesday, December 26, 2006, (71 FR 77353) changing the location to the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 199 of the Internal Revenue Code.

The public comment period for these regulations expired on January 16, 2007. The notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, January 23, 2007, no one has requested to speak. Therefore, the public hearing scheduled for February 5, 2007, is cancelled.

La Nita VanDyke,

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

[FR Doc. 07–356 Filed 1–24–07; 3:31 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–136806–06]

RIN 1545–BF87

Treatment of Payments in Lieu of Taxes Under Section 141

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations modifying the standards for treating payments in lieu of taxes (PILOTs) as generally applicable taxes for purposes of the private security or payment test under section 141.

DATES: The public hearing, originally scheduled for February 13, 2007 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Kelly Banks of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–0392 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Thursday, October 19, 2006 (71 FR 61693), announced that a public hearing was scheduled for February 13, 2007, at 10 a.m. in the IRS Auditorium, New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706. Subsequently, a notice of change of location of public hearing was published in the **Federal Register** on Tuesday, December 26, 2006 (71 FR 77352), changing the location to the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 141 of the Internal Revenue Code.

The public comment period for these regulations expired on January 16, 2007. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, January 23, 2007, no one has requested to speak. Therefore, the public hearing scheduled for February 13, 2007, is cancelled.

La Nita VanDyke,

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

[FR Doc. E7–1380 Filed 1–29–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Office of Postsecondary Education; Notice of Intent To Establish Negotiated Rulemaking Committees Under Title IV of the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Notice of negotiated rulemaking.

SUMMARY: The Secretary of Education (Secretary) announces the establishment of two negotiated rulemaking committees: one will develop proposed regulations related to accreditation topics and the other will develop proposed regulations related to other programmatic, institutional eligibility, and general provisions topics under Title IV of the Higher Education Act of 1965, as amended (HEA). In addition, the Secretary provides additional information on the negotiating committee that will address topics related to the Academic Competitiveness Grant (ACG) and the National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) programs.

DATES: The dates for the negotiation sessions are listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Wendy Macias, U.S. Department of Education, 1990 K Street, NW., room 8017, Washington, DC 20006. Telephone: (202) 502–7526. E-mail: *Wendy.Macias@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION: On August 18, 2006, we published a notice in the **Federal Register** (71 FR 47756) announcing our intent to establish up to four negotiated rulemaking committees to prepare regulations under Title IV of the HEA. The notice also announced a series of four regional hearings at which interested parties could suggest topics for consideration for action by the negotiating committees. We invited parties to submit topics for consideration in writing, as well. In the notice, we also requested nominations for individual negotiators who represent key stakeholder constituencies that are involved in the student financial assistance programs authorized under Title IV of the HEA to serve on these committees.

On November 29, 2006, the Secretary convened a forum on accreditation to discuss strategies for making higher education more accessible, affordable, and accountable and to explore ways to implement the recommendations of her Commission on the Future of Higher Education. One of the goals of the forum was to take the work that the higher education community has been doing to improve the focus on student learning outcomes and to discuss how to work together for a more robust, outcome-focused, results-centered accreditation system that will benefit students and parents and empower them with information. The forum also looked at ways to streamline and improve the accreditation process to support innovation, promote consistency in accreditation standards, increase accountability, and be more transparent to the public.

On December 8, 2006, we published a notice in the **Federal Register** (71 FR 71117) announcing the establishment of a negotiating committee to address topics related to the Federal student loan programs authorized by Title IV, Parts B, D, and E of the HEA. The notice included the topics that committee was likely to address, the members of that committee, and the schedule for that committee. That committee began meeting in December 2006.

In addition, the December 8, 2006 notice announced the establishment of a negotiating committee to address topics related to the ACG and the National SMART Grant programs. We list the members of the ACG and National SMART Grant committee, the topics that committee will likely address, and the schedule for that committee elsewhere in this notice under *ACG and National SMART Grant Committee Topics, Members, and Meeting Schedule.*

Finally, the December 8, 2006 notice extended the deadline to respond to our request for nominations for individual negotiators who represent key stakeholder constituencies to serve on the ACG and National SMART Grant programs committee and any additional negotiating committees that may be formed to address accreditation, or Title IV programmatic, institutional eligibility, and general provisions topics.

After further consideration of the information received at the regional hearings, at the accreditation forum, and in writing as a result of the notice, we have decided to establish two additional negotiating committees. One committee will address programmatic, institutional eligibility, and general provisions topics related to Title IV Parts A (except for ACG and National SMART Grant programs), C, G, and H (except subpart 2) of the HEA. The other new committee will address accreditation topics (Title IV, Part H of the HEA). We list the members of these committees, the topics the committees will likely address, and the schedule for these committees elsewhere in this notice under *General Provisions Committee Topics, Members, and Meeting Schedule and Accreditation Committee Topics, Members, and Meeting Schedule.*

ACG and National SMART Grant Committee Topics, Members, and Meeting Schedule

The topics the ACG and National SMART Grant Committee is likely to address are:

- Rigorous secondary school programs
- Mandatory institutional participation in ACG and National SMART Grants
- Eligibility of certificate programs for ACG

- Requirement that Pell Grants and ACG or National SMART Grants be disbursed at the same institution when awarded within the same term
- Grade point average
  - Transfer students
  - Coursework
  - Timing of calculation
  - Eligibility for disbursement
- Academic year progression

The members of the ACG and National SMART Grant Committee are:

Negotiator: Gabriel Pendas, United States Student Association.

Alternate: Justin McMartin, Minnesota State Colleges and Universities.

Negotiator: George Chin, City University of New York.

Alternate: Catherine Simoneaux, Loyola University.

Negotiator: Thomas Babel, DeVry, Incorporated.

Alternate: Mathew Hamill, National Association of College and University Business Officers.

Negotiator: Margaret Heisel, University of California.

Alternate: Katherine Haley Will, Gettysburg College.

Negotiator: Cecilia Cunningham, Middle College National Consortium.

Alternate: Janine Riggs, Arkansas Department of Education.

Negotiator: Lee Carrillo, Central New Mexico Community College.

Alternate: Pat Hurley, Glendale Community College.

Negotiator: June Streckfus, Maryland Business Roundtable for Education.

Alternate: Denise Hedrick, Educational Collaborative.

Negotiator: Stanley Jones, Indiana Commission for Higher Education.

Alternate: Jim Ballard, Michigan Association of Secondary School Principals.

Negotiator: Robert Scott, Texas Education Agency.

Alternate: Joan Wodiska, National Governors Association.

Negotiator: Mary Beth Kelly, Pennsylvania Higher Education Assistance Agency.

Negotiator: Linda France, Kentucky Department of Education.

Alternate: Wandra Polk, North Carolina Department of Instruction.

Negotiator: Joe McTighe, Council for American Private Education.

Alternate: William Estrada, Home School Legal Defense Association.

Negotiator: Elaine Copeland, Clinton Junior College.

Negotiator: Bill Lucia, Educational Testing Service.

Alternate: Nancy Segal, ACT.

We will hold a total of three sessions, all of which will be held in the metropolitan Washington, DC area. The following is the schedule for the sessions. This schedule is subject to change.

- Session 1: February 5–7
- Session 2: March 5–7
- Session 3: April 16–18

The February 5–7 negotiating session is scheduled from 9:30 to 5 p.m. on February 5; 9:30 a.m. to 5 p.m. on February 6; and 9 a.m. to 12 p.m. on February 7. The Committee will convene at the Department of Education, 8th Floor Conference Center, 1990 K Street, NW., Washington, DC 20006.

General Provisions Committee Topics, Members, and Meeting Schedule

The topics the General Provisions Committee is likely to address are:

- Consistent enrollment status definitions for all Title IV programs (full-time, half-time, etc.)
- Consistent definitions of undergraduate and graduate student for all Title IV programs
- Define independent study
- Nonstandard term and nonterm programs
  - Use of completion of half the weeks of instructional time for timing of loan disbursements
  - Determining loan eligibility for nonstandard term programs
  - Require institutions to use consistent disbursement periods, where allowed under the law
- Cash management
  - Recovery of funds not claimed by student or parent
  - Student/parent permission for electronic disbursements
  - Requirements for ''issuing a check'' by making it available for pickup
  - Late, late disbursements
  - Affirmative confirmation of a loan
  - Simplify excess cash allowances
- Treatment of Federal Family Education Loan (FFEL) and Direct Loan funds when a student withdraws before beginning class—make consistent with other programs
- Eliminate the single disbursement requirement for Perkins and Federal Supplemental Education Opportunity Grants (FSEOG)
- Technical corrections

The members of the General Provisions Committee are:

Negotiator: Rebecca Thompson, United States Student Association.

Alternate: Justin Klander, Minnesota State College Student Association.

Negotiator: Elaine Neely-Eacona, Kaplan Higher Education Corporation.

Alternate: Susan Little, University of Georgia.

Negotiator: David Glezerman, Temple University.

Alternate: Anne Gross, National Association of College and University Business Officers.

Negotiator: Stephen Sussman, Barry University.

Negotiator: Linda Michalowski, California Community Colleges.

Alternate: Carol Mowbray, Northern Virginia Community College.

Negotiator: Kay Noah Stroud, Appalachian State University.

Alternate: Beverly Young, California State University.

Negotiator: Stacey Ludwig, Western Governors University.

Alternate: Paula Luff, DePaul University.

Negotiator: Steven Dill, Lincoln Educational Services, Inc.

Alternate: Robert Collins, Apollo Group, Inc.

Negotiator: Mary Ann Welch, National Association of State Student Grant and Aid Programs.

Alternate: Lee Woods, Chase Education Finance.

Negotiator: Starlith Chiquita Carter, National Accrediting Commission of Cosmetology Arts and Sciences.

We will hold a total of three sessions, all of which will be held in the metropolitan Washington, DC area. The following is the schedule for the sessions. This schedule is subject to change.

- Session 1: February 7–9
- Session 2: March 7–9
- Session 3: April 18–20

The February 7–9 negotiating session is scheduled from 1 to 5 p.m. on February 7; 9 a.m. to 5 p.m. on February 8; and, 9 a.m. to 4 p.m. on February 9. The Committee will convene at the Department of Education, 8th Floor Conference Center, 1990 K Street, NW., Washington, DC 20006.

Accreditation Committee Topics, Members, and Meeting Schedule

The topics the Accreditation Committee is likely to address are:

- Measures of student achievement
- Relationship of process standards to student achievement
- Consideration of mission in application of standards
- Monitoring of institutions by accrediting organizations
- Substantive change
- Due process
- Transfer of credit
- Definition of terms
- Technical and process improvements

The members of the Accreditation Committee are:

Negotiator: Elise Scanlon, Accrediting Commission of Career Schools and Colleges of Technology.

Negotiator: Steve Crow, Higher Learning Commission, North Central Association of Colleges and Schools.

Alternate: Ralph Wolff, Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges.

Negotiator: Betty Horton, Association of Specialized and Professional Accreditors.

Alternate: Elaine Cuklanz, Joint Review Committee on Educational Programs in Nuclear Medicine Technology.

Negotiator: John Wiley, University of Wisconsin-Madison.

Alternate: Stephen Reno, University System of New Hampshire.

Negotiator: Geri Malandra, University of Texas System.

Alternate: Keith Boyum, California State University Office of the Chancellor.

Negotiator: Gerrit Gong, Brigham Young University.

Alternate: Don LeDuc, Thomas M. Cooley Law School.

Negotiator: Craig Swenson, Western Governors University.

Alternate: Mark L. Pelesh, Coalition for an American Competitive Workforce.

Negotiator: Tom Corts, The Alabama College System.

Alternate: Elaine Copeland, Clinton Junior College.

Negotiator: Thelma Thompson, University of Maryland Eastern Shore.

Negotiator: Paula Peinovich, Walden University.

Alternate: Ron Blumenthal, Kaplan University and Kaplan Higher Education.

Negotiator: Judith Eaton, Council on Higher Education Accreditation.

Negotiator: John Dew, American Society for Quality.

Alternate: Brent Ruben, Center for Organizational Development and Leadership, Rutgers University.

We will hold a total of three sessions, all of which will be held in the metropolitan Washington, DC area. The following is the schedule for the sessions. This schedule is subject to change.

- Session 1: February 21–23
- Session 2: March 26–28
- Session 3: April 24–26

The February 21–23 negotiating session is scheduled from 1 to 5 p.m. on February 21; 9 a.m. to 5 p.m. on February 22; and 9 a.m. to 4 p.m. on February 23. The Committee will convene at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

We will post information about subsequent negotiating sessions for all four committees, including information on the meeting sites and any schedule changes, at *http://www.ed.gov/policy/highered/reg/hearulemaking/2007/nr.html*.

These lists of topics are tentative. Topics may be added as the process continues. A summary of the information the Department received at the hearings and in writing will be published as part of the notices of proposed rulemaking resulting from the negotiations.

In selecting individuals and organizations from the submitted nominations to represent the constituencies listed in the August 18, 2006 and December 8, 2006 **Federal Register** notices, the Department sought to assemble a balanced and complementary representation of the interests affected by the subject matter, consistent with section 492 of the HEA. We believe the organizations and individuals selected will bring valuable knowledge and expertise to the table, and will work as a cohesive unit to assist us in developing proposed regulations that are both reasonable and effective. Organizations and individuals that were not selected as members of the committees will be able to attend the meetings and have access to the organizations and individuals representing their constituencies. The committee meetings will be open to the public.

Please note that participation in the rulemaking process is not limited to members of the committee or those who work directly with the committee. Following the negotiated rulemaking process, the Department will publish proposed regulations in the **Federal Register** for public comment. The target date for publication of proposed regulations developed by these committees is June or July 2007.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1098a.

Dated: January 26, 2007.

James F. Manning,

Delegated the Authority for the Assistant Secretary for Postsecondary Education.

[FR Doc. 07–413 Filed 1–26–07; 10:11 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[EPA–HQ–OW–2006–0765; FRL–8274–7]

Proposed NPDES Permit Fee Incentive for Clean Water Act Section 106 Grants—Allotment Formula; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency hereby gives notice that it will conduct one public meeting on the proposed regulatory revision: NPDES Permit Fee Incentive for Clean Water Act Section 106 Grants; Allotment Formula. This proposed rule was published in the **Federal Register** on January 4, 2007 (72 FR 293), under the title ''NPDES Permit Fee Incentive for Clean Water Act Section 106 Grants; Allotment Formula.''

The purpose of the meeting is to enhance public understanding of the proposed regulation and to provide the public with an opportunity to provide oral and written comments to EPA regarding the proposed regulation. Oral comments given during the public meeting will be transcribed and included in the docket. Written comments will be submitted to the docket as well. The meeting provides a mechanism for submitting formal comments on the proposal. The meeting will consist of a presentation by EPA officials on the proposed regulation followed by a public comment session. Each commenter will be allowed a set amount of time to provide oral comments to EPA. Where appropriate, EPA will provide clarification regarding the proposed rule. Participants are encouraged to familiarize themselves with the basic aspects of the proposed regulation prior to the public meeting. Advance registration is not required.

DATES: The public meeting will be held on February 21, 2007.

ADDRESSES: The public meeting will be held from 1 p.m. to 4 p.m. EST in

Washington, DC at EPA Headquarters, EPA East Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Conference Room 1153.

FOR FURTHER INFORMATION CONTACT: For additional information, please visit the EPA Web site at *http://www.epa.gov/owm/cwfinance/npdes-permit-fee.htm*, or contact Lena Ferris, Office of Water, Office of Wastewater Management (4201M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8831; fax number: (202) 501–2399; e-mail address: *ferris.lena@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a sixty-day comment period for the proposed rule. The comment period ends on March 5, 2007. In scheduling this public meeting, EPA wishes to provide the public the opportunity to be fully informed about the contents of the proposed rule in advance of the date by which comments must be submitted. EPA is utilizing its Web site, which will be updated with any changes pertaining to this public meeting, as the principal means of providing information about this public meeting. EPA recommends that those interested in attending the meeting check the site for any additional information or logistical changes, as they become available.

Background: The proposed regulation, published in the **Federal Register** on January 4, 2007, provides a financial incentive to States to utilize an adequate fee program when implementing an authorized NPDES permit program. The Agency is proposing to revise the Section 106 grant allotment formula to include a permit fee incentive as part of the allotment process.

Dated: January 24, 2007.

Judy S. Davis,

Acting Office Director, Office of Wastewater Management, Office of Water.

[FR Doc. E7–1420 Filed 1–29–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2006–0795; FRL–8112–9]

RIN 2070–AJ31

2,3,5,6-Tetrachloro-2,5-Cyclohexadiene-1,4-Dione; Proposed Significant New Use of a Chemical Substance; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the comment period for a proposed rule concerning any significant new use of the chemical chloranil (2,3,5,6-tetrachloro-2,5-cyclohexadiene-1,4-dione) published in the **Federal Register** of May 12, 1993 (58 FR 27980). EPA reopened the comment period for 30 days through a proposed rule published in the **Federal Register** of December 18, 2006 (71 FR 75703) (FRL–8102–3). This document reopens the comment period for an additional 45 days. The comment period is again reopened because of a request for additional time from one of the original commenters.

DATES: Comments must be received on or before March 16, 2007.

ADDRESSES: Follow the detailed instructions provided under **ADDRESSES** in the proposed rule published in the **Federal Register** of December 18, 2006 (71 FR 75703).

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Dwain Winters, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–1977; e-mail address: *winters.dwain@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency identified in the proposed rule those who may be potentially affected by that action. If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How and to Whom Do I Submit Comments?

To submit comments, or access the public docket, follow the detailed instructions provided under **ADDRESSES** in the proposed rule published in the **Federal Register** of December 18, 2006 (71 FR 75703).

II. What Action is EPA Taking?

This document reopens the comment period established in a proposed rule published in the **Federal Register** of May 12, 1993 (58 FR 27980). In that document, EPA proposed a Significant New Use Rule (SNUR) that would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing, for any use, of chloranil containing certain chlorinated dibenzo-p-dioxins (CDDs) and chlorinated dibenzofurans (CDFs) in total combined amounts greater than 20 parts per billion (ppb). The chloranil CDD/CDF concentration would be calculated based on their toxicity equivalence (TEQ) to 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD). The 90–day notice required by the SNUR would provide EPA with the opportunity to evaluate the intended new use and associated activities, and an opportunity to protect against unreasonable risks, if any, from CDD/CDF exposure that could result from use of chloranil with higher CDD/CDF levels. Certain recordkeeping and certification requirements would also apply to manufacturers, importers, and processors of all chloranil, no matter what the level of CDD/CDF contamination. EPA indicated that it could not promulgate a final rule until after receiving data required under the dioxin furan test rule (40 CFR part 766). Reporting under the dioxin furan test rule has been completed and no chloranil dioxin levels reported were above 20 ppb TEQ. EPA is reopening the comment period for 45 days. The new comment period ends on March 16, 2007.

III. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a Significant New Use Notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)). The mechanism for reporting under this requirement is established under 40 CFR part 721, subpart A.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 24, 2007.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. E7–1413 Filed 1–29–07; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 224 and 660

[Docket Number 070110003–7003–01;I.D. 112006A]

RIN 0648–AS89

Fisheries Off West Coast States; Highly Migratory Species Fisheries

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to amend text in the regulations governing closures of the drift gillnet fishery in the Pacific Loggerhead Conservation Area during El Nino events under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The regulation is necessary to avoid jeopardizing loggerhead sea turtles, which are listed as threatened under the Endangered Species Act, by clarifying the time period in which the area is to be closed and the methods that NMFS will use to determine if an El Nino event is occurring or forecast to occur. NMFS also proposes to correct an inaccurate cross-reference in the regulations governing special requirements for fishing activities to protect endangered sea turtles under the HMS FMP.

DATES: Comments must be received by March 1, 2007.

ADDRESSES: You may submit comments on this notice, identified by I.D. 112006A, by any of the following methods:

- E-mail: *0648–AS89.SWR@noaa.gov*. Include the I.D. number in the subject line of the message.
- Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 4213.
- Fax: (562) 980 4047.

FOR FURTHER INFORMATION CONTACT: Craig Heberer, Sustainable Fisheries Division, NMFS, 760–431–9440, ext. 303.

SUPPLEMENTARY INFORMATION: On April 7, 2004, NMFS published a final rule to implement the HMS FMP (69 FR 18444) that included incorrect regulatory text in 50 CFR 660.713(c)(2) pertaining to the timing of a closure for the California/Oregon swordfish/thresher shark drift gillnet fishery during declared El Nino events and methods for determination and notification concerning an El Nino event. This proposed rule would amend that regulatory text.

The timing of the closure and methods for determining an El Nino event were published on December 16, 2003, as part of the Pacific loggerhead conservation area final rule (68 FR 69962) and codified at 50 CFR 223.206(d)(6)(ii) and (iii). The closure is necessary to avoid jeopardizing the continued existence of threatened loggerhead sea turtles. The final rule described the area of the closure, the time period in which the area is to be closed, the methods that NMFS will use to determine if an El Nino event is occurring or is going to occur, and how the Assistant Administrator will provide notification that an El Nino is occurring.

Less than 4 months after the correct language was codified, the HMS FMP final rule removed and reserved the regulation at 50 CFR 223.206(d)(6) and moved the text from that regulation to 50 CFR 660.713(c). Due to an oversight in drafting, § 223.206(d)(6)(iii), which detailed the process for the AA to make a determination that an El Nino is occurring or scheduled to occur, was not included in the HMS FMP final rule. Also, text at 660.713(c)(2)(ii) of the draft rule was mistakenly included in the HMS FMP final rule. This proposed rule would remove paragraph the text at 660.713(c)(2)(ii) and replace it with two paragraphs that are substantively identical to the original § 223.206(d)(6)(iii). the text of 223.206(d)(6)(iii) as originally intended with non-substantive revisions to the text for clarification. Furthermore, the corrections would make clear that any closure as a result of an El Nino event would occur from June 1 – August 31 only, as currently specified in 50 CFR 660.713(c)(2), rather than during the time periods of January 1 – January 15 and August 15 – August 31, as currently specified inconsistently in § 660.713 (c)(2)(ii). NMFS also proposes to amend regulatory text at 50 CFR 224.104(c) that describes special requirements for fishing activities to protect endangered sea turtles. The existing text refers to special prohibitions relating to sea turtles at § 223.206(d)(2)(iv). However, paragraph (d)(2)(iv) no longer exists in 50 CFR 223.206. The reference should be to § 223.206(d).

Classification

NMFS has determined that the proposed rule is consistent with the HMS FMP and preliminarily determined that this proposed 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.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Approximately 90 vessels were permitted under the HMS FMP to operate in the swordfish/thresher shark drift gillnet fishery off the U.S. West Coast in 2005. Of these 90 vessels, 42 actively fished in 2005. These vessels are considered small business entities and there should be no economic impact to them as a result of this action. The proposed action is a correction measure that will clarify conflicting regulatory instructions and provide U.S. fishermen with clear instructions on how to comply with Federal law. As described earlier, the corrections would make clear that any closure as a result of an El Nino event would occur from June 1 - August 31, as currently specified in 50 CFR 660.713(c)(2), rather than during the time periods of January 1 – January 15 and August 15 – August 31, as currently specified inconsistently in § (c)(2)(ii). The corrections would also include additional information describing how NOAA will determine whether an El Nino event is occurring and when El Nino conditions have ceased. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects

50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting andrecordkeeping requirements.

50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 24, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 224 and 660 are proposed to be amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

2. In § 224.104, paragraph (c) is revised to read as follows:

§ 224.104 Special requirements for fishing activities to protect endangered sea turtles.

* * * * *

(c) Special prohibitions relating to sea turtles are provided at § 223.206(d).

PART 660—FISHERIES OFF THE WEST COAST STATES

3. The authority citation for part 660 continues to read as follows:

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

4. In § 660.713, paragraph (c)(2) is revised to read as follows:

§ 660.713 Drift gillnet fishery.

* * * * *

(c)(2) *Pacific loggerhead conservation area.* No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean east of the 120° W. meridian from June 1 through August 31 during a forecasted, or occurring, El Nino event off the coast of southern California.

(i) *Notification of an El Nino event.* The Assistant Administrator will publish in the **Federal Register** a notification that an El Nino event is occurring, or is forecast to occur, off the coast of southern California and the requirement of a closure under this paragraph (c)(2). Furthermore, the Assistant Administrator will announce the requirement of such a closure by other methods as are necessary and appropriate to provide actual notice to the participants in the California/Oregon drift gillnet fishery.

(ii) *Determination of El Nino conditions.* The Assistant Administrator will rely on information developed by NOAA offices which monitor El Nino events, such as NOAA's Climate Prediction Center and the West Coast Office of NOAA's Coast Watch program, in order to determine whether an El Nino is forecasted or occurring for the coast of southern California. The Assistant Administrator will use the monthly sea surface temperature anomaly charts to determine whether there are warmer than normal sea surface temperatures present off of southern California during the months prior to the closure month for years in which an El Nino event has been declared by the NOAA Climate Prediction Center. Specifically, the Assistant Administrator, will use sea surface temperature data from the third and second months prior to the month of the closure for determining whether El Nino conditions are present off of southern California.

(iii) *Reopening.* If, during a closure as described within this paragraph (c)(2), sea surface temperatures return to normal or below normal, the Assistant Administrator may publish a **Federal Register** notice announcing that El Nino conditions are no longer present off the coast of southern California and may terminate the closure prior to August 31.

* * * * *

[FR Doc. E7–1450 Filed 1–29–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

RIN 0648–AU46

[Docket No. 070118011–7011–01; I.D. 062906A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Observer Health and Safety

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would enhance the safety of observers and the efficiency of their deployment. The proposed rule would clarify prohibited actions regarding observers, reinforce that an observer may not be deployed or stay aboard an unsafe vessel, clarify when a fishing vessel is inadequate for observer deployment and how an owner or operator can resolve discrepancies, improve communications between observer programs and fishing vessel owners and operators, and provide for an alternate safety equipment examination of certain small fishing vessels. This proposed rule is necessary to maintain and improve the safety and effectiveness of fishing vessel observers in carrying out their duties as authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the fishery management plans and regulations adopted under the Magnuson-Stevens Act.

DATES: Comments must be received by 5 p.m., EST, on March 1, 2007.

ADDRESSES: You may submit comments on this proposed rule or its Initial Regulatory Flexibility Analysis (IRFA), identified by 0648–AU46, by any of the following methods:

- E mail: *0648–AU46@noaa.gov*. Include in the subject line of the e mail comment the following document identifier: ''Observer Safety Measures.'' Comments sent via e mail, including all attachments, must not exceed a 10 megabyte file size.
- Federal e Rulemaking portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Lisa Desfosse, Team Leader, National Observer Program, National Marine Fisheries Service, 1315 East-West Highway, Rm 12525, Silver Spring, MD 20910
- Fax: 301–713–4137.

Copies of the Regulatory Impact Review prepared for this action may be obtained from Lisa Desfosse. Requests should indicate whether paper copies or electronic copies on CD-ROM are preferred. These documents are also available at the following website: *http://www.st.nmfs.noaa.gov/st4/nop/index.html*.

FOR FURTHER INFORMATION CONTACT: Lisa Desfosse at 301–713–2328.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Act, as amended; (16 U.S.C. 1801 *et seq.*), the Marine Mammal Protection Act, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the Atlantic Tunas Convention Act, as amended (ATCA; 16 U.S.C. 971 *et seq.*) authorize the Secretary of Commerce (Secretary) to station observers aboard commercial fishing vessels to collect scientific data required for fishery and protected species conservation and management, to monitor incidental mortality and serious injury of marine mammals and other species listed under the ESA, and to monitor compliance with existing Federal regulations. In addition, under the South Pacific Tuna Act of 1988 (SPTA, 16 U.S.C. 973 *et seq.*), NMFS may require observers in the South Pacific Tuna Fishery.

Regulations governing health and safety of observers are codified at 50 CFR 600.725 and 600.746. These

regulations apply to any vessel designated to carry an observer as part of a mandatory or a voluntary observer program under the Magnuson-Stevens Act, MMPA, ESA, ATCA, SPTA, or any other U.S. law. The proposed rule is necessary to maintain and improve the safety and effectiveness of observers in carrying out their duties as authorized by the Magnuson-Stevens Act, and the fishery management plans and regulations adopted under the Magnuson-Stevens Act.

Specifically, the proposed rule would clarify and update prohibitions, change paragraph headings to better reflect contents, make pre-trip vessel safety checks mandatory, adopt a NMFS alternate safety equipment examination using a vessel safety checklist of U.S. Coast Guard (USCG) safety requirements for vessels under 26 ft (8 m) in length under the limited circumstances in which a USCG Commercial Fishing Vessel (CFV) Safety Examination cannot be conducted, and change the observer safety requirements to apply from the time a vessel is notified that it has been selected to carry an observer, rather than commencing at the moment the observer begins boarding the vessel. The proposed rule would improve the clarity of the regulations for vessel owners and operators, strengthen the ability of NMFS to enforce observer safety requirements, reduce the likelihood and associated costs of delayed fishing trips or missed observer days at sea, and improve NMFS observer data by reducing vessel selection bias associated with missed observer trips and inability to cover smaller vessels.

Observer Samples and Observer Protection

This proposed rule would expand the prohibitions of § 600.725, revising paragraphs (t) and (u) to prohibit tampering with or destroying an observer's samples or equipment, or interfering with a NMFS approved observer. This change is necessary because observers have reported that fishing vessel crews have interfered with their sampling programs by throwing samples or equipment overboard or otherwise destroying or tampering with samples or equipment. The current regulations do not expressly prohibit tampering with samples or equipment. The changes would also reflect that NMFS observers are now sometimes assigned to shoreside plants by removing the words ''aboard a vessel.'' The proposed rule modifies paragraph (p) to reflect the addition of the NMFS alternative safety examination option and to clarify that passing safety examination conditions must be maintained.

The proposed rule also adds paragraph (w), which makes it unlawful for a person to: ''fail to maintain safe conditions for the protection of observers including compliance with all USCG and other applicable rules, regulations, or statutes applicable to the vessel and which pertain to safe operation of the vessel.'' This language reinforces that vessel owners or operators are responsible for assuring that USCG regulations are followed at all times an observer is aboard their vessel.

Observer Safety

The proposed rule changes the heading of § 600.746(b) from ''Observer Requirement'' to ''Observer Safety'' to better reflect the subject matter of the section. Currently, § 600.746(b) states that an observer is not required to board, or stay aboard, a vessel that is inadequate or unsafe as described in paragraph (c) of the section. The definition was intended to provide the observer with discretion not to board a vessel. This language is open to misinterpretation in that it would seem not to allow an observer to board a vessel to determine if the vessel is unsafe. This action proposes to replace the term ''is not required'' and replace it with ''will not be deployed,'' clarifying the original intent of the regulation that observers not depart in or stay aboard vessels inadequate for observer deployment. Further, the term ''inadequate or unsafe'' in these rules would be changed to ''inadequate for observer deployment.'' This change would clarify that, while NMFS cannot determine the absolute safety of a vessel, NMFS can require standards of accommodation and safety on a vessel prior to an observer deploying in that vessel.

Proof of Examination

Under the current regulations at § 600.746(c), a vessel is inadequate or unsafe for carrying an observer unless the vessel's owner or operator can: (1) show proof to NMFS of either a current USCG CFV Safety Examination decal or a USCG certificate of examination; and (2) notify NMFS of that compliance when requested. This proposed rule would amend the current regulations to allow the owner or operator to show proof of passing the USCG CFV Safety Examination when the decal may have been lost due to window replacement, other repair, or accident. The proposed rule also adds language to paragraph (d)(1), clarifying that the decal must have been issued in the past two years, or at an interval consistent with current USCG regulations. This change is necessary to give the proposed rule flexibility in the event that USCG changes its safety decal inspection interval to a longer or shorter period.

Accommodations and Safety Requirements

This proposed rule would update the accommodations requirement in the regulations. Each NMFS region will provide this information to vessel owners or operators in a manner appropriate to that region or fishery, as established by the appropriate Regional Administrator. The proposed rule would also clarify that both the accommodations requirement and either the USCG CFV Safety Examination requirement or alternate examination procedure set out in paragraph (g) of this section must be satisfied for the vessel to be considered adequate under the requirements of paragraph (c).

Vessel Pre-trip Safety Check

Recent fishing vessel casualties have highlighted the importance of safety equipment in preventing or reducing the severity of accidents on board fishing vessels. The current regulations at § 600.746(c)(3) encourage, but do not require, observers to use the pre-trip safety check, including the check for USCG required safety equipment. A vessel may have met the requirements for issuance of a current USCG CFV Safety Examination decal, or passed an appropriate USCG inspection. However, the equipment required for issuance of the decal or passing of the inspection may not be present or within its inspection parameters prior to the initial deployment of the observer (for example, the vessel may only have enough personal flotation devices for the crew, not including the observer).

This proposed rule would require that the vessel's captain or the captain's designee accompany the observer in making a safety check to verify compliance with safety requirements prior to the initial observer deployment. The checklist used by the observer will include the six items listed in the current regulation, plus additional fishery-area and vessel specific items required by the USCG. The vessel's captain or designee would also accompany the observer in a walk through the vessel to ensure that no obviously hazardous conditions exist aboard the vessel. This pre-trip check may be incorporated into the vessel safety orientation provided by the vessel to the observer as required by 46 CFR 28.270.

The proposed rule would also clarify that an emergency position indicating radio beacon (EPIRB), when required, must be registered to the vessel where it is located, and that survival craft, when required, must have sufficient capacity to accommodate the total number of persons, including the observer(s), that will embark on the voyage.

NMFS Alternate Safety Equipment Examination

The current regulations do not allow for an alternative to the USCG CFV Safety Examination in cases where NMFS observers are required to board smaller vessels in remote areas (primarily in Alaska). Although these small vessels generally comply with the USCG CFV Safety Examination standards, their small size precludes them from traveling to a location where a CFV safety examination can be performed, and USCG personnel, in certain circumstances, may not be available to travel to all remote locations to conduct an examination. This proposed rule would provide an alternative method for vessels less than 26 ft (8 m) in length to meet the safety requirement by passing an alternate safety equipment examination that is consistent with the USCG safety standards for commercial fishing vessels under 26 ft. USCG safety requirements for commercial fishing vessels are at 46 CFR part 28. A NMFS approved observer, NMFS employee, or an authorized observer provider would conduct the alternate safety examination. This alternate safety examination would only be valid for the trip for which the vessel was selected to carry an observer. This alternate safety examination would allow observer programs to increase coverage of remote fisheries, which would provide more comprehensive scientific information. Vessels would still be required to comply with applicable regional requirements governing observer accommodations, which may address adequacy, health, and safety concerns beyond the scope of USCG standards.

Duration

The current regulations at § 600.746(e) state that the requirements of this section apply to the time of the observer's boarding, at all times the observer is aboard, and at the time the observer is disembarking from the vessel. This proposed rule would amend the current regulations by adding the phrase ''at the time of written or verbal selection of the vessel to carry an observer'' by the observer program. This would make it clear that vessels are required to comply with the observer safety requirements from the time the vessel is selected to carry an observer, which is days or weeks in advance of the actual deployment date of an observer to the selected vessel, until the observer disembarks the vessel at the end of the observed trip. This amendment should accelerate the process of placing observers aboard vessels, reduce vessel selection bias associated with missed observer trips, and reduce the costs of fishing trip delay by providing an additional assurance that the selected vessel complies with the regulations on the day the observed fishing trip is scheduled. It will also give NMFS authority to enforce the safety requirements prior to the deployment of an observer by, for example, checking vessels for compliance with safety requirements.

Classification

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

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

Initial Regulatory Flexibility Analysis (IRFA)

Section 603 of the Regulatory Flexibility Act (RFA) requires that NMFS prepare an IRFA describing the economic impact this proposed rule, if adopted, would have on small entities. These economic impacts are discussed below. A description of the action, why it is being considered, the objectives of, and the legal basis for this action are found in the Background and SUMMARY sections of the preamble. This rule does not duplicate, overlap, or conflict with any relevant federal rules. There are no reporting, recordkeeping, or other compliance costs associated with this rulemaking.

Description and Number of Entities Affected

NMFS has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of $4,000,000, as small businesses. NMFS estimates that approximately 8,925 commercial fishing vessels could be required to carry an observer in NMFS-regulated fisheries. Current, precise data on the number of commercial fishing vessels that are ''small entities'' is not presently available because year-to-year participation by such entities in any given fishery is variable, due to economic, regulatory, climatic, and other forces. However, an estimate of 8,755–8,825 vessels was derived by combining the best estimates from data available to each of the regional programs.

The proposed rule clarifies an existing NMFS requirement that vessels display a USCG CFV Safety Examination decal. The decal is obtained after passing a USCG inspection of the vessel for compliance with USCG safety regulations. The inspection is scheduled at a time convenient to the vessel owner or operator, and is free of charge (except to some processor vessels). NMFS has not identified any disproportionate economic impacts between small and large entities for this action. Furthermore, there are no disproportionate economic impacts among groups of entities based on types of gear, areas fished, or vessel size.

Preferred Alternative

The benefits of the preferred alternative include increased safety for all crew members and observers. Potential costs to vessel owners or operators include the costs associated with putting the vessel in safe condition. However, this is already required by the existing NMFS regulations and is based on safety regulations promulgated and enforced by the USCG. Therefore, this rule should not impose new compliance costs.

This proposed rule does not require that vessel operators expend more than the existing rules require (e.g. for the purchase of an additional personal floatation device). However, failure of a vessel to comply with this proposed rule may cause loss of fishing time. The cost of a lost fishing day will vary among fisheries. For example, a fishing day at sea in a multispecies fishery in the Northeast region has been valued at an average of $364, but this figure would vary in other fisheries, depending upon the value of the fishery, the type of management regime governing that fishery, and the degree to which a vessel derives its income from that fishery. The risk of loss of fishing time due to this proposed rule is minimal, because vessel owners are already required to comply with USCG safety regulations and to obtain a USCG CFV Safety Decal. NMFS anticipates that vessel owners will voluntarily ensure that their vessels comply with the safety requirements to avoid the loss of fishing time.

Vessels would incur a small cost in allocating the captain or other crew member's time to accompany the

observer on the pre-trip safety check, but this could be readily integrated into existing procedures, such as the existing requirement to orient the observer to the vessel (46 CFR 28.270). Additional benefits of this proposed rule include the avoidance of the loss of human life and the economic costs of non-lethal injury.

''No Action'' and Other Alternatives

Under the ''no action'' alternative to this proposed rule, no new costs would be incurred. However, the difference between the cost of ''no action'' and the cost of the preferred alternative is minimal and NMFS believes that most of the affected vessels already voluntarily follow the USCG safety regulations and comply with the existing NMFS requirement for a USCG CFV Safety Decal.

Another alternative discussed by NMFS is to allow the observer to assess, in addition to the safety requirements set out in the proposed rule, a range of considerations, such as food and accommodation quality, competence of the vessel captain and crew, and drug or alcohol use by the captain or crew. This option would broaden the safety protections of observers, but would also enable the observer to make subjective, individual determinations that not all vessels would be able to economically meet for all observers. The risk of loss of fishing days under this alternative is greater than the preferred alternative.

Finally, NMFS considered making a NMFS employee or an authorized observer provider the judge of the adequacy of a vessel. NMFS does not believe that a NMFS employee or an observer provider is more likely to discover safety issues than the observer, so this alternative does not improve safety. This alternative also has the potential to increase the risk of lost fishing days while safety concerns are resolved, particularly if there is disagreement between the observer and NMFS or the observer provider about whether the vessel is adequate.

A copy of the IRFA is available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 24, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 600 is proposed to be amended as follows:

PART 600—MAGNUSON–STEVENS ACT PROVISIONS

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

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.725, paragraphs (p), (t), and (u) are revised and paragraph (w) added to read as follows:

§ 600.725 General prohibitions.

* * * * *

(p) Fail to show proof of passing the USCG Commercial Fishing Vessel Safety Examination or the NMFS alternate safety equipment examination, or fail to maintain the vessel safety conditions necessary to pass the examination, when required by NMFS pursuant to § 600.746.

* * * * *

(t) Assault, oppose, impede, intimidate, or interfere with a NMFS-approved observer.

(u)(1) Prohibit or bar by command, impediment, threat, coercion, interference, or refusal of reasonable assistance, an observer from conducting his or her duties as an observer; or

(2) Tamper with or destroy samples or equipment.

* * * * *

(w) Fail to maintain safe conditions for the protection of observers including compliance with all USCG and other applicable rules, regulations, or statutes applicable to the vessel and which pertain to safe operation of the vessel.

3. In § 600.746, paragraphs (b) through (f) are revised and paragraphs (g) and (h) are added to read as follows:

§ 600.746 Observers.

* * * * *

(b) *Observer safety.* An observer will not be deployed on, or stay aboard, a vessel that is inadequate for observer deployment as described in paragraph (c) of this section.

(c) *Vessel inadequate for observer deployment.* A vessel is inadequate for observer deployment and allowing operation of normal observer functions if it:

(1) Does not comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 285, 300, 600, 622, 635, 648, 660, and 679);

(2) Has not passed a USCG Commercial Fishing Vessel Safety Examination, or

(3) For vessels less than 26 ft (8 m) in length, has not passed an alternate safety equipment examination, as described in paragraph (g) of this section.

(d) *Display or show proof.* A vessel that has passed a USCG Commercial Fishing Vessel Safety Examination must display or show proof of one of the following:

(1) A valid USCG Commercial Fishing Vessel Safety Examination decal certifying compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I, that will not expire before the end of the fishing trip, and issued within the last 2 years, or at a time interval consistent with current USCG regulations;

(2) In situations of mitigating circumstances which may prevent a vessel from displaying a valid safety decal (broken window, etc.), NMFS, the observer, or NMFS' designated observer provider may accept the associated documentation as proof of the missing safety decal in paragraph (d)(1) of this section;

(3) A certificate of compliance issued pursuant to 46 CFR 28.710;

(4) A certificate of inspection pursuant to 46 U.S.C. 3311.

(e) *Visual inspection.* Upon request by an observer, a NMFS employee, or a designated observer provider, a vessel owner or operator must provide correct information concerning any item relating to any safety or accommodation requirement prescribed by law or regulation, in a manner and according to a timeframe as directed by NMFS. A vessel owner or operator must also allow an observer, a NMFS employee, or a designated observer provider to visually examine any such item.

(f) *Vessel safety check.* Prior to the initial deployment, the vessel owner or operator or the owner or operator's designee must accompany the observer in a walk through the vessel's major spaces to ensure that no obviously hazardous conditions exist. This action may be a part of the vessel safety orientation to be provided by the vessel to the observer as required by 46 CFR 28.270. The vessel owner or operator or the owner or operator's designee must also accompany the observer in checking the following major items as required by applicable USCG regulations:

(1) Personal flotation devices/ immersion suits;

(2) Ring buoys;

(3) Distress signals;

(4) Fire extinguishing equipment;

(5) Emergency position indicating radio beacon (EPIRB), when required, registered to the vessel where it is located;

(6) Survival craft, when required, with sufficient capacity to accommodate the total number of persons, including the observer(s), that will embark on the voyage; and

(7) Other fishery-area and vessel specific items required by the USCG.

(g) *Alternate safety equipment examination.* If a vessel is under 26 ft (8 m) in length, and NMFS has determined that the USCG cannot provide a USCG Commercial Fishing Vessel Safety Examination due to unavailability of inspectors or to unavailability of transportation to or from an inspection station, the vessel will be adequate for observer deployment if it passes an alternate safety equipment examination conducted by a NMFS certified observer, observer provider, or a NMFS observer program employee, using a checklist of USCG safety requirements for commercial fishing vessels under 26 ft (8 m) in length. Passage of the alternative examination will only be effective for the single trip selected for observer coverage.

(h) *Duration.* The requirements of this section apply at the time the vessel owner or operator is notified orally or in writing by an observer, a NMFS employee, or a designated observer provider, that his or her vessel has been selected to carry an observer. The requirements of this section continue to apply through the time of the observer's boarding, at all times the observer is aboard, and at the time the observer disembarks from the vessel at the end of the observed trip.

[FR Doc. E7–1444 Filed 1–29–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 72, No. 19
Tuesday, January 30, 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.

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Meeting: Board of Directors Meeting

TIME: Tuesday, January 30, 2007, 2 p.m. to 6:15 p.m.

PLACE: African Development Foundation, Conference Room, 1400 I Street, NW., Suite 1000, Washington, DC 20005.

DATE: Tuesday, January 30, 2007.

STATUS:

1. Open session, January 30, 2007, 2 p.m. to 5:30 p.m.; and,

2. Closed session, January 30, 2007, 5:40 p.m. to 6:15 p.m.

Due to security requirements and limited seating, all individuals wishing to attend the open sessions of the meeting must notify Doris Martin, General Counsel, at (202) 673–3916 or *mrivard@adf.gov* of your request to attend by 2 p.m. on Monday, January 29, 2007.

Rodney J. MacAlister,

President.

[FR Doc. 07–420 Filed 1–26–07; 2:34 pm]

BILLING CODE 6117–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Senior Executive Service: Membership of Performance Review Board

ACTION: Notice.

SUMMARY: The following persons are members of the 2006 Senior Executive Service Performance Review Board:

Gloria Steele, Chair, James Painter, Harry Manchester.

FOR FURTHER INFORMATION CONTACT: Darren Shanks, 202–712–5685.

Dated: January 25, 2007.

Darren Shanks,

Executive and Labor Relations.

[FR Doc. E7–1476 Filed 1–29–07; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Hawaiian Islands National Marine Monument.

Form Number(s): None.

OMB Approval Number: 0648–0548.

Type of Request: Regular submission.

Burden Hours: 1,456.

Number of Respondents: 87.

Average Hours Per Response: General, recreation and Native Hawaiian practices permits, 5 hours; special ocean use permits, 24 hours; VMS purchase and installation and VMS maintenance, 4 hours; VMS certification and entry and exit notification, 5 minutes; and hourly VMS reports, 5 seconds.

Needs and Uses: On June 15, 2006, President Bush established the Northwestern Hawaiian Islands Marine National Monument by issuing Presidential Proclamation 8031 (71 FR 36443, June 26, 2006) under the authority of the Antiquities Act (16 U.S.C. 431). The proclamation includes restrictions and prohibitions regarding activities in the monument consistent with the authority provided by the Act. Specifically, the proclamation prohibits access to the monument except when passing through the monument without interruption or as allowed under a permit issued by NOAA and the Department of the Interior's Fish and Wildlife Services (FWS). Vessels passing through the monument without interruption are required to notify NOAA and FWS upon entering into and leaving the monument. Individuals wishing to access the monument to conduct certain regulated activities must first apply for and be granted a permit issued by NOAA and FWS and certify compliance with certain vessel monitoring system requirements. On August 29, 2006, NOAA and FWS published a final rule codifying the provisions of the proclamation (71 FR 51134).

Affected Public: Federal government, individuals or households, not-for-profit institutions; business or other for-profit; State, Local or Tribal Government.

Frequency: Annually and on occasion.

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

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

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: January 24, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–1429 Filed 1–29–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Islands Region Permit Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648–0490.

Type of Request: Regular submission.

Burden Hours: 157.

Number of Respondents: 232.

Average Hours Per Response: Hawaii longline limited entry permit, Western Pacific bottomfish, lobster, longline general and receiving vessel permits, 30

minutes; Northwest Hawaiian Islands bottomfish permit, 1 hour; American Samoa longline limited entry permit, 45 minutes; permit appeals, 2 hours; and shallow-set certificate request, 10 minutes.

Needs and Uses: This collection is needed to assist with the administration and evaluation of the NOAA Community-based Restoration Program (CRP), which has provided financial assistance on a competitive basis to over 1,200 habitat restoration projects since 1996. The information is used to provide accountability for the CRP and NOAA on the expenditure of federal funds used for restoration, contributes to the Government Performance and Results Act (GPRA) ''acres restored'' measure and to the President's Wetlands Initiative goal of 3 million acres of wetland restoration, enhancement and protection by 2010. Information is required only from parties receiving CRP funds. Fishermen in Federally-managed fisheries in the Western Pacific region are required to maintain valid fishing permits on-board their vessels at all times. The permits are renewed annually and are needed to identify participants in the fisheries. Permits are also important to help measure impacts of management controls on the participants in the fisheries of the U.S. exclusive economic zone (EEZ) in the Western Pacific.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: Annually, on occasion and variable.

Respondent's Obligation: Mandatory.

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

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: January 24, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–1430 Filed 1–29–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Census Bureau

2008 Census Dress Rehearsal

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(C)(2)(A)).

DATES: Written comments must be submitted on or before April 2, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *Dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Frank Vitrano, U.S. Census Bureau, Room 3H174, Washington, DC 20233–9200, 301–763–3961 (or via Internet at *frank.a.vitrano@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

Background

In order to design and implement an optimal short-form-only 2010 Census, the Census Bureau has adopted a robust incremental and iterative research, development, and testing program. This program includes several special purpose tests (*e.g.* cognitive tests for the wording of the race and Hispanic origin questions), two national mail-out/mail-back tests (the 2003 National Census Test and the 2005 National Census Test), two site tests (2004 Census Test and the 2006 Census Test), a dress rehearsal of the actual 2010 Census plan (2008 Census Dress Rehearsal), and finally, the 2010 Census. This strategy allowed for development of new methods and supporting systems never used in previous censuses. This strategy presented a number of opportunities to improve overall data coverage and quality, increase data processing efficiency, and contain costs.

The 2003 National Census Test was the first major test that we conducted in preparation for the 2010 Census. This was a two-part mail-out/mail-back test designed to evaluate alternative self-response options (paper, Internet, and telephone) and alternative presentations of the race and Hispanic origin questions. For more information, see **Federal Register**: June 7, 2002 (Volume 67, Number 110).

A site test in 2004 (the 2004 Census Test) focused on new automated field data collection methods and systems, including the use of hand held computers, and studied new methods to improve coverage. For more information on the 2004 Census Test, see **Federal Register**: July 11, 2003 (Volume 68, Number 133).

The 2005 National Questionnaire Content Test employed a mail-out/mail-back methodology designed to evaluate alternative treatments including procedures intended to improve the completeness and accuracy of reporting for short form items, especially the wording of the race and Hispanic origin questions. For more information on the 2005 National Census Test, see **Federal Register**: November 1, 2004 (Volume 69, Number 210).

A 2006 Census Test expanded on the number of new and refined methods evaluated in the 2004 Census Test, and tested integration with new systems and new infrastructure. For more information on the 2006 Census Test, see **Federal Register**: May 4, 2005 (Volume 70, Number 85).

2008 Census Dress Rehearsal

The 2008 Census Dress Rehearsal is an opportunity for the Census Bureau to conduct an operational test of the overall design of the 2010 Census. While we have tested certain parts of the plan, the dress rehearsal is our first opportunity to see how well all of the pieces fit together. The main goal of this dress rehearsal is to enable the Census Bureau to integrate the various operations and procedures planned for the decennial census under as close to census-like conditions as possible. Many aspects of the 2010 Census design, including the use of hand held computers, have been tested in selected local areas during our last test census using Census Bureau developed and implemented software applications and automation infrastructure. Additionally, the questionnaire content has been tested nationally over the past four years.

The 2008 Census Dress Rehearsal will be conducted in two sites, one urban, and the other one, a mix of urban and suburban. San Joaquin County, California is the urban site. South Central North Carolina has been selected as the urban/suburban mix test site. This area consists of Fayetteville and nine counties surrounding

Fayetteville (Chatham, Cumberland, Harnett, Hoke, Lee, Montgomery, Moore, Richmond and Scotland).

Prior to actual enumeration, the Census Bureau will conduct the 2008 Dress Rehearsal Local Update of Census Addresses (LUCA), Address Canvassing, and Group Quarters Validation. Brief descriptions of these operations are included below for reference purposes.

The 2008 Dress Rehearsal LUCA program provides an opportunity for local, State, and tribal governments to review and update individual address information or block-by-block address counts from the Master Address File (MAF). The goal of LUCA is to improve the completeness and accuracy of the MAF.

The Address Canvassing operation, conducted in May 2007 through June 2007, is a field operation where census workers systematically canvass all census blocks looking for living quarters and updating the address and map information in a hand held computer. The purpose of the Group Quarters Validation (GQV) operation is to help us determine the status of the addresses identified during Address Canvassing as other living quarters. An address can be classified as a group quarter, housing unit, transient location, or non-residential. For the 2008 Dress Rehearsal, this operation will be conducted between September 2007 and October 2007.

II. Method of Collection

Both sites combined contain about 480,000 housing units and a variety of group quarters. The Census Bureau will establish temporary Local Census Offices (LCOs) in the two dress rehearsal sites to support data collection operations and functions. The LCOs will manage the staff recruiting, hiring, training, and conduct of all data collection operations.

In the portion of both dress rehearsal sites where city-style addresses are used for mail delivery, the Census Bureau will use a multiple mailing strategy similar to the one used in mail-out/mail-back areas in the 2006 Census Test. The multiple mailing strategy consists of:

- An advance notice letter that alerts households the census form will be sent to them shortly. For non-city style addresses, the advance letter will be delivered between February 26, 2008 and February 28, 2008 and between March 10, 2008 and March 12, 2008 for city-style addresses;
- An initial mailing package with a postage-paid return envelope will be delivered about one to two weeks after the advance letter. In certain tracts in the San Joaquin County site the questionnaire will be in English, in others it will be a bilingual (English/Spanish) form. We are examining the possibility of delivering bilingual questionnaires to selected tracts in the Chatham, Lee, and Montgomery counties within the North Carolina site.
- A blanket reminder postcard that serves as a thank you for respondents who have mailed back their questionnaire, or as a reminder for those who have not mailed one, will be delivered March 24–26, 2008.
- An English-only replacement questionnaire will be prepared and mailed on a flow basis to city-style addresses beginning about 10 days after the reminder card is mailed only to households who have not returned their questionnaire by a pre-determined date.

The United States Postal Service, via first class postage, will deliver all mailing pieces to city-style addresses.

In predominately non-city style areas in the North Carolina site, we will use the Update/Leave (U/L) methodology to deliver questionnaires. During Update/Leave, enumerators will deliver addressed English-only questionnaires to housing units in their assignment areas (one or more census blocks). The Census Bureau is currently researching the possibility of delivering bilingual questionnaires to selected tracts in the Chatham, Lee, and Montgomery counties within the North Carolina site. Concurrent with delivering addressed questionnaires, the enumerators also will update the address lists and maps in their assignment areas. Additionally, they will prepare and drop off English-only questionnaires to any added housing units that they find in their assignment areas. This operation is scheduled starting March 3, 2008 through April 7, 2008.

During Nonresponse Followup (NRFU), between April 21, 2008 and July 9 2008, enumerators equipped with hand held computers (HHC) will visit each of the addresses in both sites for which we have not yet received a census response. Enumerators will determine the Census Day (April 1, 2008) status of the unit and complete a questionnaire on their HHC based on that status. Quality check procedures conducted during this operation will include coverage edit checks and an independent reinterview of a portion of an enumerator's completed cases.

As Nonresponse Followup is completed in an LCO, we will begin the Vacant-Delete Check operation. Vacant-Delete Check is an independent follow-up of addresses classified as vacant or nonexistent for the first time during NRFU. These addresses will be assigned to an enumerator different than the enumerator who made the original classification during the NRFU operation. During the Vacant-Delete Check operation, enumerators will verify the Census Day status of the assigned addresses and complete a short form questionnaire on their HHC that reflects the Census Day status.

Individuals in group living situations (*e.g.* college residence halls, shelters for people experiencing homelessness, or military personnel living or staying in barracks or other group quarters on base) will not be enumerated using the mail-out/mail-back method or the U/L method. Instead, these individuals will be enumerated during the Group Quarters Enumeration, the Service-Based Enumeration or the Military Enumeration. Prior to enumerating these individuals, we will conduct the Group Quarters Advance Visit operation to inform the group quarters (GQ) contact person of the upcoming GQ enumeration, address privacy and confidentiality concerns, identify any security issues, verify the GQ name, address information, contact name and phone number, and obtain an expected Census Day population count so that the correct amount of enumeration materials can be prepared. This operation will be conducted February 8, 2008 through March 21, 2008.

During the Group Quarters Enumeration (GQE) operation, scheduled for April 1, 2008–May 16, 2008, enumerators will visit all group quarters, except GQs on military installations in order to verify their address information, obtain a list of all residents, and distribute questionnaires for completion. Within a few days, the same enumerator will return to the GQ to retrieve the completed questionnaires. In order to obtain a complete count for everyone who uses the facility, the enumerator will ask the GQ contact to provide the census information for any missing questionnaires based on the control list prepared at the initial enumeration visit. At small GQs (usually nine residents or less), enumerators will conduct personal interviews to complete a questionnaire for each resident.

The Service-Based Enumeration (SBE) is designed to enumerate people experiencing homelessness who may be missed in the traditional enumeration of housing units and group quarters. These individuals will be enumerated at places where they receive services such as meals, or a bed for the night. The SBE location will include shelters (emergency and transitional shelters, hotels and motels providing shelter for people experiencing homelessness), soup kitchens and regular stops of

mobile food vans. Between March 26, 2008 and March 28, 2008, enumerators will visit these facilities to enumerate the clients using the service at the time of the enumeration.

The Military Group Quarters Enumeration operation is a special component of GQE designed to enumerate military personnel living or staying in GQ such as barracks and other group quarters on base. The enumeration for military GQs will be coordinated with the military installation Point of Contact (POC). Census staff will meet with the POCs, swear them in and leave materials for the enumeration. Any personnel assigned to participate in conducting the enumeration on the installation will also be sworn in. The POC determines how the questionnaires are distributed on the installation for completion. Census Bureau staff will then return to the installation to collect the questionnaires, obtain census information for any missing cases, and provide the completed questionnaires to the local census office. However, those military families living in housing units on base will be enumerated using the mail-out/mail-back methodology.

For those areas where a transient population may exist, the Census Bureau will conduct the Enumeration at Transitory Locations (ETL) operation between March 17, 2008 and April 18, 2008. Transitory Locations include recreational vehicle (RV) parks, campgrounds, marinas, racetracks, hotels, motels (civilian and military) and carnivals.

During this operation, enumerators will visit these identified areas and complete census questionnaires for residents who have no other place of residence for which they can be counted.

To support data collection activities, respondents will be able to call the toll-free telephone number to obtain information about the dress rehearsal. Census Bureau employees at the call center will provide telephone questionnaire assistance by answering questions about the census questionnaire and about the dress rehearsal and provide fulfillment services for respondents who request a replacement questionnaire, a questionnaire in a language other than English, or a language assistance guide. In addition, beginning in late March 2008, the Census Bureau will be placing unaddressed Be Counted forms in community locations and Walk-in Assistance Centers throughout the dress rehearsal sites for respondents to use to submit their census information. The Census Bureau intends to make these forms available in the English, Spanish and Chinese languages.

As part of the 2008 Census Dress Rehearsal, the Census Bureau will conduct the 2008 Coverage Followup operation and the 2008 Census Coverage Measurement operation. Information collection requests for these operations will be submitted separately for OMB review. Brief descriptions of these operations are included below for reference purposes.

The 2008 Coverage Follow-up operation is designed to improve coverage by collecting additional information from households identified with the following criteria, such as:

- Unresolved potential duplicate persons based on the unduplication operation;
- Count discrepancies on their mail-back questionnaires as a result of the coverage edit;
- Yes responses to the coverage probes on the mail-back questionnaires;
- Large households (more than six persons) on their mail-back questionnaires; and,
- Persons identified on administrative records but not included on their census questionnaire.

Coverage Follow-up will be conducted on the telephone. We will contact the above households from a commercial call center and complete a Coverage Follow-up web-based questionnaire.

The 2008 Census Coverage Measurement (CCM) operations are designed to rehearse all of the planned coverage measurement operations to ensure they are working as expected, and that they are integrated with the appropriate census operations. This is particularly important because the dress rehearsal is the first time in the 2010 census cycle that coverage measurement operations for housing units will be conducted. The CCM operations planned for the dress rehearsal, to the extent possible, will mirror those that will be conducted for the 2010 Census to provide estimates of net coverage error and coverage error components (omissions and erroneous enumerations) for person and housing units. Because the dress rehearsal is being conducted in only two sites, our ability to produce good estimates of omissions and erroneous enumerations will be limited.

III. Data

OMB Number: Not available.

Form Number(s): DX–1—(Initial Mailback Questionnaire, also used for Replacement and U/L).

DX–1(UL)—Update Leave (ADD)
DX–1(E/S)—Bilingual (English/Spanish)
DX–1(C)—FULFILLMENT—Mailback Language Questionnaire (Chinese)
DX–10—Be Counted (English)
DX–10(S)—Be Counted (Spanish)
DX–10(C)—Be Counted (Chinese)
DX–15—Transient Enumeration
DX–20—ICR (English)
DX–20(S)—ICR (Spanish)
DX–21—Military Census Report
DX–61—Informational copy of Mailback Questionnaire
DX–61(E/S)—Informational copy of Bilingual Questionnaire (English/Spanish)
DX–351—Other Living Quarters Validation Electronic Data Collection:
DX–1(EE)—NRFU (English)
DX–1(ESE)—NRFU (Spanish)
DX–1(ERE)—NRFU Reinterview (English)
DX–1(ERSE)—NRFU Reinterview (Spanish)

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated number of Respondents: Approximately 480,000 housing units for NRFU and Vacant Delete Check. Approximately 16,450 housing units for Reinterview. Approximately 42,421 residents in group living situations.

Estimated Time Per Response: All housing unit questionnaires will require approximately 10 minutes for response. The ICR questionnaires will require approximately 5 minutes for response.

Estimated Total Annual Burden Hours: Approximately 80,000 hours for the housing units that responded by mail or during NRFU. Approximately 2,742 hours for Reinterview. Approximately 3,535 hours for Group Quarters Enumeration, Service-Based Enumeration and Military Enumeration combined.

Estimated Total Annual Cost: There is no cost to respondents except for their time to respond.

Respondent Obligation: Mandatory.

Legal Authority: Title 13 of the United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected, and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 24, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–1410 Filed 1–29–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Census Coverage Measurement Housing Unit Followup Operation

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 2, 2007.

ADDRESSES: Direct all comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington DC 20230 (or via the internet at *Dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Magdalena Ramos, U.S. Census Bureau, 4600 Silver Hill Rd., Room 4H265, Washington, DC 20233, 301–763–4295 (or via the Internet at *Magdalena.Ramos@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

In preparation for the 2010 Census, the U.S. Census Bureau will conduct a Census Coverage Measurement (CCM) test as part of the 2008 Census Dress Rehearsal. The 2008 Census Dress Rehearsal will be conducted in two sites, one urban, and the other one, a mix of urban and suburban. San Joaquin County, California is the urban site. South Central North Carolina has been selected as the urban/suburban mix test site. This area consists of Fayetteville and nine counties surrounding Fayetteville (Chatham, Cumberland, Harnett, Hoke, Lee, Montgomery, Moore, Richmond, and Scotland). As is typical, the CCM operations and activities will be conducted separate from and independent of the census operations. The CCM program for the dress rehearsal is designed to test that all planned coverage measurement operations are working as expected, that they are integrated internally, and that they are coordinated with the appropriate census operations. This is particularly important because the dress rehearsal is the first time in the 2010 census cycle that CCM operations for housing units will be conducted. The CCM operations planned for the dress rehearsal, to the extent possible, will mirror those that will be conducted for the 2010 Census to provide estimates of Net Coverage Error and Components of Coverage Error (omissions and erroneous enumerations) for housing units and persons in housing units (see Definition of Terms). The purpose of this effort in both the DR and 2010 is to evaluate the coverage of the census. The data collection and matching methodologies for previous coverage measurement programs were designed only to measure net coverage error, which reflects the difference between omissions and erroneous inclusions.

The 2008 CCM test will be comprised of two samples selected to measure census coverage of housing units and the household population: the population sample (P sample) and the enumeration sample (E sample). The P sample is a sample of housing units and persons obtained independently from the census for a sample of block clusters. The E sample is a sample of census housing units and enumerations in the same block cluster as the P sample. The independent roster of housing units is obtained during the CCM Independent Listing, the results of which will be matched to census housing units in the sample block clusters and surrounding blocks. A separate OMB register notice was previously submitted for the Independent Listing operation.

After the CCM Independent Listing and matching operations have taken place, some cases will be identified to receive the CCM Housing Unit Followup (HUFU) interview. Generally, these will be cases where additional information is needed to determine housing unit status (for example, clarify if the addresses refer to a housing unit, identify duplicate addresses) or resolve inconsistencies observed during the matching operations between the CCM and census addresses in the block cluster. Using a paper questionnaire tailored for the type of followup required, interviewers will contact a member (or proxy, as a last resort) of each housing unit needing followup to answer questions that might allow a resolution of housing unit status or clarify discrepancies. We also will conduct a quality control operation of the HUFU called the Housing Unit Followup Quality Control (HUFU QC) of ten percent of the HUFU workload to ensure that the work performed is of acceptable quality. There will be one Housing Unit Followup Form, DX–1303, that will be used for HUFU and HUFU QC.

Definition of Terms

Components of Coverage Error—The two components of census coverage error are census omissions (missed persons or housing units) and erroneous inclusions (persons or housing units enumerated in the census that should not have been). *Examples of erroneous inclusions are:* housing units built after Census Day and persons or housing units enumerated more than once (duplicates).

Net Coverage Error—Reflects the difference between census omissions and erroneous inclusions. A positive net error indicates an undercount, while a negative net error indicates an overcount.

For more information about the Census 2000 Coverage Measurement Program, please visit the following page of the Census Bureau's website: *http://www.census.gov/dmd/www/refroom.html*

II. Method of Collection

The housing unit followup operation will be conducted using person-to-person interviews.

III. Data

OMB Number: None.
Form Number: DX–1303.
Type of Review: Regular submission.
Affected Public: Individuals or households.
Estimated Number of Respondents: 16,000 Housing units (HUs) for Housing Unit Followup, and 1,600 HUs for Housing Unit Followup QC.
Estimated Times Per Response: 3 minutes.
Estimated Total Annual Burden Hours: 880.
Estimated Total Annual Cost to the Public: No cost to the respondent except for their time to respond.
Respondent Obligation: Mandatory.
Legal Authority: Title 13, U.S. Code, Sections 141, 193, and 221.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection; they also will become a matter of public record.

Dated: January 24, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–1422 Filed 1–29–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2008 New York City Housing and Vacancy Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 2, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via e-mail at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Howard Savage, U.S. Census Bureau, Room 7H090, Washington, DC 20233–8500, phone (301)763–5665, or by e-mail to *howard.a.savage@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to conduct the 2008 New York City Housing and Vacancy Survey (NYCHVS) under contract for the City of New York. The primary purpose of the survey is to measure the rental vacancy rate which is the primary factor in determining the continuation of rent control regulations. Other survey information is used by city and state agencies for planning purposes as well as the private sector for business decisions. New York is required by law to have such a survey conducted every three years.

Information to be collected includes: age, gender, race, Hispanic origin, and relationship of all household members; employment status, education level, and income for persons aged 15 and above. Owner/renter status (tenure) is asked for all units, including vacants. Utility costs, monthly rent, availability of kitchen and bathroom facilities, maintenance deficiencies, neighborhood suitability, and other specific questions about each unit such as number of rooms and bedrooms are also asked. The survey also poses a number of questions relating to handicapped accessibility. For vacant units, a shorter series of similar questions is asked. Finally, all vacant units and approximately five percent of occupied units will be reinterviewed for quality assurance purposes.

The Census Bureau compiles the data in tabular format based on specifications of the survey sponsor, as well as non-identifiable microdata. Both types of data are also made available to the general public through the Census Internet site. Note, however, that the sponsor receives the same data that are made generally available so as not to enable the identification of any sample respondent or household.

II. Method of Collection

All information will be collected by personal interview.

III. Data

OMB Number: 0607–0757.

Form Number: H–100, H–108 (reinterview).

Type of Review: Regular.

Affected Public: Households.

Estimated Number of Respondents: 16,500 occupied units. 1,500 vacant units. 2,000 reinterviews.

Estimated Time Per Response: 30 minutes occupied. 10 minutes vacant. 10 minutes reinterview.

Estimated Total Annual Burden Hours: 8,835.

Estimated Total Annual Cost: The only cost to the respondent is that of his/her time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C.— Section 8b and Local Emergency Housing Rent Control Act, Laws of New York (Chapters 8603 and 657).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 24, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–1427 Filed 1–29–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

[Docket No. 05–BIS–14]

Bureau of Industry and Security

Action Affecting Export Privileges; Ihsan Elashi, Tetrabal Corporation, Al Kayali Corporation, Mynet.Net Corporation, Infocom Corporation, Synaptix.Net, Maysoon Al Kayali, Hazim Elashi, Bayan Elashi, Ghassan Elashi, Basman Elashi, Majida Salem and Fadwa Elafrangi; Order Making Denial of Export Privileges Against Ihsan Elashi Applicable to Related Persons

Pursuant to Section 766.23 of the Export Administration Regulations (''EAR''), the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I make the denial order that was imposed against Ihsan Elashi on June 29, 2006 applicable to the following

entities, as persons related to Ihsan Elashi:

(1) Tetrabal Corporation, 605 Trail Lake Drive, Richardson, Texas 75081.

(2) Al Kayali Corporation, 605 Trail Lake Drive, Richardson, Texas 75081.

(3) Mynet.net Corporation, 605 Trail Lake Drive, Richardson, Texas 75081.

(4) Infocom Corporation, 401 International Parkway, Richardson, Texas 75081.

(5) Synaptix.Net, 401 International Parkway, Richardson, Texas 75081.

(6) Maysoon Al Kayali, 605 Trail Lake Drive, Richardson, Texas 75081.

(7) Hazim Elashi, Inmate 28685–177, Seagoville FCI, 2113 North Highway, Seagoville, Texas 75159.

(8) Bayan Elashi, Inmate 28688–177, Seagoville FCI, 2113 North Highway, Seagoville, Texas 75159.

(9) Ghassan Elashi, 304 Town House Lane, Richardson, Texas 75081.

(10) Basman Elashi, Inmate 29686–177, Seagoville FCI, 2113 North Highway, Seagoville, Texas 75159.

(11) Majida Salem, 304 Town House Lane, Richardson, Texas 75081.

(12) Fadwa Elafrangi, 304 Town House Land, Richardson, Texas 75081.

(hereinafter collectively referred to as the ''Related Persons'').

On June 29, 2006, an order was issued and on July 10, 2006, that order was published in the **Federal Register** imposing a fifty year denial of export privileges against Ihsan Medhat Elashi (a/k/a I. Ash, Haydee Herrera, Abdullah Al Nasser, Samer Suwwan, and Sammy Elashi), of Seagoville FCI, 2113 North Highway, Seagoville, Texas, 75159 (71 FR 38843, July 10, 2006), resulting from the decision and order issued by the Under Secretary of Commerce for Industry and Security after litigation of administrative charges against Ihsan Elashi related to his involvement in a conspiracy to export items to Syria without the required licenses and for his involvement in a scheme to export items to various destinations in violation of a temporary denial of his export privileges.

BIS has presented evidence that indicates that the Related Persons are related to Ihsan Elashi by ownership control, position of responsibility, affiliation, or other connection in the conduct of trade or business, and that it is necessary to add these persons to the denial order against Ihsan Elashi in order to avoid evasion of that order.

BIS has notified all Related Persons of this action in accordance with the requirements of Sections 766.23 and 766.5(b) of the Export Administration Regulations and BIS received responses from five of the Related Persons. Three of the responses, those of Ghassan Elashi, Majida Salem, and Fadwa Elafrangi, failed to address whether they are related to Ihsan Elashi by ownership control, position of responsibility, affiliation, or other connection in the conduct of trade or business, and whether it is necessary to add these persons to the denial order against Ihsan Elashi in order to avoid evasion of that order. One of the responses, that of Basman Elashi, noted that he was not involved in any of the violations committed by Ihsan Elashi in violation of the temporary denial order against Ihsan Elashi and Tetrabal Corporation. The final response, that of Bayan Elashi, denies complicity in the specific transactions that were the subject of the litigation in the Ihsan Elashi case. After a review of the evidence and the responses, I find that it is necessary to make the Order imposed against Ihsan Elashi applicable to the above-named Related Persons to prevent the evasion of that Order.

It Is Now Therefore Ordered

First, that having been provided notice and opportunity for comments as provided in Section 766.23 of the Export Administration Regulations (hereinafter, the ''Regulations''), the following parties (hereinafter, ''Related Persons'') have been determined to be related to Ihsan Medhat Elashi (a/k/a I. Ash, Haydee Herrera, Abdullah Al Nasser, Samer Suwwan, and Sammy Elashi), of Seagoville FCI, 2113 North Highway, Seagoville, Texas, 75159, by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services, and it has been deemed necessary to make the Order denying the export privileges of Ihsan Elashi applicable to these Related Persons in order to prevent evasion of the Order:

A. Tetrabal Corporation, 605 Trail Lake Drive, Richardson, Texas 75081.

B. Al Kayali Corporation, 605 Trail Lake Drive, Richardson, Texas 75081.

C. Mynet.net Corporation, 605 Trail Lake Drive, Richardson, Texas 75081.

D. Infocom Corporation, 401 International Parkway, Richardson, Texas 75081.

E. Synaptix.Net, 401 International Parkway, Richardson, Texas 75081.

F. Maysoon Al Kayali, 605 Trail Lake Drive, Richardson, Texas 75081.

G. Hazim Elashi, Inmate 28685–177, Seagoville FCI, 2113 North Highway, Seagoville, Texas 75159.

H. Bayan Elashi, Inmate 28688–177, Seagoville FCI, 2113 Noth Highway, Seagoville, Texas 75159.

I. Ghassan Elashi, 304 Town House Lane, Richardson, Texas 75081.

J. Basman Elashi, Inmate 29686–177, Seagoville FCI, 2113 North Highway, Seagoville, Texas 75159.

K. Majida Salem, 304 Town House Lane, Richardson, Texas 75081.

L. Fadwa Elafrangi, 304 Town House Lane, Richardson, Texas 75081.

Second, that the denial of export privileges described in the Order against Ihsan Elashi which was published in the **Federal Register** on July 10, 2006, shall be made applicable to the Related Persons until June 29, 2056 as follows:

I. The Related Persons, their successors or assigns, and when acting for or on behalf of the Related Persons, their officers, representatives, agents, or employees (collectively, ''Denied Persons'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Persons any item subject to the Regulations:

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Persons of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Persons of any item subject to the Regulations that

has been exported from the United States;

D. Obtain from the Denied Persons in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Persons, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Persons if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that in accordance with the provisions of Section 766.23(c) of the Export Administration Regulations, any of the Related Persons may, at any time, make an appeal related to this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be published in the **Federal Register** and a copy provided to each of the Related Persons.

This Order is effective upon publication in the **Federal Register**.

Entered this 23d day of January 2007.

Wendy L. Wysong,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 07–389 Filed 1–29–07; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Acting Affecting Export Privileges; Fernando Sero, a/k/a Ferdie Resada; Order Denying Export Privileges

A. Denial of Export Privileges of Fernando Sero, a/k/a Ferdie Resada

On December 15, 2005, in the U.S. District Court for the Southern District of New York, following a plea of guilty, Fernando Sero, a/k/a Ferdie Resada (''Sero'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. §§ 2778 (2000)) (''AECA''). Sero pled guilty to knowingly and willfully causing to be exported from the United States to a location on the Island of Mindanao, in the Southern Philippines, U.S. defense articles to wit, weapons parts, which were designated as defense articles on the United States Munitions List, without having first obtained a valid license from the Department of State for such export, or written authorization for such an export. Sero was sentenced to 40 months imprisonment followed by three years of supervised release.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. §§ 2401–2420 (2000)) (''Act'') [1] and Section 766.25 of the Export Administration Regulations[2] (''Regulations'') provide, in pertinent part, that ''[t]he Director of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of * * * Section 38 of the Arms Export Control Act (22 U.S.C. 2778),'' for a period not to exceed 10 years from the date of conviction. 15 CFR §§ 766.25(a) and (d). In addition, Section 750.8 of the Regulations states that BIS's Office of Exporter Services may revoke any BIS licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Sero's conviction for violating the AECA, and have provided notice and an opportunity for Sero to make a written submission to the Bureau of Industry and Security as provided in Section 766.25 of the Regulations. I have also received a written submission from Sero explaining why he does not believe a 10 year denial is appropriate and have decided, following consideration of his submission and consultations with the Export Enforcement, including the Director, Office of Export Enforcement, to deny Sero's conviction.

Accordingly, it is hereby ordered:

I. Until December 15, 2015, Fernando Sero, a/k/a Ferdie Resada, Inmate No. 84301–054, FCI Loretto, Federal Correction Institute, P.O. Box 1000, Loretto, PA 15940, and with an address at: 37 Rugby Road, Yonkers, NY 10710, and when acting for or on behalf of Sero, his representatives, assigns, agents, or employees, (collectively referred to hereinafter as the ''Denied Person'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned,

[1] Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 3, 2006 (71 FR 44551, Aug. 7, 2006), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701–1706 (2000)) (''IEEPA'').

[2] The Regulations are currently codified at 15 CFR Parts 730–774 (2006).

possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Fernando Sero by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until December 15, 2015.

VI. In accordance with Part 756 of the Regulations, Sero may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Sero. This Order shall be published in the **Federal Register**.

Dated: January 22, 2007.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 07–390 Filed 1–29–07; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121406B]

Marine Mammals; Pinniped Removal Authority

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

ACTION: Notice; request for comments.

SUMMARY: NMFS received an application under Section 120 of the Marine Mammal Protection Act (MMPA) from the states of Oregon, Washington, and Idaho requesting authorization to intentionally take, by lethal methods, individually identifiable California sea lions (Zalophus californianus) that prey on Pacific salmon and steelhead (*Onchorhynchus* spp.) listed as threatened or endangered under the Endangered Species Act (ESA) in the Columbia River in Washington and Oregon. This authorization is requested as part of a larger effort to protect and recover listed salmonid stocks in the river. NMFS has determined that the application contains sufficient information to warrant convening a Pinniped-Fishery Interaction Task Force (Task Force), which will be established after the close of the public comment period. NMFS solicits public comments on the application, other information related to pinniped predation on salmonids at Bonneville Dam, and nominations for potential members of the Task Force.

DATES: Comments and information must be received by April 2, 2007.

ADDRESSES: Comments on the application should be addressed to Assistant Regional Administrator, Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232. Comment may also be submitted by email to *SeaLion.Predation@noaa.gov* or by fax to 301–427–2527.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, (503) 231–2005, or Tom Eagle, (301) 713–2322, ext. 105.

SUPPLEMENTARY INFORMATION:

Electronic Access

The states' application and background information on pinniped predation on listed salmonids, and non-lethal efforts to address the predation, are available via the Internet at the following address: *http://www.nwr.noaa.gov*.

Statutory Authority

Section 120 of the MMPA (16 U.S.C. 1361, *et seq*.) allows the Secretary of Commerce, acting through the Assistant Administrator for Fisheries (Assistant Administrator), NMFS, to authorize the intentional lethal taking of individually identifiable pinnipeds that are having a significant negative impact on the decline or recovery of salmonids that are listed as threatened or endangered under the Endangered Species Act (ESA). The authorization applies only to pinnipeds that are not listed under the ESA, or designated as a depleted or strategic stock under the MMPA. Pursuant to section 120(b) and (c), applicants may request authorization to lethally remove pinnipeds, and the Assistant Administrator is required to:

(1) Review the application to determine whether the applicant has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force (Task Force);

(2) Establish the Task Force and publish a notice in the **Federal Register** requesting public comment on the application if sufficient evidence has been produced;

(3) Consider any recommendations made by the Task Force in making a determination whether to approve or deny the application; and

(4) If approved, immediately takes steps to implement the intentional lethal taking, which shall be performed by Federal or state agencies, or qualified individuals under contract to such agencies.

The Task Force is required to be comprised of the following: (1) NMFS/NOAA staff, (2) scientists who are knowledgeable about the pinniped interaction, (3) representatives of affected conservation and fishing community organizations, (4) treaty Indian tribes, (5) the states, and (6) such other organizations as NMFS deems appropriate. The Task Force reviews the application, other background information, and public comments and, as required by statute, recommends to NMFS whether to approve or deny the application. The Task Force is also required to submit with its recommendation, a description of the specific pinniped individual or individuals, the proposed location, time, and method of such taking, criteria for evaluating the success of the action, the duration of the intentional lethal taking authority, and a suggestion for non-lethal alternatives, if available and practicable, including a recommended course of action.

Background

On December 5, 2006, NMFS received an application co-signed by the Washington Department of Fish and Wildlife (WDFW), the Oregon Department of Fish and Wildlife (ODFW) and the Idaho Department of Fish and Game (IDFG) requesting authorization to intentionally take, by lethal methods, individually identifiable California sea lions in the Columbia River, which are having a significant negative impact on the recovery of threatened and endangered Pacific salmon and steelhead. According to the states' application, impacted salmon and steelhead include Lower Columbia River Chinook (threatened), Lower Columbia River steelhead (threatened), Middle Columbia River steelhead

(threatened), Upper Columbia River Spring Chinook (endangered), Snake River Spring/Summer Chinook (threatened), Snake River Basin steelhead (threatened), Upper Willamette Chinook (threatened), and Upper Willamette steelhead (threatened). The states requested that NMFS establish a Pinniped-Fishery Interaction Task Force and initiate the process provided by Section 120 of the MMPA.

The states' application references studies conducted by the U.S. Army Corps of Engineers (Corps) Fisheries Field Unit that document when pinniped predation occurs in the Bonneville Dam tailrace, numbers of pinnipeds present, numbers of individual sea lions observed, numbers of salmonids consumed, and the proportion of all salmonids passing Bonneville that are taken by pinnipeds foraging in the tailrace of the dam. Information from the study, begun in 2002 and continuing through 2006, indicates that predation increased from an estimated 1,010 salmonids (0.35 percent of the salmonids passing the dam) in 2002 to an estimated 2,920 salmonids (3.44 percent of the salmonids passing the dam) in 2005. In 2006, an estimated 3,023 salmonids (2.80 percent of the total return) were consumed by sea lions immediately below the dam. Pinniped predation estimates at the dam represent a minimum lower bound on the total river-wide predation because they apply only to the area immediately below the dam (less than 0.5 miles from the structure). California sea lions, however, have been documented by WDFW/ODFW (unpublished data) feeding on salmonids immediately below Bonneville to navigation Marker 85 (approximately 6 miles downstream) and throughout the lower Columbia River.

During the spring salmon return in 2005 and 2006, the Corps, NMFS, ODFW, and WDFW tried to deter sea lions from foraging on salmon and steelhead in the dam's fish passage facilities and tailrace area. Although the Corps prevented sea lions from entering the dam's fish passage system, the agencies' collective non-lethal deterrence efforts have done little to reduce predation of salmon and steelhead in the tailrace area. While a more intensive non-lethal hazing program is planned by Oregon and Washington in 2007, the states noted they must also pursue the MMPA option for lethal removal.

The states propose to lethally remove a limited number of California sea lions above Columbia River Navigation Marker 85 (approximately river mile 139.5), annually from January 1 to June 30. Any lethal removal activity would be preceded by a period of non-lethal deterrent activity (e.g., acoustic and tactile harassment) and followed by an evaluation period. Under the proposal, this incremental process (i.e., non-lethal deterrence followed by lethal removal and an evaluation period) would be repeated as necessary. In addition to animals located above Marker 85, all individually marked California sea lions that have been documented feeding on salmonids at Bonneville Dam would be candidates for removal without restriction to time or location in the river. Lethal removals in the first year of the proposed authorization is proposed to be less than one percent of the Potential Biological Removal (PBR) level for California sea lions (current PBR level is 8,333 animals out of an estimated population of 237,000); the number proposed to be removed in subsequent years is anticipated to be lower and would likely approach zero within several years. Individual sea lions would be lethally removed by humane methods following recommendations of a Safety and Animal Care committees convened by the states.

The proposed action to address pinniped predation is part of a comprehensive fish recovery strategy. As reported in the application, significant actions to address the decline of salmon populations in the Columbia River basin have been underway for several decades and are progressing each year as a result of development and implementation of ESA conservation and recovery plans throughout the basin. These actions include harvest reductions, hydroelectric system mitigation, watershed and sub-basin planning, and hatchery reform.

The applicants state that continued use of only non-lethal methods will likely result in an expansion of the problem by allowing increasing numbers of sea lions to become recruited into the pool of nuisance animals. The expected benefit of permanent removal of the animals in question will be to reduce a recent significant source of mortality that has affected the states' ongoing efforts to recover ESA listed salmonids in the Columbia River Basin.

In considering whether the application should be approved or denied, the MMPA requires that the Task Force and NMFS consider:

(1) Population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individual pinnipeds are involved;

(2) Past efforts to deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success;

(3) The extent to which such pinnipeds are causing undue injury impact to, or imbalance with, other species in the ecosystem, including fish populations; and

(4) The extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

The Assistant Administrator has considered the states' application and determined that it provides sufficient evidence to warrant establishing a Task Force. The application describes the means of identifying individual pinnipeds, includes a detailed description of the problem interactions between pinnipeds and listed salmonids at and below Bonneville Dam, and describes the expected benefits of potential taking of pinnipeds. The application also documents past non-lethal efforts to prevent the problem interactions.

Request for Comments and Other Information

NMFS solicits public comments on the states' application and any additional information that should be considered by the Task Force in making its recommendation, or NMFS in making its determination whether to approve or deny the application. NMFS is interested in receiving additional information related to the factors that must be considered in determining whether to approve or deny the application (see Background) and on the impact of sea lion predation at Bonneville Dam on the affected salmonid populations.

NMFS requests that comments be specific. In particular, we request information regarding:

(1) Observations of sea lions (number, species and predation on salmonids) in the Columbia River above or below Bonneville Dam;

(2) Information on areas where numbers of sea lions are concentrated in the lower Columbia River, between Tongue Point (river mile 16) and Navigation Marker 85 (river mile 135), including resting (haulout) sites and locations where sea lions have been repeatedly observed taking salmonids; and

(3) Dates when sea lions have been observed in the river above Tongue Point to Bonneville Dam.

NMFS also solicits the names and affiliations of experts from the academic and scientific community, tribes, Federal and state agencies, and the private sector for consideration as potential Task Force members. A Task Force, established under MMPA section 120 must, to the maximum extent practicable, consist of an equitable balance among representatives of resource users and non-users as outlined above. The cover letter to the states' application included a list of suggested agencies and organizations for inclusion in the Task Force (see Electronic Access). Nominations for Task Force membership must include sufficient background information (e.g., 1–page resume) on the candidate to allow us to judge their expertise and should indicate the prospective candidate's willingness to serve without compensation.

Dated: January 23, 2007.

Samuel D. Rauch III,

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

[FR Doc. E7–1447 Filed 1–29–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012407A]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council), its Bycatch/Limited Access Privilege Program (LAPP) Committee, its Ecosystem Committee, its Tilefish Committee, its Executive Committee, and its Law Enforcement Committee will hold public meetings.

DATES: The meetings will be held on Tuesday, February 13, 2007 through Thursday, February 15, 2007. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: This meeting will be held at the Holiday Inn Select, 630 Naamans Rd., Claymont, DE; telephone: (302) 791–2700.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331, ext. 19.

SUPPLEMENTARY INFORMATION:

Tuesday, February 13, 2007

10 a.m. to 12 noon - The Bycatch/LAPP Committee will meet.

1 p.m. to 4 p.m. - The Ecosystem Committee will meet.

4 p.m. to 5:30 p.m. - The Tilefish Committee with meet.

Wednesday, February 14, 2007

8 a.m. to 10 a.m. - The Executive Committee will meet.

10 a.m. - The Council will convene, at which time Regular Council business will be conducted. The Council will receive a report on the outcome on the 44th Stock Assessment Review.

2 p.m. to 4 p.m. - The Council will review Framework 7 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) [Meeting1].

4 p.m. to 5 p.m. - The Council will meet to review and approve Amendment 14 to Summer Flounder, Scup, and Black Sea Bass FMP [Scup Rebuilding Plan].

Thursday, February 15, 2007

8 a.m. to 9 a.m. - The Law Enforcement Committee will meet.

9 a.m. to 10:30 a.m. - The Council will convene and receive a presentation on Northeast Monitoring Program (NEAMAP).

10:30 a.m. to 11 a.m. - The Council will received an update from the South Atlantic Council regarding its Snapper-Grouper FMP.

11 a.m. to 11:30 a.m. - The Council will review and adopt Amendment 9 to Squid, Mackerel, Butterfish FMP.

11:30 a.m. to 12:30 p.m. - The Council will discuss Amendment 10 to the Squid, Mackerel, Butterfish FMP.

1:30 p.m. until adjournment - The Council will receive committee reports and address any continuing or new business.

Agenda items for the Council's committees and the Council itself are:

The Bycatch/LAPP Committee will review and evaluate public comments on proposed Standardized Bycatch Reporting Methodology (SBRM) Amendment, discuss and develop a Council position regarding Secretarial submission of the SBRM Amendment, and review the reauthorized Magnuson-Stevens Act (MSA) LAPP charge.

The Ecosystems Committee will discuss: NMFS perspective on liquified natural gas (LNG) facilities and windmill farms, industry (Blue Water Wind) perspective on offshore energy sources, Ecosystem Approach to Fishery Management, reauthorized MSA study requirement for regional ecosystem based management and research, exclusive economic zone (EEZ) artificial reef management, Corps of Engineers (COE) permit conditions, and special management zones.

The Tilefish Committee will review Fishery Management Action Team (FMAT) progress regarding Amendment 1 and provide guidance regarding future actions.

The Executive Committee will review new requirements regarding the reauthorized MSA and associated timelines. As a minimum, the Committee will discuss the role of the Scientific and Statistical Committee (SSC) in future Council actions; discuss how best to integrate MSA and National Environmental Protection Agency (NEPA); address overcapitalization and excess harvesting capacity; and, discuss the integration of cooperative research, experimental fishing permits and research set-aside (RSA). The Committee will also discuss utilization of Joint Atlantic States Marine Fisheries Commission/Mid-Atlantic Fishery Management Council (ASMFC/MAFMC) advisors.

When the Council convenes, it will conduct its regular business session and receive a report on the 44th Stock Assessment Review to include surfclams, ocean quahogs and skate. Meeting 1 of Framework 7 to Summer Flounder, Scup, and Black Sea Bass FMP will be held to review options/alternatives regarding a mechanism to change biological reference points during the specification setting process following stock assessment reviews. The Council will then review and discuss public hearing and written comments concerning Amendment 14 to the Summer Flounder, Scup, and Black Sea Bass FMP [Scup Rebuilding Plan], decide and adopt final measures to be included in Amendment 14, and approve Amendment 14 for Secretarial submission.

The Law Enforcement Committee will discuss enforcement priorities for the 2007 fishing year, address maritime security issues impacting the fishing industry, and develop list of potential actions for the Committee in 2007.

The Council will receive a presentation on the NEAMAP and receive an update from the South Atlantic Council regarding its Snapper-Grouper FMP. The Council will review and approve Amendment 9 to Squid, Mackerel, and Butterfish FMP for Secretarial submission. The Council

will receive an update on the timeline and status of butterfish rebuilding efforts and discuss the use and role of SSC in addressing butterfish stock rebuilding (Amendment 10 to Squid, Mackerel, and Butterfish FMP). This will be followed by committee reports and any continuing or new business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders, (302) 674–2331 ext: 18, at least 5 days prior to the meeting date.

Dated: January 25, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–1389 Filed 1–29–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012407B]

Western Pacific Regional Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The 94th meeting of the Western Pacific Regional Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will convene Tuesday, February 20, 2007, through Thursday February 22, 2007. The meeting will be held between 8:30 a.m. and 5 p.m. each day. See **SUPPLEMENTARY INFORMATION** for specific times, dates, and agenda items.

ADDRESSES: The SSC meeting will be held at the Council Office Conference Room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION:

9 a.m., Tuesday, February 20, 2007

1. Introductions
2. Approval of draft agenda and assignment of rapporteurs
3. Approval of the minutes of the 92nd meeting
4. Report of the Pacific Science Center Director
5. Status of Stocks
   A. Report to Congress
   B. SSC participation in stock assessment review process
6. Magnuson-Stevens Act (MSA) Reauthorization
   A. Total Allowable Catches (TACs)
   B. Limited Access Privilege Programs (LAPPs)
   C. Recreational fisher registration
   D. Stipend
7. Ecosystem and Habitat
   A. Fishery Ecosystem Plan (FEP) Programmatic Environmental Impact Statement (PEIS) update
   B. Essential Fish Habitat (EFH) revisions
   C. Ecosystem Policy Workshop
   D. Public Comment
   E. Discussion and Recommendations
8. Protected Species
   A. Monk Seal Fatty Acid Study report
   B. Marine Mammal Advisory Committee (MMAC)
   C. Public Comment
   D. Discussion and Recommendations
9. Insular Fisheries
   Precious Corals and Crustaceans
   i. Ecological impacts of Carijoa riisei on black coral habitat
   ii. Northwestern Hawaiian Island (NWHI) Lobster Research
   iii. Public Comment
   iv. Discussion and Recommendations

8:30 a.m,. Wednesday, February 21, 2007

   A. Bottomfish and Seamount Groundfish
   B. Revising NWHI bottomfish zones
   C. Main Hawaiian Islands (MHI) bottomfish
   D. Insular Stock Assessment
   E. Public Comment
   F. Discussion and Recommendations
10. Pelagics Fisheries
   A. Pelagic/TAC framework
   B. Council shark project
   C. Guam longline area closure
   D. American Samoa and Hawaii Longline quarterly reports
   E. International Fisheries
   a. Western and Central Pacific Fishery Commission (WCPFC3)
   b. Tuna Regional Fishery Management Organization (RFMO) Meeting
   c. Inter-American Tropical Tuna Commission (IATTC)
   d. Bycatch Consortium
   F. Public Comment
   G. Discussion and Recommendations

8:30 a.m., Thursday, February 22, 2007

11. Other Business
   95th SSC meeting
12. Summary of SSC Recommendations to the Council - Paul Callaghan

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: January 25, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–1434 Filed 1–29–07; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its AmeriCorps Enrollment Form and AmeriCorps Exit Form. These forms are used by programs to certify members' eligibility to serve and to receive an education award, and are the only source for certain program-related and demographic information.

Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by April 2, 2007.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, National Service Trust; Attention Bruce Kellogg, 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax sent to: (202) 606–3484, Attention Bruce Kellogg.

(4) Electronically through the Corporation's e-mail address system: *bkellogg@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Bruce Kellogg, (202) 606–6954.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 expected to respond, including 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).

Background

The enrollment and exit forms are completed jointly by members interested in performing a period of national service and by programs providing that opportunity. Upon successfully completing a term of service an AmeriCorps participant may receive an education award that may be used to pay for certain educational expenses or for qualified student loans. Enrollment and exit processing is completed electronically. The paper forms are retained by the programs for audit purposes.

Current Action

The Corporation seeks to renew and revise the current applications. Enrollment form revisions consist of minor formatting and textual changes to add clarity; for example, in providing definitions of the terms 'citizen', 'US national', and 'lawful permanent resident alien'. There are no proposed changes to the current exit form.

The application will otherwise be used in the same manner as the existing application. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on April 30, 2007.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Enrollment Form, and AmeriCorps Exit Form.

OMB Number: 3045–0006 (Enrollment) & 3045–0015 (Exit).

Agency Number: None.

Affected Public: Individuals about to participate in an AmeriCorps program (Enrollment) and AmeriCorps members who have ended their term of service (Exit).

Total Respondents: 73,000 annually for each form.

Frequency: Annually.

Average Time Response: Averages 7 minutes for each form (4 minutes for the AmeriCorps member to complete the form, and 3 minutes for the program staff).

Estimated Total Burden Hours: 17,032 for both forms. (8516 enrollment and 8516 for exit)

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 24, 2007.

Cynthia Wooten,

Manager, National Service Trust.

[FR Doc. E7–1359 Filed 1–29–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–PS–0151]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 1, 2007.

Title, Associated Form, and OMB Number: Trustee Report; DD Form 2826; OMB Control Number 0730–0012.

Type of Request: Extension.

Number of Respondents: 600.

Responses per Respondent: 1.

Annual Responses: 600.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 300.

Needs and Uses: This form is used to report on the administration of the funds received on behalf of a mentally incompetent member of the uniformed services pursuant to 37 U.S.C. 602–604.

Affected Public: Individuals or households.

Frequency: On Occasion.

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

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Office for DoD, Room 10236, new Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

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

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/

Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: January 22, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–378 Filed 1–29–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0152]

Submission for OMB Review; Comment Request

ACTION: Notice. The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 1, 2007.

Title, Associated Form, and OMB Number: Application for Trusteeship; DD Form 2827; OMB Control Number 0730–0013.

Type of Request: Extension.

Number of Respondents: 75.

Responses Per Respondent: 1.

Annual Responses: 75.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 19.

Needs and Uses: This form is used to report on the administration of the funds received on behalf of a mentally incompetent member of the uniformed services pursuant to 37 U.S.C. 602–604.

Affected Public: Individuals or households.

Frequency: On Occasion.

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

OMB Desk Officer: Ms. Hillary Jaffe. Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

DoD Clearance Officer: Ms. Patricia Toppings. Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: January 22, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–379 Filed 1–29–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0166]

Submission for OMB Review; Comment Request

ACTION: Notice. The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 1, 2007.

Title, Associated Form, and OMB Number: Police Records Check; DD Form 369; OMB Control Number 0704–0007.

Type of Request: Extension.

Number of Respondents: 175,000.

Responses per Respondent: 1.

Annual Responses: 175,000.

Average Burden per Response: 27 minutes.

Needs and Uses: Per Sections 504 and 505, Title 10 U.S.C., applicants for enlistment must be screened to identify any discreditable involvement with police or other law enforcement agencies. This information is used to identify persons who may be undesirable for military service. The DD Form 369, ''Police Records Check,'' is forwarded to law enforcement agencies to identify if an applicant has a record.

Affected Public: State, local or tribal government.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Hillary Jaffe. Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

DOD Clearance Officer: Ms. Patricia Toppings. Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: January 22, 2007.

Patricial L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–380 Filed 1–29–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0165]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB Review for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 1, 2007.

Title, Associated Form, and OMB Number: Record of Military Processing—Armed Forces of the United States; DD Form 1966; OMB Control Number 0704–0173.

Type of Request: Extension.

Number of Respondents: 510,000.

Responses per Respondent: 1.

Annual Responses: 510,000.

Average Burden Per Response: 20 minutes.

Annual Burden Hours: 170,000.

Needs and Uses: Title 10 U.S.C., Sections 504, 505, 508, 12102; Title 14 U.S.C., Sections 351 and 632; and 50 USC Appendix Section 451, requires applicants to meet standards for

enlistment into the Armed Forces. This information collection is the basis for determining eligibility of applicants for enlistment in the Armed Forces and is needed to verify data given by the applicant and to determine his/her qualification of enlistment. The information collected aids in the determination of qualifications, term of service, and grade in which a person, if eligible, will enter active duty or reserve status.

Affected Public: Individuals or households.

Frequency: On Occasion.

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

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

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

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: January 22, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–381 Filed 1–29–07; 8:45 am]

BILLING CODE 5001–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0167]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 1, 2007.

Title, Associated Form, and OMB Number: Medical Screening of Military Personnel; DD Form 2807–1 and DD Form 2807–2; OMB Control Number 0704–0413.

Type of Request: Extension.

Number of Respondents: 850,000.

Responses per Respondent: 1.

Annual Responses: 850,000.

Average Burden per Response: 10 minutes (average).

Annual Burden Hours: 135,833.

Needs and Uses: Title 10 USC 504, 505, 507, 532, 978, 1201, 1202, and 4346, require military applicants to meet medical accession standards for enlistment, induction, and appointment to the Armed Forces. This information collection is the basis for determining medical eligibility of applicants for entry in the Armed Forces. Information is needed to determine the medical qualifications of applicants based upon their current and past medical history. The DD Form 2807–1, ''Report of Medical History'' and the DD Form 2807–2, ''Medical Prescreen of Medical History Report,'' will be the forms used to collect the necessary data needed from military applicants to elicit a more accurate picture of their well being and medical history. The information obtained on the DD Form 2807–2 will also identify any medical disqualifying condition(s) prior to the application process and meets the Congressional requirements to obtain the applicants Health Care provider and Insurance provider.

Affected Public: Individuals or households; Not-for-profit institutions.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: January 22, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–382 Filed 1–29–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0211]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 1, 2007.

Title, Associated Form, and OMB Number: Technical Assistance for Public Participation (TAPP) Application; DD Form 2749; OMB Control Number 0704–0392.

Type of Request: Extension.

Number of Respondents: 50.

Responses per Respondent: 1.

Annual Responses: 50.

Average Burden per Response: 4 hours.

Annual Burden Hours: 200.

Needs and Uses: This collection of information is necessary to identify products or services requested by community members of restoration advisory boards or technical review committees to aid in their participation in the Department of Defense's environmental restoration program, and to meet Congressional reporting requirements.

Affected Public: Not-for-profit institutions.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Hillary Jaffe. Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

DOD Clearance Officer: Ms. Patricia Toppings. Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Divsion, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: January 22, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–383 Filed 1–29–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DOD–2007–OS–0006]

Proposed Collection; Comment Request

AGENCY: Defense Threat Reduction Agency (DTRA), DoD.

ACTION: Notice.

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

DATES: Consideration will be given to all comments received by April 2, 2007.

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

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the associated collection instrument, please write to the Defense Threat Reduction Agency, Attn: NTPR, 8725 John J. Kingman Road MSC 6201, Ft Belvoir, VA 22060–6201, or call (703) 767–2407, or e-mail *NTPR@dtra.mil.*

Title; Associated Form; and OMB Number: Nuclear Test Personnel Review (NTPR) Forms; DTRA Form 150, ''Information Request and Release'' and DTRA Forms 150–A, –B, –C, ''Nuclear Test Questionnaires'; OMB Control Number 0704–TBD.

Needs and Uses: Veterans and their representatives routinely contact DTRA (by phone and mail) to request information regarding participation in U.S. atmospheric nuclear testing. A release form is required to certify the identify of the requester and authorize the release of Privacy Act information (to the veteran or a 3rd party). DTRA is also required to collect irradiation scenario information from nuclear test participants to accurately determine their radiation dose assessment.

Affected Public: Veterans and civilian test participants, and their representatives who are filing radiogenic disease compensation claims with the Department of Veterans Affairs or Department of Justice and require information from the Department of Defense.

Annual Burden Hours: 463.

Number of Respondents: 370.

Responses per Respondent: 1.

Average Burden per Response: 1.25 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Authority to collect this information is provided by PL 98–542 which appointed DNA (now DTRA) Executive Agent for the NTPR Program. It is also required that the Secretary of Defense publish guidelines (see 32 CFR 218) describing DoD's process for generating radiation dose estimates.

Dated: January 22, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–384 Filed 1–29–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for the Approval of Nurse Education

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education (The Advisory Committee).

What Is the Purpose of This Notice?

The purpose of this notice is to invite written comments on accrediting agencies and State approval agencies whose applications to the Secretary for initial or renewed recognition, requests for an expansion of the scope of recognition, or reports will be reviewed at the Advisory Committee meeting to be held on May 30–June 1, 2007, at The Madison, 1177 15th Street, NW., Washington, DC 20005, *telephone:* 202–862–1600.

Where Should I Submit My Comments?

Please submit your written comments by mail, fax, or e-mail no later than March 1, 2007 to Ms. Robin Greathouse, Accreditation and State Liaison. You may contact her at the U.S. Department of Education, Room 7105, MS 8509, 1990 K Street, NW., Washington, DC 20006, *telephone:* (202) 219–7011, *fax:* (202) 219–7005, or e-mail: *Robin.Greathouse@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What is the Authority for the Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011c. One of the purposes of the Advisory Committee is to advise the Secretary of Education on the recognition of accrediting agencies and State approval agencies.

Will This Be My Only Opportunity to Submit Written Comments?

Yes, this notice announces the only opportunity you will have to submit written comments. However, a subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests to make oral presentations before the Advisory Committee on the agencies that the Committee will review. That notice, however, does not offer a second opportunity to submit written comments.

What Happens to the Comments That I Submit?

We will review your comments, in response to this notice, as part of our evaluation of the agencies' compliance with Section 496 of the Higher Education Act of 1965, as amended, and the Secretary's Criteria for Recognition of Accrediting Agencies and State Approval Agencies. The Criteria are regulations found in 34 CFR Part 602 (for accrediting agencies) and in 34 CFR Part 603 (for State approval agencies) and are found at the following site: *http://www.ed.gov/admins/finaid/accred/index.html.*

We will also include your comments with the staff analyses we present to the Advisory Committee at its May 2007 meeting. Therefore, in order for us to give full consideration to your comments, it is important that we receive them by March 1, 2007. In all instances, your comments about agencies seeking initial recognition, continued recognition and/or an expansion of an agency's scope of recognition must relate to the Criteria for Recognition. In addition, your comments for any agency whose interim report is scheduled for review must relate to the issues raised and the Criteria for Recognition cited in the Secretary's letter that requested the interim report.

What Happens to Comments Received After the Deadline?

We will review any comments received after the deadline. If such comments, upon investigation, reveal that the accrediting agency or State approval agency is not acting in accordance with the Criteria for Recognition, we will take action either before or after the meeting, as appropriate.

What Agencies Will the Advisory Committee Review at the Meeting?

The Secretary of Education recognizes accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education if the Secretary determines that they meet the Criteria for Recognition. Recognition means that the Secretary considers the agency to be a reliable authority as to the quality of education offered by institutions or programs it accredits that are encompassed within the scope of recognition she grants to the agency.

The following agencies will be reviewed during the May 2007 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies

Petition for an Expansion of Scope

1. *Accrediting Bureau of Health Education Schools (Current scope of recognition:* The accreditation of private, postsecondary institutions in the United States offering predominantly allied health education programs and the programmatic accreditation of medical assistant, medical laboratory technician and surgical technology programs, leading to a certificate, diploma, or the Associate of Applied Science and Associate of Occupational Science degrees.) (Requested scope of recognition: The accreditation of private, postsecondary institutions in the United States offering predominantly allied health education programs and the programmatic accreditation of medical assistant, medical laboratory technician and surgical technology programs, leading to a certificate, diploma, Associate of Applied Science, Associate of Occupational Science, or Academic Associate degree, including those offered via distance education.)

Petitions for Renewal of Recognition That Include an Expansion of the Scope of Recognition

1. *American Board of Funeral Service Education, Committee on Accreditation (Current scope of recognition:* The accreditation of institutions and programs within the United States awarding diplomas, associate degrees and bachelor's degrees in funeral service or mortuary science.) (Requested scope of recognition: The accreditation of institutions and programs within the United States awarding diplomas, associate degrees and bachelor degrees in funeral service and/or mortuary science, including the accreditation of Distance Learning courses and programs offered by these programs and institutions.)

2. *American Dietetic Association, Commission on Accreditation for Dietetics Education (Current scope of recognition:* The accreditation within the United States of Didactic and Coordinated Programs in Dietetics at both the undergraduate and graduate level, post baccalaureate Dietetic Internships, and Dietetic Technician Programs at the associate degree level and for its accreditation of such programs offered via distance education.) (Requested scope of recognition: The accreditation and preaccreditation within the United States of Didactic and Coordinated Programs in Dietetics at both the undergraduate and graduate level, post baccalaureate Dietetic Internships, and Dietetic Technician Programs at the associate degree level and for its accreditation of such programs offered via distance education.)

3. *Council on Accreditation of Nurse Anesthesia Educational Programs (Current scope of recognition:* The accreditation of institutions and programs of nurse anesthesia within the United States at the post-master's certificate, master's, or doctoral degree levels.) (Requested scope of recognition: The accreditation of institutions and programs of nurse anesthesia within the United States at the post master's certificate, master's, or doctoral degree levels, including programs offering distance education.)

4. *Council on Education for Public Health (Current scope of recognition:* The accreditation and preaccreditation (''Preaccreditation status'') within the United States of graduate schools of public health, graduate programs in community health education outside schools of public health, and graduate programs in community health/preventive medicine outside schools of public health.) (Requested scope of recognition: The accreditation within the United States of schools of public health and public health programs outside schools of public health at the baccalaureate and graduate degree levels, including those offered via distance education.)

5. *Council on Occupational Education (Current scope of recognition:* The accreditation and preaccreditation (''Candidacy status'') throughout the United States of non-degree granting postsecondary occupational/vocational institutions and those postsecondary

occupational/vocational education institutions that have state authorization to grant the applied associate degree in specific vocational/occupational fields.) (Requested scope of recognition: The accreditation and preaccreditation (''Candidacy Status'') throughout the United States of postsecondary occupational education institutions offering non-degree and applied associate degree programs in specific career and technical education fields, including institutions that offer programs via distance education.)

Petitions for Renewal of Recognition

1. *Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission (Current and requested scope of recognition:* The accreditation and preaccreditation (''Correspondent'' and ''Candidate'') within the United States of advanced rabbinical and Talmudic schools.)

2. *Commission on Accreditation of Healthcare Management Education (Current and requested scope of recognition:* The accreditation throughout the United States of graduate programs in health services administration.)

3. *Liaison Committee on Medical Education (Current and requested scope of recognition:* The accreditation of medical education programs within the United States leading to the M.D. degree.)

4. *Middle States Association of Colleges and Schools, Commission on Higher Education (Current and requested scope of recognition:* The accreditation and preaccreditation (''Candidacy status'') of institutions of higher education in Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, and the U.S. Virgin Islands, including distance education programs offered at those institutions.)

5. *New England Association of Schools and Colleges, Commission on Technical and Career Institutions (Current and requested scope of recognition:* The accreditation and preaccreditation (''Candidate status'') of secondary institutions with vocational-technical programs at the 13th and 14th grade level, postsecondary institutions, and institutions of higher education that provide primarily vocational/technical education at the certificate, associate, and baccalaureate degree levels in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving preaccreditation, initial accreditation, and adverse actions.)

6. *New York State Board of Regents, and the Commissioner of Education (Current and requested scope of recognition:* The accreditation of those degree-granting institutions of higher education in New York that designate the agency as their sole or primary nationally recognized accrediting agency for purposes of establishing eligibility to participate in HEA programs.)

I*nterim Reports* (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition.)

1. American Association for Marriage and Family Therapy, Commission on Accreditation for Marriage and Family Therapy Education.

2. American Osteopathic Association, Commission on Osteopathic College Accreditation.

3. American Podiatric Medical Association, Council on Podiatric Medical Education.

State Agencies Recognized for the Approval of Nurse Education

Petition for Initial Recognition

1. Kansas State Board of Nursing

Petition for Renewal of Recognition

1. Missouri State Board of Nursing

Federal Agency Seeking Degree-Granting Authority

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at this meeting:

Proposed Master's Degree-Granting Authority

1. Air University, Maxwell Air Force Base, Alabama (request to award a Master of Science in Flight Test Engineering Degree.)

Where Can I Inspect Petitions and Third-Party Comments Before and After the Meeting?

All petitions and those third-party comments received in advance of the meeting will be available for public inspection at the U.S. Department of Education, Room 7105, MS 8509, 1990 K Street, NW., Washington, DC 20006, telephone (202) 219–7011 between the hours of 8 a.m. and 3 p.m., Monday through Friday, until May 2, 2007. They will be available again after the May 30–June 1, 2007 Advisory Committee meeting. An appointment must be made in advance of such inspection.

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/index.html.*

Authority: 5 U.S.C. Appendix 2.

James F. Manning,

Delegated the Authority of the Assistant Secretary.

[FR Doc. E7–1407 Filed 1–29–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on the proposed new survey,

''Natural Gas Processing Plant Survey''. When activated, this new survey will collect information on the status and operations of natural gas processing plants for use during periods of supply disruption in areas affected by an emergency, such as a hurricane.

DATES: Comments must be filed by April 2, 2007. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Barbara Mariner-Volpe, Natural Gas Division, (EI–44), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Mariner-Volpe may be contacted by telephone at (202) 586–5878, FAX at (202) 586–4420, or e-mail at *Barbara.MarinerVolpe@eia.doe.gov*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Barbara Mariner-Volpe at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 et seq.) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 et seq.) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3501, et seq.), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

The proposed form, ''Survey of Natural Gas Processing Plants,'' will collect information from processing plant operators that will be used to monitor their operational status and assess operations of processing plants during a period when natural gas supplies are disrupted. The activation, selection of respondents, and frequency of the survey collection will be determined based on the location and severity of the supply disruption. For those processing plants whose operations have been disrupted, information about plant damage and the anticipated schedule of plant recovery will be collected. The data collected will be aggregated and used to develop measures of current processing activity and expected plant recovery in the disrupted area. The aggregate statistics will be used to inform the public, industry, and the government about the status of supply and delivery activities in the area affected by the disruption.

The proposed form, ''Survey of Natural Gas Processing Plants,'' will consist of two schedules: Schedule A is a ''Baseline Report'' and Schedule B is the ''Emergency Status Report.'' The Baseline Report will collect information about processing plant characteristics and operator contact information, prior to any supply disruption. The information gathered in the Baseline Report, will be used to develop the sample of companies to survey using the Emergency Status Report. It is expected that information in the ''Baseline Report'' would be collected once to determine the baseline processing capacities of the processing plants. Depending upon the utility of the data and the availability of alternative data sources for updating the plant capacity measures, the baseline report may be collected once every three years. The Emergency Status Report will only be implemented if there is a supply disruption.

The information reported on both schedules of the proposed form ''Survey of Natural Gas Processing Plants,'' will be protected and not disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the DOE regulations implementing the FOIA, 10 CFR 1004.11, and the Trade Secrets Act, 18 U.S.C. 1905. The EIA will protect the information in accordance with its confidentiality and security policies and procedures.

II. Current Actions

EIA is proposing a new, mandatory survey, ''Survey of Natural Gas Processing Plants,'' that will collect information from natural gas processing plants. The proposed form will consist of two schedules: Schedule A is the ''Baseline Report'' and Schedule B is the ''Emergency Status Report.'' The ''Baseline Report'' will collect information at least once from all natural gas processing plants about plant characteristics and operator contact information, and may continue to collect that information every three years. The ''Emergency Status Report'' will be a standby form that will only be activated during an energy emergency situation. EIA will notify OMB for approval prior to activating Schedule B and collecting any information. When Schedule B is activated, it is expected that the data collection on Schedule B will be temporary and the frequency of the data collection (e.g., daily or weekly) will be determined at that time based on a number of factors including the severity of the emergency and the number of plants affected.

Data will be used to monitor energy supply in the area(s) with outages to the natural gas processing plants. Respondents to Schedule B will be natural gas processing plants in the affected area(s) of the United States where a supply disruption occurred. Information collected will include: Plant characteristics and contact information, plant operation capacity and utilization (pre-event and current), plant operating constraints and plant restoration. The information may be collected by phone, fax, or e-mail, depending upon the preference of the respondent.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information To Be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Can the information be submitted during a supply disruption? With what frequency?

C. Public reporting burden for this collection is estimated to average 0.5 hours for Schedule A and 1.5 hours for Schedule B. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

D. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

E. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(j)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, January 23, 2007.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E7–1409 Filed 1–29–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–62–000AES Sparrows Point LNG, LLC; Docket Nos. CP07–63–000, CP07–64–000, CP07–65–000, Mid-Atlantic Express, LLC]

Notice of Applications for Certificates of Public Convenience and Necessity and Section 3 Authorization

January 23, 2007.

Take notice that on January 8, 2007, AES Sparrows Point LNG, LLC, (AES Sparrows Point) filed an application in Docket No. CP07–62–000 pursuant to Section 3(a) of the Natural Gas Act (NGA), and Parts 153 and 380 of the Commission's regulations for authorization to site, construct and operate a liquefied natural gas (LNG) receiving terminal and associated facilities to be located in Baltimore County, Maryland as a place of entry for the importation of LNG.

Also take notice that on January 8, 2007, Mid-Atlantic Express, LLC, (Mid-Atlantic Express) filed pursuant to Section 7(c) of the NGA and the Commission's regulations; (1) an application in Docket No. CP07–53–000 for a certificate of public convenience and necessity; (i) authorizing Mid-Atlantic Express to construct, own and operate the Mid-Atlantic Express's pipeline under Part 157, Subpart A, (ii) approving the pro forma Tariff submitted as Exhibit P of the application, and (iii) approving the proposed initial rates for pipeline transportation services; (2) an application in Docket No. CP07–54–000, for a blanket certificate authorizing Mid-Atlantic Express to engage in certain self-implementing routine activities under Part 157, Subpart F; and (3) an application in Docket No. CP07–55–000, for a blanket certificate authorizing Mid-Atlantic Express to transport natural gas, on an open access and self-implementing basis, under Part 284, Subpart G.

Any questions regarding these applications should be directed to Christopher H. Diez, AES Sparrows Point LNG, LLC & Mid-Atlantic Express, LLC, 140 Professional Parkway, Suite A, Lockport, New York 14094.

These filings are available for review at the Commission's Washington, DC offices or may be viewed on the Commission's Web site at *http://www.ferc.gov/* using the ''e-Library'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *ferconlinesupport@ferc.gov* or Telephone: 202–502–6652; Toll-free: 1–866–208–3676; or for TTY, contact (202) 502–8659.

AES Sparrows Point seeks authorization to site, construct and operate a new LNG import terminal LNG Terminal, with an initial delivery capacity of 1.5 billion cubic feet per day of natural gas, to be located at the Sparrows Point industrial complex in Baltimore County, Maryland. AES Sparrows Point's proposed LNG Terminal would be located on an about 80 acre parcel located at the Sparrows Point industrial complex, which is situated on the Sparrows Point peninsula extending into the Chesapeake Bay east of the Port of Baltimore. The LNG Terminal would include facilities to receive LNG from ocean-going LNG ships, store the LNG onshore in full-containment tanks, re-vaporize the LNG, and then deliver pipeline quality natural gas to the Mid-Atlantic Express pipeline.

Mid-Atlantic Express seeks authorization to construct and operate an 88-mile natural gas pipeline that will transport regasified LNG from the Terminal to interconnections with three existing interstate pipelines in the vicinity of Eagle, Pennsylvania. Mid-Atlantic Express conducted an open season for firm transportation capacity on its proposed pipeline and AES Mid-Atlantic LNG Marketing, LLC, an affiliate of Mid-Atlantic Express, submitted a bid for the entire capacity of the Pipeline and was accepted as the sole customer of the project at this point. Mid-Atlantic Express estimates that the cost of its pipeline facilities will be about $415 million. The details of Mid-Atlantic Express's proposed transportation services and the derivation of the initial recourse rates for those services are shown in Exhibit P of Mid-Atlantic Express's filing.

AES Sparrows Point and Mid-Atlantic Express propose to commence service in late 2010. AES Sparrows Point and Mid-Atlantic Express request that the Commission issue a final order in these proceedings by November 1, 2007 to enable them to begin construction in a timely manner to achieve their proposed in-service date.

On April 3, 2006, the Commission staff granted AES Sparrows Point's and Mid-Atlantic Express's request to utilize the Pre-Filing Process and assigned Docket No. PF06–22–000 to staff activities involving Sparrows Point LNG's and Mid-Atlantic Express's combined project. Now, as of the filing of Sparrows Point LNG's and Mid-Atlantic Express's applications on

January 8, 2007, the Pre-Filing Process for this project has officially concluded. And while the PF docket number is now closed, all of the information contained in the Pre-Filing Process will become part of the LNG terminal authorization and pipeline certificate proceeding(s). From this time forward, Sparrows Point LNG's and Mid-Atlantic Express's proceedings will be conducted in Docket Nos. CP07–62–000, CP07–63–000, CP07–64–000, and CP07–65–000 as noted in the caption of this Notice. All future correspondence should refer to these CP docket numbers only.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this Project. First, any person wishing to obtain legal status by becoming a party to the proceeding for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project and/or associated pipeline. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 285.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link. The Commission strongly encourages electronic filings.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project and associated pipeline. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed pipeline and balances that against the non-environmental benefits to be provided by the project.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: February 14, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–1362 Filed 1–29–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–139–000]

Algonquin Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

January 23, 2007.

Take notice that on January 19, 2007, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing to be effective February 19, 2007.

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

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

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

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–1369 Filed 1–29–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–165]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

January 23, 2007.

Take notice that on January 22, 2007, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval an amended negotiated rate agreement between CEGT and Chevron U.S.A. Inc. CEGT has entered into an agreement to provide firm transportation service to this shipper under Rate Schedule FT and requests the Commission accept and approve the transaction under which transportation service will commence upon the ''in-service'' date following completion of certain Line CP facilities.

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

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E7–1361 Filed 1–29–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–142–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 23, 2007.

Take notice that on January 22, 2007, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets attached to Appendix A to the filing, to be effective March 1, 2007.

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

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E7–1372 Filed 1–29–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–76–001, Docket No. RP07–95–001]

Colorado Interstate Gas Company; Notice of Compliance Filing

January 23, 2007.

Take notice that on January 22, 2007, Colorado Interstate Gas Company (CIG) submitted a compliance filing pursuant to the Commission's order issued December 22, 2006 in Docket Nos. RP07–76–000 and RP07–95–000.

CIG states that the tariff sheets revise the fuel tariff provisions related to deferred quantities in the Fuel and L&U mechanism.

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. E7–1373 Filed 1–29–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR07–7–000]

DCP Raptor Pipeline, LLC; Notice of Petition for Rate Approval

January 23, 2007.

Take notice that on December 29, 2006, DCP Raptor Pipeline, LLC (Raptor) filed a petition for rate approval for NGPA section 311 maximum transportation rates, pursuant to section 284.123(b)(2) of the Commission's regulations. Raptor states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA, with its pipeline located entirely within the state of New Mexico.

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

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

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

Comment Date: 5 p.m. Eastern Time February 9, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–1366 Filed 1–29–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–67–000]

Dominion Transmission, Inc.; Notice of Application

January 23, 2007.

Take notice that on January 17, 2007, Dominion Transmission, Inc. (DTI), 120 Tredegar Street, Richmond, VA 23219, filed in Docket No. CP07–67–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for authorization to drill two new storage injection/withdrawal (I/W) wells, EW–210 and EW–326, within the existing limits of the Ellisburg Storage Field, located in Potter County, Pennsylvania at a total estimated cost of approximately $944,630, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Any questions regarding this application should be directed to Matthew R. Bley, Manager, Gas Transmission Certificates, Dominion Transmission, Inc. 120 Tredegar Street, Richmond, VA 23219, at (804) 819–2877 or fax (804) 819–2064 and e-mail: *Matthew_R_Bley@dom.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process.

Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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.

Comment Date: February 13, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–1363 Filed 1–29–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status

January 23, 2007.

Ewington Energy Systems LLC	Docket No. EG07–1–000
Cisco Wind Energy LLC	Docket No. EG07–2–000
Plains End II, LLC	Docket No. EG07–3–000
RC Cape May Holdings, LLC	Docket No. EG07–4–000
Holland Energy, LLC	Docket No. EG07–5–000
Caithness Long Island, LLC	Docket No. EG07–6–000
BTEC New Albany LLC	Docket No. EG07–7–000
BTEC Southaven LLC	Docket No. EG07–8–000
Uskmouth Power Limited	Docket No. FC07–1–000
Apiaćas Energia S.A. Brąco Norte Energia S.A. Quatiara Energia S.A. Vale Energetica S.A. Cuiabá Energia S.A. Primavera Energia S.A. VP Energia S.A. Isamu Ikeda Energia S.A. Sociebe Energia S.A. Alvorada Energia S.A. Enel Brasil Participações, Ltda.	Docket No. FC07–2–000
Tynagh Energy Limited	Docket No. FC07–3–000

Take notice that during the month of December 2006, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Magalie R. Salas,

Secretary.

[FR Doc. E7–1364 Filed 1–29–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–407–005]

Gas Transmission Northwest Corporation; Notice of Compliance Filing

January 23, 2007.

Take notice that on January 22, 2007, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the tariff sheets attached as Appendix A to the filing, to be effective January 1, 2007.

GTN states that copies of the filing were served on parties on the official service list in the above-captioned 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. E7–1367 Filed 1–29–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–115–001]

Gas Transmission Northwest Corporation; Notice of Compliance Filing

January 23, 2007.

Take notice that on January 22, 2007, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Fourth Revised Sheet No. 138, to be effective January 19, 2007.

GTN states that copies of the filing were served on parties on the official service list in the above-captioned 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. E7–1368 Filed 1–29–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–140–000]

Texas Gas Transmission, LLC; Notice of Annual Cash-Out Report

January 23, 2007.

Take notice that on January 19, 2007, Texas Gas Transmission, LLC (Texas Gas) tendered for filing a report, which compares its cash-out revenues with its cash-out costs incurred for the annual billing period November 1, 2005, through October 31, 2006, in accordance with its tariff.

Texas Gas states that copies of this filing have been served upon their customers and interested state commissions.

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

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

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

Comment Date: 5 p.m. Eastern Time January 31, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–1370 Filed 1–29–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–141–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

January 23, 2007.

Take notice that on January 18, 2007, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective February 18, 2007:

Second Revised Sheet No. 247B.02
First Revised Sheet No. 247B.03

TransColorado states that a copy of this filing has been served upon TransColorado's customers and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E7–1371 Filed 1–29–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 23, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG06–15–000.

Applicants: Twin Buttes Wind LLC.

Description: Twin Buttes Wind LLC submits an errata to its Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 01/17/2007.

Accession Number: 20070118–0186.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 7, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–22–003.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits a Large Generator Interconnection Agreement among Endeavor Power Partners LLC Co et al.

Filed Date: 01/18/2007.

Accession Number: 20070119–0202.

Comment Date: 5 p.m. Eastern Time on Thursday, February 8, 2007.

Docket Numbers: ER06–864–005; ER06–1543–003; ER00–2885–013; ER01–2765–012; ER02–1582–011; ER02–1785–008; ER02–2102–012; ER97–2414–008; ER03–1283–005.

Applicants: Bear Energy LP; Brush Cogeneration Partners; Cedar Brakes I, L.L.C.; Cedar Brakes II, L.L.C.; Mohawk River Funding IV, L.L.C.; Thermo Cogeneration Partnership L.P.; Utility Contract Funding, L.L.C.; Lowell Cogeneration Company Limited Partnership; Vineland Energy LLC.

Description: Bear Energy LP et al submits a notice of a change in their status resulting from the acquisition by Central Power Holding LP etc.

Filed Date: 01/18/2007.

Accession Number: 20070122–0196.

Comment Date: 5 p.m. Eastern Time on Thursday, February 8, 2007.

Docket Numbers: ER06–1545–002.

Applicants: North American Electric Reliability Council.

Description: North American Electric Reliability Council And North American Reliability Corporation submit a compliance filing, pursuant to the Commission's order issued 111/30/06.

Filed Date: 12/22/2006.

Accession Number: 20061222–5002.

Comment Date: 5 p.m. Eastern Time on Friday, February 2, 2007.

Docket Numbers: ER07–205–001.

Applicants: Central Illinois Public Service Company; Central Illinois Light Company; Illinois Power Company; Union Electric Company; Ameren Energy Marketing Company.

Description: Central Illinois Public Service Company, et al, submit a Notice of Withdrawal of its Nov. 9, 2006 application.

Filed Date: 01/19/2007.

Accession Number: 20070119–5027.

Comment Date: 5 p.m. Eastern Time on Friday, February 9, 2007.

Docket Numbers: ER07–445–000.

Applicants: Duke Energy Indiana, Inc.

Description: Duke Energy Indiana, Inc submits Notice of Termination of Rate Schedule 234, the Power Coordination Agreement between PSI Energy, Inc, Cinergy Services, Inc and Indiana Municipal Power Agency, effective 6/1/07.

Filed Date: 01/19/2007.

Accession Number: 20070122–0211.

Comment Date: 5 p.m. Eastern Time on Friday, February 9, 2007.

Docket Numbers: ER07–446–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits revisions to Rate Schedule 5 of its Open Access Transmission Tariff concerning the Allocation of Operating Reserve Costs.

Filed Date: 01/19/2007.

Accession Number: 20070122–0212.

Comment Date: 5 p.m. Eastern Time on Friday, February 9, 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 5:00 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 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. E7–1375 Filed 1–29–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2153–012 California]

United Water Conservation District; Notice of Availability of Environmental Assessment

January 23, 2007.

In accordance with the National Environmental Policy Act of 1969, as amended, and Federal Energy Regulatory Commission (Commission or FERC) regulations (18 CFR Part 380), Commission staff reviewed the application for a minor license for the Santa Felicia Hydroelectric Project and prepared this final environmental assessment (EA). The project is located on Piru Creek in Ventura County, California. The project occupies 174.5 acres of U.S. land that is administered by the U.S. Department of Agriculture, Forest Service (Forest Service) in the Los Padres and Angeles National Forests.

Specifically, the project licensee, United Water Conservation District, requested Commission approval of the Santa Felicia Project for hydroelectric generation purposes. In the final EA, Commission staff analyze the probable environmental effects of relicensing the project and conclude that approval of the project, with appropriate staff-recommended environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the final EA are available for review in Public Reference Room 2–A of the Commission's offices at 888 First Street, NE., Washington, DC. The EA also may be viewed on the Commission's Internet Web site (*www.ferc.gov*) using the ''eLibrary'' link. Additional information about the project is available from the Commission's Office of External Affairs at (202) 502–6088, or on the Commission's Web site using the eLibrary link. For assistance with eLibrary, contact *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 208–3676; for TTY contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E7–1365 Filed 1–29–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD07–5–000]

Seismic Design Guidelines for LNG Facilities; Notice of Availability of ''Draft Seismic Design Guidelines and Data Submittal Requirements for LNG Facilities'' and Request for Comments

January 23, 2007.

The Federal Energy Regulatory Commission's Office of Energy Projects has updated its prior guidelines and is making available for public comment a document entitled ''*Seismic Design Guidelines and Data Submittal Requirements for LNG Facilities*''. These draft guidelines apply to all proposed new LNG facilities and proposed significant changes to existing LNG facilities under the jurisdiction of the Federal Energy Regulatory Commission. The new guidelines update, replace and supersede ''*Data Requirements for the Seismic Review of LNG Facilities,* NBSIR 84–2833'' (18 CFR 380.12(h)(5) and (o)(15)).

Federal regulations applicable to seismic design of LNG facilities are identified and summarized, and guidance is provided in a number of areas that may be subject to interpretation by technical experts. The guidelines provide a basis for uniform reviews of various LNG terminal structures, components and systems under FERC jurisdiction.

This guidance is intended for those facilities to be constructed on land and is not intended for floating or offshore facilities. The scope of the guidelines includes all portions of the facility located within the facility security fence including loading docks.

The document may be downloaded from the FERC Web site at: *http://www.ferc.gov/industries/lng.asp.* A limited number of paper copies are available from the Commission's Public Reference Room, or by contacting the FERC Project Manager identified below.

Comments on this draft version of the guidelines are requested by March 9, 2007, and will be considered in preparation of the final document. Please submit your comments electronically if possible by visiting the Commission's Web site at *http://www.ferc.gov;* look under the ''e-Filing'' link and the link to User's Guide. Before you can file comments electronically you will need to create a free account which can be done on-line. Comments may also be submitted in writing to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please be sure to identify Docket No. AD07–5–000 in your filing. Questions may be directed to Lonnie Lister, Program Manager, at 202–502–8587, or by e-mail (*lonnie.lister@ferc.gov*).

Depending upon the nature and extent of comments, upon closure of the comment period, if necessary, FERC Staff may prepare a comment response summary to be made available to the public when the final guidelines are issued.

Magalie R. Salas,

Secretary.

[FR Doc. E7–1374 Filed 1–29–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8273–6]

Notice of Broadly Applicable Alternative Test Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces broadly applicable alternative test method approval decisions that the Environmental Protection Agency has made under and in support of the New Source Performance Standards and the National Emission Standards for Hazardous Air Pollutants. Although we have made both site-specific and broadly applicable alternative test method approvals in the past, most recently we have issued only site- or facility-specific approvals. This notice announces our plan to issue broadly applicable alternative test method approvals in the future. We will post these broadly applicable approvals on our technology transfer network Web site as well as announce them in the **Federal Register.** The publication of these broadly applicable alternative test method approvals on our Web site will provide information about options and flexibility for the regulated community. In addition, this information may reduce the burden on source owners and operators in making site-specific alternative test method requests and the permitting authorities and the EPA

Administrator in processing those requests.

FOR FURTHER INFORMATION CONTACT: Broadly applicable alternative test method approvals may be accessed from the EPA's Web site at *http://www.epa.gov/ttn/emc/tmethods.html#CatB.* For questions about this notice, contact Robin R. Segall, Air Quality Assessment Division, Office of Air Quality Planning and Standards (E143–02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number (919) 541–0893; fax number (919) 541–0893; e-mail address: *segall.robin@epa.gov.* For technical questions about individual alternative test method decisions, refer to the contact person identified in the individual approval documents.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This announcement will be of interest to entities regulated under 40 CFR parts 60, 61, and 63 and State, local, Tribal agencies, and EPA Regional Offices responsible for implementation and enforcement of regulations under 40 CFR parts 60, 61, and 63.

B. How can I get copies of this information?

You may access copies of the broadly applicable alternative test method approvals from the EPA's Web site at *http://www.epa.gov/ttn/emc/tmethods.html#CatB.*

II. Background

Broadly applicable alternative test method approval decisions that we have made in the past under the New Source Performance Standards (NSPS), 40 CFR part 60 and the National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR parts 61 and 63 are identified in this notice (*see* Table 1). Most of our prior alternative test method approvals have been on a facility-specific basis, but we plan to issue more broad (*i.e.*, source category-wide) alternative test method approvals in the future, and we will post these broadly applicable approvals on our technology transfer network Web site. We will also announce them in the **Federal Register.** Source owners or operators may voluntarily choose to use these broadly applicable alternative test methods. Use of these alternatives does not change the applicable emission standards.

TABLE 1.—APPROVED ALTERNATIVE TEST METHODS AND MODIFICATIONS TO TEST METHODS UNDER APPENDICES A OR B IN 40 CFR PARTS 60, 61, AND 63

We are announcing alternative number	As an alternative or modification to . . .	For . . .	You may . . .
Alt-001	Method 7, Determination of Nitrogen Oxide Emissions from Stationary Sources and Method 7A, Determination of Nitrogen Oxide Emissions from Stationary Sources—Ion Chromatographic Method.	Sources required to use Method 7 or 7A and which have concentrations of SO_2 greater than 2100 ppm.	Measure NO_X emissions when the SO_2 concentration is greater than 2100 ppm by either increasing the absorbing solution concentration or by using Method 7E, 40 CFR, part 60, appendix A.
Alt-002	Methods 10 and 10B, Determination of Carbon Monoxide Emissions from Stationary Sources and Method 10A, Determination of Carbon Monoxide Emissions.	Sources required to use Methods 10, 10A, or 10B in certifying continuous emission monitoring systems at petroleum refineries.	Determine carbon monoxide (CO) emissions using gas tanks instead of Tedlar bags.
Alt-005	Method 5, Determination of Particulate Emissions from Stationary Sources.	Sources required to use Method 5	Use Teflon bags in lieu of glass weighing dishes.
Alt-006	Method 12, Determination of Inorganic Lead Emissions from Stationary Sources.	Sources required to use Method 12	Use Inductively Coupled Plasma—Atomic Emission Spectrometry (ICP-AES) to analyze samples.
Alt-006	Method 101A, Determination of Particulate and Gaseous Mercury Emissions from Sewage Sludge Incinerators.	Sources required to use Method 101A	Use Inductively Coupled Plasma—Atomic Emission Spectrometry (ICP–AES) to analyze samples.
Alt-006	Method 104, Determination of Beryllium Emissions from Stationary Sources.	Sources required to use Method 104	Use Inductively Coupled Plasma—Atomic Emission Spectrometry (ICP–AES) to analyze samples.
Alt-006	Method 108A, 40 CFR part 61, appendix B, Determination of Arsenic Content in Ore Samples from Nonferrous Smelters.	Sources required to use Method 108A	Use Inductively Coupled Plasma—Atomic Emission Spectrometry (ICP–AES) to analyze samples.
Alt-008	Method 6, Determination of Sulfur Dioxide Emissions from Stationary Sources.	Sources required to use Method 6	Measure stack gas moisture for correction of pollutant concentration and flow rate.
Alt-010	Method 11, Determination of Hydrogen Sulfide Content of Fuel Gas Streams in Petroleum Refineries.	Sources required to use Method 11	Measure hydrogen sulfide using Method 15 or 16 (40 CFR part 60, appendix A) in lieu of Method 11.
Alt-011	Method 2, Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube).	Sources required to use Method 2	Check the thermocouple calibration at a single point in lieu of two points.
Alt-012	Method 5H, Determination of Particulate Emissions from Wood Heaters from a Stack Location.	Sources required to use Method 5H	Measure particulate emissions from a woodstove stack one foot or less in diameter with gas flow between 5 and 15 feet per second, or from stacks or ducts where there is no stratification of the tracer gas.

TABLE 1.—APPROVED ALTERNATIVE TEST METHODS AND MODIFICATIONS TO TEST METHODS UNDER APPENDICES A OR B IN 40 CFR PARTS 60, 61, AND 63—Continued

We are announcing alternative number	As an alternative or modification to . . .	For . . .	You may . . .
Alt-014	Methods 306 and 306A, Determination of Chromium Emissions from Decorative and Hard Chromium Electroplating and Anodizing Operations.	Sources required to use Methods 306 and 306A.	Omit the filtering of Sample Container No. 1 when there is no observable sediment in the impinger liquid when sampling at electroplating and anodizing operations.
Alt-016	Method 14, Determination of Fluoride Emissions from Potroom Roof Monitors for Primary Aluminum Plants; Method 14A, Determination of Total Fluoride Emissions from Selected Sources at Primary Aluminum Production Facilities.	Sources required to use Methods 14 and 14A.	Use scintillation anemometers in lieu of propeller anemometers to determine effluent velocity from potroom roofs.
Alt-017	Method 18, Measurement of Gaseous Organic Compound Emissions by Gas Chromatography, Method 106, Determination of Vinyl Chloride from Stationary Sources.	Sources required to use Method 18 or Method 106 under the subparts of 40 CFR parts 60, 61, and 63 specified in Alt-017.	Use direct interface gas chromatography/mass spectrometry (GC/MS) in lieu of GC with limitations specified.
Alt-018	Method 9, Visual Determination of the Opacity of Emissions from Stationary Sources.	Sources with multiple emission points subject to visible emissions observations under 40 CFR part 60, subpart LL, Standards of Performance for Metallic Mineral Processing Plants and subpart 000, Standards of Performance for Nonmetallic Mineral Processing Plants.	Allow a single visible emission observer to conduct up to three visible emissions observations from fugitive, stack, or vent emission points simultaneously.
Alt-019	Method 24, Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings.	Entities using Method 24 for analysis of electrical insulating varnishes.	Use ASTM D6053-96 in lieu of Method 24 to determine the VOC content in electrical insulating varnishes.
Alt-020	Method 204 of 40 CFR part 51, appendix M, Criteria for and Verification of a Permanent or Temporary Total Enclosure.	Bakery ovens required to use Method 204.	Use the alternative procedure entitled ''Negative Pressure Enclosure Qualitative Test Method for Bakery Ovens'' to determine capture efficiency.
Alt-021	Method 25A, Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer.	Marine tank vessel loading operations	Determine the total gaseous organic concentration using Method 25B in lieu of Method 25A.
Alt-022	Method 25C, Determination of Nonmethane Organic Compounds (NMOC) in MSW Landfill Gases.	Sources required to use Method 25C	Drill the sample probe in one step without backfilling.
Alt-023	Method 25C, Determination of Nonmethane Organic Compounds (NMOC) in MSW Landfill Gases.	Sources required to use Method 25C	Use teflon lines instead of stainless-steel liners; use leak tight teflon tubing as a sampling line; use non-perforated probes if they meet the gas gap equivalent; use composite samples from different sample probes in a single vessel; use a hand-driven pump and bag setup for the probe purge.
Alt-024	Method 25E, Determination of Vapor Phase Organic Concentration in Waste Samples.	Sources required to use Method 25E	Use 40ml VOA vials as alternative sampling vessels.
Alt-025	Test methods, performance specifications, and quality assurance requirements that require the use of multiple calibration gases.	Sources required to use multiple calibration gas test methods.	Use the Method 205 gas dilution system in lieu of using multiple calibration gases.
Alt-026	Method 18, Measurement of Gaseous Organic Compound Emissions by Gas Chromatography.	Sources subject to 40 CFR, part 60, subpart III, Standards of Performance for VOC Emissions From the Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit Processes.	Use Method 316 to measure formaldehyde emissions in lieu of Method 18.

TABLE 1.—APPROVED ALTERNATIVE TEST METHODS AND MODIFICATIONS TO TEST METHODS UNDER APPENDICES A OR B IN 40 CFR PARTS 60, 61, AND 63—Continued

We are announcing alternative number	As an alternative or modification to . . .	For . . .	You may . . .
Alt-027	Method 18, Measurement of Gaseous Organic Compound Emissions by Gas Chromatography.	Sources subject to 40 CFR, part 63, subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and 40 CFR part 63, subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	Use Method 316 to measure formaldehyde emissions in lieu of Method 18.
Alt-028	Test procedures in 40 CFR § 63.365 (including Method 18, Measurement of Gaseous Organic Compound Emissions by Gas Chromatography).	Ethylene oxide sterilizers subject to 40 CFR part 63, subpart O, Ethylene Oxide Emissions Standards from Sterilization Facilities.	Use CARB Method 431 in lieu of procedures (including Method 18) in 40 CFR § 63.365.
Alt-029	Method 308, Procedure for Determination of Methanol Emissions from Stationary Sources.	Pulp and paper mills required to use Method 308 under 40 CFR part 63.	Use NCASI Chilled Water/Impinger/Silica Gel Tube Test Method in lieu of Method 308
Alt-030	Method 306, Determination of Chromium Emissions from Decorative and Hard Chromium Electroplating and Chromium Anodizing Operations—Isokinetic Method.	Sources subject to 40 CFR part 63, subpart N, National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	Use SCAQMD Method 205.1 in lieu of Method 306.
Alt-031	Method 2, Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube).	Sources required to use Method 2 under 40 CFR parts 60, 61, or 63.	Use Method 2G (three-dimensional probe), Method 2F (two-dimensional probe), or Method 2H (taking into account velocity decay near stack wall) in lieu of Method 2, as appropriate.

Alternative test methods and procedures are necessary for various reasons. In some cases, there are inherent restrictions in test methods which warrant a deviation from a specific requirement in the method. For example, the sampling equipment specified in Method 5 is not appropriate at stack temperatures greater than 1200 degrees Fahrenheit, and in such cases, water-cooled probes are necessary. As another example, it is problematic to measure volatile organic compounds (VOCs) at concentrations below 50 parts per million (ppm) using Method 25 (40 CFR part 60, appendix A), so other methods (notably Method 25A) have been approved for this situation. Also, new and improved testing techniques are developed over time. As pollution controls improve and emissions decrease, it may be necessary or desirable to utilize newer methods with advantages such as lower detection limits.

The EPA Administrator has the authority to approve the use of alternative test methods to comply with requirements under 40 CFR parts 60, 61, and 63. This authority is found in §§ 60.8(b)(3), 61.13(h)(1)(ii), and 63.7(e)(2)(ii). In 40 CFR part 63, § 63.2, test method is defined as ''the validated procedure for sampling, preparing, and analyzing for an air pollutant specified in a relevant standard as the performance test procedure. The test method may include methods described in an appendix of this chapter, test methods incorporated by reference in this part, or methods validated for an application through procedures in Method 301 of appendix A of this part.'' The term ''reference method'' is used in 40 CFR parts 60 and 61 instead of the term ''test method.'' In 40 CFR part 60, reference method means ''any method of sampling and analyzing for an air pollutant as specified in the applicable subpart.'' The definition in 40 CFR part 61 is similar. For simplicity, we use the term ''test method'' in this notice to refer to both ''test methods'' under 40 CFR part 63 and ''reference methods'' under 40 CFR parts 60 and 61. Citations and definitions in all three of these parts refer to the use of alternatives to test (or reference) methods. Under 40 CFR part 60, alternative method means ''any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the EPA Administrator's satisfaction to, in specific cases, produce results adequate for his determination of compliance.'' Again, 40 CFR part 61 contains a similar definition. 40 CFR part 63 defines alternative test method as ''any method of sampling and analyzing for an air pollutant that is not a test method in this chapter and that has been demonstrated to the EPA Administrator's satisfaction, using Method 301 in appendix A of this part, to produce results adequate for the EPA Administrator's determination that it may be used in place of a test method specified in this part.''

Over the years, we have performed thorough technical reviews of numerous requests for alternatives and modifications to test methods and procedures. Based on these experiences, we have found that often, these changes or alternatives would be equally valid and appropriate to apply to other sources within a particular class, category, or subcategory. Consequently, we have concluded that where a method modification or a change or alternative is clearly broadly applicable to a class, category, or subcategory of sources, it is both more equitable and efficient to approve its use for all appropriate sources and situations at the same time.

This approach would not change the practical outcome of whether any specific request would or would not be approved. However, approving broadly applicable alternative test methods would expedite the approval process, provide additional flexibility for the regulated community, and reduce the burden on source owners and operators, the permitting authorities, and the EPA Administrator. Where technically appropriate, we will continue, as always, to approve the use of an alternative test method or modification to a test method for a specific source only. It is important to clarify that alternative methods are not mandatory but permissible. That is, no source is required to employ such a method but may choose to do so in appropriate cases. By electing to use an alternative method, the source owner or operator consents to thereafter demonstrating compliance with applicable requirements based on the results of the alternative method until approved to do otherwise.

If you are aware of reasons why a particular alternative test method approval that we issue should not be broadly applicable, we request that you make us aware of the reasons within 60 days of the **Federal Register** notice announcing the broad approval, and we will revisit the broad approval. Approvals for broadly applicable alternative test methods will be announced on our technology transfer network Web site *http://www.epa.gov/ttn/emc/tmethods.html#CatB* soon after they are issued, as well as through periodic notices of this kind. Likewise, any objection to a broadly applicable alternative test method as well as the resolution to that objection will be posted on the same Web site and announced in the subsequent **Federal Register** notice. If we should decide to retract a broadly applicable alternative test method, we would continue to grant case-by-case approvals, as appropriate, and would (and States should) consider the need for an appropriate transition period for users either to request case-by-case approval or to transition to an approved method.

Section 63.90(a) of 40 CFR part 63 defines three categories of alternatives or changes to test methods: minor changes, intermediate changes, and major changes. A major change to a test method includes modifications using ''unproven technology or procedures'' (those not generally accepted by the scientific community), entirely new methods, or changes that apply to a category or subcategory of affected sources. Such changes will almost always set a national precedent. Under 40 CFR part 63, § 63.91(g), a State may ask EPA to delegate the authority to approve minor and intermediate, but not major alternatives to test methods. The Agency's policy has been to retain the authority to approve major changes to test methods at the national level to assure uniformity and technical quality in the test methods used for enforcement of national standards. Likewise, broad approvals to alternative test methods would be made only at the national level or as part of a revision to a State or Tribal implementation plan.

A. Criteria for Approval of Alternative Methods

The definitions of ''alternative method'' in 40 CFR parts 60 and 61 and ''alternative test method'' in 40 CFR part 63, establish the principal criterion for approval of an alternative test method: The EPA Administrator or his authorized representative must be satisfied that the test method alternative will produce results adequate to determine compliance. In other words, the EPA Administrator or authorized representative, such as a State having delegated authority, generally must be assured that a test method change provides a determination of compliance status at the same or greater stringency as the test method specified in the applicable regulation.

The General Provisions to 40 CFR part 63 provide a number of specifications regarding the content and process for alternative test method requests. In particular, § 63.7(f)(2)(i) stipulates that the source owner or operator must notify the EPA Administrator of the intent to use an alternative test method at least 60 days before the performance test is scheduled. Section 63.7(f)(2) clarifies that a written application is required for approval of an alternative test method and specifies that the submittal to the EPA Administrator must include the results of the Method 301 validation process as well as justification for not using the test method specified in the applicable subpart. The 40 CFR parts 60 and 61 General Provisions are less specific. Nevertheless, based on our experience in responding to hundreds of alternative test method requests over the last 30 years, we ask that alternative test method requests include the applicable Federal regulation and test method, a description of the process and controls to which the alternative method will be applied, a description of the alternative testing procedures as well as the justification for use of the alternative and Method 301 validation data required under 40 CFR part 63.

B. Procedures for Submission and Review of Alternative Methods

Considering that the different levels of alternatives or changes to test methods (minor, intermediate, and major) may be acted on by differing levels of government (e.g., State, local, and Tribal agencies; EPA Regional Offices; or EPA Headquarters), we recommend that the owner/operator of an affected source consult with the responsible agency to determine how and to whom a request for a particular request for an alternative method should be submitted. Review processes may vary depending on the agency involved. The process described here is typical of how EPA Headquarters might handle a request for an alternative test method. Upon our receipt of a written request, the request is recorded in our tracking system. Within a few days of receipt of the request, a technical expert determines whether or not the request is complete (i.e., contains sufficient supporting data and information). The technical expert then acknowledges receipt of the request and notifies the requester that we are evaluating the request. The reviewer evaluates the request and supporting information to confirm that the proposed alternative is justified, technically sound, and that it will produce results adequate to determine compliance with the emission standards. The reviewer analyzes all necessary information to check the accuracy and repeatability of the alternative method. As previously noted, § 63.7(f)(2)(iii) of 40 CFR part 63 specifies that the results of a Method 301 validation and justification for not using the specified method must accompany a request for approval to use an alternative test method. Method 301, Validation of Pollutant Measurement Methods from Various Waste Media includes procedures for determining and documenting the systematic error (i.e., bias) and random error (i.e., precision) of a measurement system. The procedures involve introducing known concentrations of an analyte or comparing the test method against a validated test method to determine the method's bias and collecting multiple or co-located simultaneous samples to determine the method's precision. Method 301 validation testing or data in a form responsive to § 12 of Method 301 should also accompany requests for major changes to test methods under parts 60 and 61. During the review process, all relevant documents (e-mails, letters, and other supporting materials) are retained and filed. Once the review process has been completed, we issue an official letter providing

written notification of approval/disapproval of the alternative test method request under § 63.7(f)(3), § 60.8(b), or § 61.13(h)(1).

C. Recording and Publication

As noted earlier, approvals for broadly applicable alternative test methods will be announced on the EPA's Web site at *http://www.epa.gov/ttn/emc/tmethods.html#CatB* as soon as they are issued. The notification on our Technology Transfer Network (TTN) Web site will clearly indicate each class, category, or subcategory of sources for which the change or alternative test method is approved. We intend to publish a notice annually that summarizes approvals for broadly applicable alternative test methods.

Table 1 in this notice includes a summary of broad approvals that have been posted to the TTN. Complete copies of these documents may be obtained at *http://www.epa.gov/ttn/emc/tmethods.html#CatB.*

Dated: January 19, 2007.

Jenny Noonan Edmonds,

Acting Director, Office of Air Quality Planning, and Standards.

[FR Doc. E7–1338 Filed 1–29–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8274–3]

Access to Confidential Business Information by Industrial Economics, Inc. and Its Subcontractors, Cascadia Consulting, DPRA, Inc., Energy and Environmental Research Corporation (A Subsidiary of General Electric) (''EERGC''), ERG Corporation, Indtai, Inc., Menzie Cura, Ross & Associates, and RTI International

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of access to data and request for comments.

SUMMARY: EPA will authorize its contractor, Industrial Economics, Inc., and its subcontractors, Cascadia Consulting, DPRA, Inc., Energy and Environmental Research Corporation (a subsidiary of General Electric) (''EERGC''), ERG Corporation, Indtai, Inc., Menzie Cura, Ross & Associates, and RTI International to access Confidential Business Information (CBI) which has been submitted to EPA under the authority of all sections of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. EPA has issued regulations (40 CFR Part 2, Subpart B) that outline business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter as CBI to abide by these provisions.

DATES: Access to confidential data submitted to EPA will occur no sooner than February 9, 2007.

ADDRESSES: Comments should be sent to LaShan Haynes, Document Control Officer, Office of Solid Waste (5305P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Comments should be identified as ''Access to Confidential Data.''

FOR FURTHER INFORMATION CONTACT: LaShan Haynes, Document Control Officer, Office of Solid Waste (5305P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, 703–605–0516.

SUPPLEMENTARY INFORMATION:

1. Access to Confidential Business Information

Under EPA Contract No. EP–W–07–011, Industrial Economics, Inc., and its subcontractors, Cascadia Consulting, DPRA, Inc., EERGC, ERG Corporation, Indtai, Inc., Menzie Cura, Ross & Associates, and RTI International will assist the Economics, Methods, Risk Analysis Division of the Office of Solid Waste (OSW) with data and information collection, analysis, and management; regulatory assessment including costs, benefits, and economic and other impacts; program transformation, evaluation and support; hazard, exposure, and risk assessment support; and, document preparation. OSW collects data from industry to support the RCRA hazardous waste regulatory program. Some of the data collected from industry are claimed by industry to contain trade secrets or CBI. In accordance with the provisions of 40 CFR Part 2, Subpart B, OSW has established policies procedures for handling information collected from industry, under the authority of RCRA, including RCRA Confidential Business Information Security Manuals. Industrial Economics, Inc., and its subcontractors, Cascadia Consulting, DPRA, Inc., EERGC, ERG Corporation, Indtai, Inc., Menzie Cura, Ross & Associates, and RTI International, shall protect from unauthorized disclosure all information designated as confidential and shall abide by all RCRA CBI requirements, including procedures outlined in the RCRA CBI Security Manual.

The U.S. Environmental Protection Agency has issued regulations (40 CFR Part 2, Subpart B) that outline business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter as CBI to abide by these provisions. Industrial Economics, Inc., and its subcontractors, Cascadia Consulting, DPRA, Inc., EERGC, ERG Corporation, Indtai, Inc., Menzie Cura, Ross & Associates, and RTI International will be authorized to have access to RCRA CBI under the EPA ''Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual.''

EPA is issuing this notice to inform all submitters of information under all sections of RCRA that EPA will provide Industrial Economics, Inc. and its subcontractors, Cascadia Consulting, DPRA, Inc., EERGC, ERG Corporation, Indtai, Inc., Menzie Cura, Ross & Associates, and RTI International, access to the CBI records located in the RCRA Confidential Business Information Center. Access to RCRA CBI under this contract will take place at EPA Headquarters only. Contractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to confidential information.

Dated: January 18, 2007.

Matthew Hale,

Director, Office of Solid Waste.

[FR Doc. E7–1424 Filed 1–29–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8274–5]

Proposed National Pollutant Discharge Elimination System (NPDES) General Permits for Storm Water Discharges From Industrial Activities—Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: On December 11, 2006 (71 FR 71540), EPA published a notice of the availability of Seven (7) National Pollutant Discharge Elimination System (NPDES) General Permits for Storm Water Discharges from Industrial Activities and requested comments on the draft by January 10, 2007. The purpose of this notice is to extend this comment period to February 13, 2007.

DATES: Comments on the proposed general permits must be received by February 13, 2007.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Send written comments to: Greg Davis (8P–W–WW); Attention: NPDES Permits; U.S. EPA, 1595 Wynkoop Street; Denver, CO 80202. Public comments will also be accepted via electronic mail (E-mail) at *davis.gregory@epa.gov.*

FOR FURTHER INFORMATION CONTACT: For a copy of the draft permit and fact sheet or for further information on the draft permit, contact either Greg Davis (303) 312–6314 (*davis.gregory@epa.gov*) at the above address or Ellen Bonner, (303) 312–6371 (*bonner.ellen@epa.gov*), at U.S. EPA Region 8 (8P–W–WW); 1595 Wynkoop Street; Denver, CO 80202. Copies of the draft permit and Fact Sheet may be downloaded from the EPA Region 8 Web site at *http://www.epa.gov/region8/water/stormwater.*

SUPPLEMENTARY INFORMATION: Effective January 17, 2007, the Office of Partnerships and Regulatory Assistance for EPA Region 8 will be located in a new office at 1595 Wynkoop Street. Commenters are encouraged to use the Wynkoop Street address for all comments submitted, however, comments submitted to the EPA office at 999 18th Street in Denver will be forwarded to the new office location.

Dated: January 8, 2007.

Stephen S. Tuber,

Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance.

[FR Doc. E7–1426 Filed 1–29–07; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Submission for OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final notice of submission for OMB review.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request to approve a new information collection as described below.

DATES: Written comments on this final notice must be submitted on or before March 1, 2007.

ADDRESSES: The Request for Clearance (SF 83–I), supporting statement, and other documents submitted to OMB for review may be obtained from: Brett Brenner, Attorney Advisor, 1801 L Street, NW., Washington, DC 20507. Comments on this final notice must be submitted to Brenda Aguilar, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or electronically mailed to *baguilar@omb.eop.gov*. Comments should also be sent to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile (''FAX'') machine. This limitation is necessary to assure access to the equipment. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll-free telephone numbers.)

FOR FURTHER INFORMATION CONTACT: Cynthia Pierre, Director, Field Management Programs, Office of Field Programs, at (202) 663–7115. This notice is also available in the following formats: large print, Braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the EEOC Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: A notice that EEOC would be submitting this request was published in the **Federal Register** on September 7, 2006, allowing for a 60-day public comment period. Two comments were received. The first comment questioned whether the three questions were enough to serve as the ''sole component, or perhaps even the primary component, of an accurate evaluation'' of the Contact Center's quality of service. The comment asked that the questionnaire be expanded to include more questions to provide a ''significantly more precise and thorough sense of potential claimants' experience'' with the Center. The suggested additions to the questionnaire dealt with responsiveness, e.g., the type of information requested, if it was communicated clearly, if it was answered in a timely fashion and if the Center was able to answer the caller's question. The second comment, besides expressing general opposition to the Contact Center as a whole, states that the survey is not an adequate indicator of performance and expresses concern that the survey is too short.

The EEOC is not relying on the three questions in the customer service survey as the sole, or even the primary, indicator of Contact Center performance. However, capturing the level of customer satisfaction is important and is a factor in judging the performance of the Center. Additionally, the Contact Center currently collects data and performance metrics that answer many of the concerns expressed in the comment, including the time it takes to answer a call and the type of information requested by a caller. Further, the EEOC regularly monitors calls on a live and recorded basis to ensure the accuracy and quality of the information provided by the Center. Therefore, we believe that the customer survey is adequate for its intended purpose.

Overview of This Information Collection

Collection Title: EEOC National Contact Center Customer Satisfaction Survey.

OMB No.: None.

Frequency of Report: On occasion.

Description of Affected Public: Individuals or households; Businesses or other for profit, not-for-profit institutions; state or local governments.

Responses: 200,000.

Reporting Hours: 5,722.

Federal Cost: 0.

Abstract: Voluntary customer satisfaction survey for the users of the EEOC National Contact Center. The survey is necessary to gauge customer satisfaction and to assist in determining contract performance and guide possible changes in the operation of the Contact Center.

Burden Statement: The estimated number of respondents is approximately 200,000 people. Over the past six months, the NCC has averaged approximately 51,000 contacts from the public each month. Because the survey is voluntary there is no way to accurately predict the number of users who will agree to take the survey. The contractor estimates that, based on its experience with similar surveys the response rate will be between 25% and 35%. The contractor also estimates that if the respondent does not need to have the satisfaction questions repeated and responds immediately after hearing the complete response, the survey will take approximately 1 minute 43 seconds to administer. The burden is estimated at 5,722 hours. We estimated 200,000 annual surveys completed at 1 minute and 43 seconds per survey. There is no annualized cost to respondents.

Dated: January 19, 2007.

For the Commission.

Naomi C. Earp,

Chair.

[FR Doc. E7–1357 Filed 1–29–07; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 26, 2007.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. New England Bancshares, Inc., Enfield, Connecticut, to become a bank holding company by acquiring First Valley Bancorp, Inc., Bristol, Connecticut, and thereby indirectly acquire voting shares of Valley Bank, Bristol, Connecticut.

In connection with this application, Applicant also has applied to retain voting shares of Enfield Federal Savings and Loan Association, Enfield, Connecticut, and thereby engage in operating a Federal savings and loan association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 25, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–1406 Filed 1–29–07; 8:45 am]

BILLING CODE 6210–01–S

Federal Reserve System

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Monday, February 5, 2007.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, January 26, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 07–428 Filed 1–26–07; 3:54 pm]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—01/03/2007			
20061489	Allied Waste Industries, Inc	Waste Services, Inc	Cactus Waste Systems, LLC, Waste Services of Arizona, Inc.
20070494	Forest Laboratories, Inc	Cerexa, Inc	Cerexa, Inc.
20070496	Carlyle Partners IV, L.P	ElkCorp	ElkCorp.
20070498	Odyssey Investment Partners Fund III, L.P.	DLJ Merchant Banking Partners III, L.P	WQP Holdings, Inc.
20070501	CPG International Holdings LP	Pro-Cell, LLC	Pro-Cell, LLC.
20070502	Natixis	Hansberger Group, Inc	Hansberger Group, Inc.
20070503	Torchmark Corporation	Barry Wolf	Direct Marketing Advertising Distributors.

Trans #	Acquiring	Acquired	Entities
20070515	West Fraser Timber Company Ltd	International Paper Company	International Paper Company.
20070517	Seagate Technology	EVault, Inc	eVault Canada, Inc.
20070528	Trevor Lloyd	Sirsi Holdings Corp	Sirsi Holdings Corp.
20070535	Penn National Gaming, Inc	R.D. Hubbard	Ruidoso Downs Racing, Inc., Zia Partners, LLC.
Transactions Granted Early Termination—01/04/2007			
20070451	Sonic Healthcare Limited	American Esoteric Laboratories, Inc	American Esoteric Laboratories, Inc.
20070497	Telefonaktiebolaget LM Ericsson	Redback Networks, Inc	Redback Networks, Inc.
Transactions Granted Early Termination—01/05/2007			
20070420	Trian Partners, L.P	H.J. Heinz Company	H.J. Heinz Company.
20070499	WLR Recovery Fund III, L.P	Lear Corporation	Lear Corporation.
20070510	RR Acquisition Holding LLC	RailAmerica, Inc	RailAmerica, Inc.
20070513	Schmolz + Bickenbach KG	A. Finkl & Sons Co	A. Finkl & Sons Co.
20070519	Vestar AIV Holdings A. L.P	Wilton Re Holdings Limited	Wilton Re Holdings Limited.
20070526	The Hain Celestial Group, Inc	North Castle Partners III, L.P	Avalon Holding Corporation.
20070534	Trident III, L.P	Wilton Re Holdings Limited	Wilton Re Holdings Limited.
Transactions Granted Early Termination—01/08/2007			
20070520	V.F. Corporation	Faust E. Capobianco III	Majestic Athletic, Ltd., Majestic Graphics, Ltd., Majestics Athletic International, Ltd., Maria Rose Fashions, Inc.
20070524	Weston Presidio V, L.P	Harvest Partners IV, L.P	HP Evenflo Holdings, Inc.
20070527	Beecken Petty O'Keefe QP Fund II, L.P	Reichert, Inc	Reichert, Inc.
20070537	Wabash Valley Power Association, Inc	Duke Energy Corporation	Duke Energy Indiana.
20070538	ASML Holding N.V	Brion Technologies, Inc	Brion Technologies, Inc.
20070550	Johnson & Johnson	Conor MedSystems, Inc	Conor MedSystems, Inc.
20070553	Hewlett-Packard Company	Bitfone Corporation	Bitfone Corporation.
20070558	Express Energy Services Holding LP	Mike Byrd	BAHD LLC, BAH Leasing, Ltd., Brazos Oilfield Services, Ltd., Byrd R&S Oilfield Services, L.P., D&D Tong, Ltd., Laydown, Ltd., MBCC, Ltd., Mike Byrd Casing Crews, Ltd., North Trail Oilfield Services, Ltd.
Transactions Granted Early Termination—01/09/2007			
20070481	The Stanley Works	GTCR Fund VII, L.P	SecurityCo Solutions, Inc.
20070495	Schering-Plough Corporation	Valeant Pharmaceuticals International	Valeant Research & Development.
20070508	J.W. Childs Equity Partners III, L.P	Sun Capital Partners II, L.P	Mattress Holding Corp.
20070521	MDI Holdings, LLC	MacDermid, Incorporated	MacDermid, Incorporated.
20070556	Giovanni Agnelli e.C.S.a.p.az	Mitsubishi Estate Company, Ltd	Cushman & Wakefield Holdings, Inc., Cushman & Wakefield, Inc.
20070560	Publicis Groupe S.A	Digitas Inc	Digitas, Inc.
Transactions Granted Early Termination—01/10/2007			
20070505	Chemtura Corporation	Alex Kaufman	Kaufman Holdings Corporation.
20070542	American Capital Strategies, Ltd	ONCAP L.P	Western Inventoy Service Holdings Ltd.
20070551	American European Group, Inc	Merchants Group, Inc	Merchants Group, Inc.
20070554	Avista Capital Partners, LP	Thomas L. Phillips	Phillips Investment Resources, LLC.
Transactions Granted Early Termination—01/11/2007			
20070544	Marquette Transportation Company, Inc	Raymond A. Eckstein, Jr	Eckstein Marine Service, L.L.C.
Transactions Granted Early Termination—01/12/2007			
20070533	Friedman Fleischer & Lowe Capital Partners II, L.P.	Wilton Re Holdings Limited	Wilton Re Holdings Limited.
20070549	Graeme Hart	SIG Holding Ltd	SIG Holding Ltd.
20070567	Arlington Capital Partners II, L.P	Kevin McMurtry	Advanced Health Media, Inc.
20070573	Avista Capital Partners, L.P	The McClatchy Company	Alternate Delivery Extra Distribution Company, Metro Marketing Associates, Inc., The Star Tribune Company.
20070575	Bear Stearns Merchant Banking Partners III (Cayman) L.P.	Caisse de depot de placement du Quebec.	Alter Moneta Corporation.

Trans #	Acquiring	Acquired	Entities
		Transactions Granted Early Termination—01/16/2007	
20070492	Perot Systems Corporation	Frank F. Islam	QSS Group, Inc.
20070581	Alliance Data System Corporation	Hellman & Friedman Capital Partners V, L.P.	DoubleClick, Inc.
		Transactions Granted Early Termination—01/17/2007	
20070487	DSI International Sarl	Sentinel Capital Partners III, L.P	Fasloc Holdings, Inc.
20070583	Level 3 Communications, Inc	Savvis, Inc	Mount Shasta Acquisition LLC.
20070595	Apollo Investment Fund VI, L.P	Realogy Corporation	Realogy Corporation.
		Transactions Granted Early Termination—01/18/2007	
20070018	Hospira, Inc	Mayne Pharma Limited	Mayne Pharma Limited.
		Transactions Granted Early Termination—01/19/2007	
20070568	Euronet Worldwide, Inc	Fred Kunik	Continental Exchange Solutions, Inc., Global Exchange Services, Inc., RIA de la Hispaniola, C. Por A., RIA Envia Financial Services GmbH, RIA Envia France, SARL, RIA Envia, Inc., RIA Financial Services AG, RIA Financial Services Australia Party Ltd., RIA Financial Services Limited, RIA Financial Services Puerto Rico, RIA France SAS, RIA Italia SRL, RIA Telecommunicaciones S.A., RIA Telecommunications of Canada, RIA Telecom of New York, Inc., RIA Telecom, S.L. Unipersonal.
20070570	Euronet Worldwide, Inc	Irving Barr	Continental Exchange Solutions, Inc., Global Exchange Services, Inc., RIA de la Hispaniola, C. Por A., RIA Envia Financial Services GmbH, RIA Envia France, SARL, RIA Envia, Inc., RIA Financial Services AG, RIA Financial Services Australia Party Ltd., RIA Financial Services Limited, RIA Financial Services Puerto Rico, RIA France SAS, RIA Italia SRL, RIA Telecommunicaciones S.A., RIA Telecommunications of Canada, RIA Telecom of New York, Inc., RIA Telecom, S.L. Unipersonal.
20070572	Massachusetts Mutual Life Insurance Company.	Scottish Re Group Limited	Scottish Re Group Limited.

For Further Information Contact: Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 07–373 Filed 1–29–07; 8:45 am]

BILLING CODE 6750–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Quality Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 5th meeting of the American Health Information Community Quality Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.)

DATES: February 7, 2007, from 1 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/quality/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue discussing possible quality reporting measure recommendations to the AHIC.

The meeting will be available via Internet access. For additional information, go to *http://www.hhs.gov/healthit/ahic/quality/quality_instruct.html.*

Dated: January 22, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–393 Filed 1–29–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Chronic Care Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 13th meeting of the American Health Information Community Chronic Care Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C.; App.)

DATES: February 15, 2007, from 1 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION: *http://www.hhs.gov/healthit/ahic/chroniccare/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue to discuss possible Recommendations to the American Health Information Community, and medical/legal issues and challenges facing the use of remote monitoring and secure messaging technologies.

The meeting will be available via Internet access. For additional information, go to *http://www.hhs.gov/healthit/ahic/chroniccare/cc_instruct.html.*

Dated: January 24, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–394 Filed 1–29–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Population CARE and Clinical Care Connections Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 13th meeting of the American Health Information Community Population Care and Clinical Care Connections Workgroup [formerly Biosurveillance Workgroup] in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.)

DATES: February 2, 2007, from 10 a.m. to 3 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building)

FOR FURTHER INFORMATION CONTACT: *http:/www.hhs.gov/healthit/ahic/biosurveillance/.*

SUPPLEMENTARY INFORMATION: The Workgroup will discuss the priority areas of Adverse Events and Response Management.

The meeting will be available via Internet access. For additional information, go to *http://www.hhs.gov/healthit/ahic/biosurveillance/bio_instruct.html.*

Dated: January 22, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–395 Filed 1–29–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee.

Name: Healthcare Infection Control Practices Advisory Committee (HICPAC).

Times and Dates:

8:30 a.m.–5 p.m., February 15, 2007.

8:30 a.m.–4 p.m., February 16, 2007.

Place: Centers for Disease Control and Prevention (CDC) Roybal Campus, Bldg 19, Auditorium B3, 1600 Clifton Road, Atlanta, GA 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (e.g., nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters to Be Discussed: Agenda items will include: Information Technology Standards Update; National Quality Forum Update and Prevention Epidemiology Centers Update.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Harriette Lynch, Committee Management Specialist, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE, M/S A–07, Atlanta, Georgia 30333, telephone 404–639–4035.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 23, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–1393 Filed 1–29–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0421]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Biological Products: Reporting of Biological Product Deviations in Manufacturing; Forms FDA 3486 and 3486A

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of

information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 1, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857,301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Biological Products: Reporting of Biological Product Deviations in Manufacturing; Forms FDA 3486 and 3486A (OMB Control Number 0910–0458)—Extension

Under section 351 of the Public Health Service Act (42 U.S.C. 262), all biological products, including human blood and blood components, offered for sale in interstate commerce must be licensed and meet standards designed to ensure the continued safety, purity, and potency of such products. In addition, the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351) provides that drugs and devices (including human blood and blood components) are adulterated if they do not conform with Current Good Manufacturing Practice (CGMP) assuring that they meet the requirements of the act. All establishments manufacturing biological products including human blood and blood components must comply with the applicable CGMP regulations (parts 211, 606, and 820 (21 CFR parts 211, 606, and 820)). Transfusion services are required under 42 CFR 493.1271 to comply with 21 CFR parts 606 and 640 as they pertain to the performance of manufacturing activities. FDA regards biological product deviation (BPD) reporting to be an essential tool in its directive to protect public health by establishing and maintaining surveillance programs that provide timely and useful information.

Section 600.14 requires the manufacturer who holds the biological product license, for other than human blood and blood components, and who had control over the product when the deviation occurred, to report to the Center for Biologics Evaluation and Research (CBER) or to the Center for Drugs Evaluation and Research (CDER) as soon as possible but not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. Section 606.171 requires a licensed manufacturer of human blood and blood components, including Source Plasma; an unlicensed registered blood establishment; or a transfusion service who had control over the product when the deviation occurred, to report to CBER as soon as possible but not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. The BPD reporting under 21 CFR 1271.350(b) for human cells, tissues, and cellular and tissue-based products is approved under OMB control number 0910–0559 (expires November 30, 2007). Form FDA 3486 is used to submit BPDs under these regulations.

Respondents to this collection of information are the licensed manufacturers of biological products other than human blood and blood components, licensed manufacturers of blood and blood components including Source Plasma, unlicensed registered blood establishments, and transfusion services. Based on information from FDA's database, there are an estimated 147 licensed manufacturers of biological products other than human blood and blood components, 194 licensed manufacturers of human blood and blood components, including Source Plasma, and 1,230 unlicensed registered blood establishments. Based on the Center for Medicare and Medicaid Services records, there are an estimated 4,980 transfusion services. The number of licensed manufacturers and total annual responses under § 600.14 include the estimates for both CBER and CDER. The number of total annual responses is based on the number of BPD reports FDA received in fiscal year 2005. The rate of submission is not expected to change significantly in the next few years. Based on information from industry, the estimated average time to complete a deviation report is 2 hours. The availability of the standardized report form, Form FDA 3486, and the ability to submit this report electronically to CBER (CDER does not currently accept electronic filings) further streamlines the report submission process.

CBER is developing an addendum to Form FDA 3486. The web-based addendum (Form FDA 3486A) would request additional information when a BPD report has been reviewed by FDA and evaluated as a possible recall. The additional information requested would include information not contained in the Form FDA 3486 such as: (1) Distribution pattern, (2) method of consignee notification, (3) consignee(s) of products for further manufacture, (4) additional product information, and (5) updated product disposition. This information would be requested by CBER through e-mail notification to the submitter of the BPD report. This information would be used by CBER for purposes of recall classification. We plan to use Form FDA 3486A for only biological products regulated by CBER. We do not plan to use this form for biological products regulated by CDER because they receive very few BPD reports and do not accept electronic filings. CBER estimates that 5 percent of the total BPD reports submitted to CBER would need additional information submitted in the addendum. CBER estimates it would take between 15 to 45 minutes to complete the addendum. For calculation purposes, CBER is using one-half hour.

Activities such as investigating, changing standard operating procedures or processes, and followup are currently required under part 211 (approved under OMB control no. 0910–0139, expires September 30, 2008); part 606 (approved under OMB control no. 0910–0116, expires December 31, 2008); and part 820 (approved under OMB control no. 0910–0073, expires September 30, 2007) and, therefore, are not included in the burden calculation for the separate requirement of submitting a BPD report to FDA.

In the **Federal Register** of October 31, 2006, (71 FR 63772), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	FDA Form Number	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Responses	Total Hours
600.14	3486	147	2.73	401	2.0	802
606.171 [2]	3486	194	169.89	32,958	2.0	65,916
606.171 [3]	3486	6,210	1.50	9,311	2.0	18,622
	3486A [4]	6,551	0.33	2,133	0.5	1,067
Total						86,407

[1] There are no capital costs or maintenance costs associated with this collection of information.
[2] Licensed manufacturers of human blood and blood components, including Source Plasma.
[3] Unlicensed registered blood establishments and transfusion services (1,230 + 4,980 = 6,210).
[4] Five percent of the total annual responses to CBER (42,653 x 0.05 = 2,133).

Dated: January 24, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–1415 Filed 1–29–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0105]

James T. Kimball; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying Mr. James T. Kimball's request for a hearing and is issuing a final order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Mr. James T. Kimball from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Kimball was convicted of felonies under Federal law for conduct relating to the regulation of a drug product under the act. In addition, Mr. Kimball has failed to file with the agency information and analyses sufficient to create a basis for a hearing concerning this action.

DATES: This order is effective January 30, 2007.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On May 24, 2000, a jury found Mr. Kimball guilty of one count of conspiring to commit offenses against the United States and the Florida Department of Health, a Federal felony offense under 18 U.S.C. 371; six counts of distributing a misbranded drug into interstate commerce, a Federal felony offense under 21 U.S.C. 331(a); and one count of making a false statement in a matter within the jurisdiction of a Federal agency, a Federal felony offense under 18 U.S.C. 1001. On October 19, 2000, the U.S. District Court for the Middle District of Florida entered judgment and sentenced Mr. Kimball for these offenses.

The bases for these convictions were Mr. Kimball's knowing and willful participation, including conspiring, to violate Federal laws in connection with the distribution of a misbranded drug, deprenyl, into interstate commerce, and false statements he made to the U.S. Customs Service about shipments of deprenyl for export. The drug deprenyl was misbranded because it contained selegiline, the active ingredient of a prescription drug Eldepryl, but was dispensed without a prescription issued by a licensed practitioner.

As a result of these convictions, FDA served Mr. Kimball by certified letter on April 25, 2005,[1] a proposal to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The notice also offered Mr. Kimball an opportunity to request a hearing on the debarment proposal. The debarment proposal was based on a finding, under section 306(a)(2)(B) of the act (21 U.S.C. 335a(a)(2)(B)), that Mr. Kimball was convicted of felonies under Federal law for conduct relating to the regulation of a drug product under the act.

The certified letter also informed Mr. Kimball that his request for a hearing could not rest upon mere allegations or denials, but must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The letter also informed Mr. Kimball that the only material issue of fact was whether he was convicted as alleged in the letter, and that the facts underlying his conviction are not at issue in this proceeding. Finally, the letter informed Mr. Kimball that if it conclusively appeared from the face of the information and factual analyses in his request for a hearing that there was no genuine and substantial issue of fact that precluded the order of debarment, FDA would enter summary judgment against him and deny his request for a hearing.

In a letter dated May 16, 2005, Mr. Kimball responded to the certified letter by requesting a hearing.

II. Denial of Hearing

In his May 16, 2005, request for a hearing, Mr. Kimball does not present any arguments or information to show why he should not be debarred. Mr. Kimball merely states that: (1) He ''was not convicted pursuant to the statements set forth in FDA's alleged notice'', (2) the allegations of his convictions are incorrect, and (3) his conviction does not mandate his debarment. Such statements do not create a basis for a hearing because hearings will not be granted on mere allegations, denials, or general

[1] The certified letter was mailed to the prison facility where records indicated that Mr. Kimball was incarcerated, and the return receipt was signed on April 25, 2005, by an employee at the facility. In his request for hearing, Mr. Kimball stated that he received the letter on May 5, 2005. The delivery dates do not alter the nature of Mr. Kimball's request for a hearing or our application of summary judgement in this matter.

descriptions of positions (see 21 CFR 12.24(b)(2)). Although FDA's proposal to debar Mr. Kimball explained that he had the opportunity to file a request for a hearing and then submit factual information within 60 days from receipt of the letter, Mr. Kimball did not submit any factual information. Mr. Kimball has failed to present any arguments or information to show why he should not be debarred. Therefore, FDA finds that Mr. Kimball has failed to identify any genuine and substantial issue of fact requiring a hearing. Accordingly, FDA denies Mr. Kimball's request for a hearing.

III. Findings and Order

Therefore, the Associate Commissioner for Regulatory Affairs, under section 306(a) of the act and under authority delegated to him, finds that Mr. James T. Kimball has been convicted of felonies under Federal law for conduct relating to the regulation of a drug product under the act (section 306(a)(2)(B) of the act).

As a result of the foregoing findings, Mr. James T. Kimball is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**) (sections 306(c)(1)(B) and (c)(2)(A)(iii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Kimball in any capacity, during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Mr. Kimball, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Kimball during his period of debarment.

Any application by Mr. Kimball for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 2005N–0105 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 22, 2007.

Margaret O'K. Glavin,

Associate Commissioner for Regulatory Affairs.

[FR Doc. E7–1416 Filed 1–29–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0029]

Indevus Pharmaceuticals, Inc.; Withdrawal of Approval of a New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new drug application (NDA) for REDUX (dexfenfluramine hydrochloride (HCl)) Capsules held by Indevus Pharmaceuticals, Inc. (Indevus), 33 Hayden Ave., Lexington, MA 02421–7971. Indevus has requested that approval of this application be withdrawn because the product is no longer marketed, thereby waiving its opportunity for a hearing.

DATES: Effective January 30, 2007.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1997, FDA asked that REDUX (dexfenfluramine HCl) be withdrawn from the market because of safety concerns; Indevus (formerly Interneuron Pharmaceuticals, Inc.) discontinued marketing this product. REDUX (dexfenfluramine HCl)Capsules, a treatment for obesity, was withdrawn from the market after review of safety data showed that the product is associated with valvular heart disease (see FDA press releases on ''Health Advisory on Fenfluramine/Phentermine for Obesity,'' dated July 8, 1997, (*http://www.fda.gov/opacom/hpnews.html*), and ''FDA Announces Withdrawal of Fenfluramine and Dexfenfluramine,'' dated September 15, 1997, (*http://www.fda.gov/opacom/hpnews.html*)).

In a letter dated January 16, 2006, Indevus requested that FDA withdraw approval, under § 314.150(d) (21 CFR 314.150(d)), of NDA 20–344 for REDUX (dexfenfluramine HCl) Capsules, stating that it had discontinued marketing the product. The letter also stated that Indevus believes that the risk/benefit ratio for the use of dexfenfluramine is unfavorable and that withdrawal of approval of NDA 20–344 is in the best interest of public health. Indevus voluntarily waived its opportunity for a hearing, provided under § 314.150(a) and (b).

Therefore, under section 505(e) of Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)), § 314.150(d), and under authority delegated to the Director, Center for Drug Evaluation and Research, by the Commissioner of Food and Drugs, approval of NDA 20–544, and all amendments and supplements thereto, is withdrawn, effective January 30, 2007. Distribution of this product in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the act (21 U.S.C. 331(d)).

Dated: January 12, 2007.

Douglas C. Throckmorton,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. E7–1414 Filed 1–29–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Physician's Certification of Borrower's Total and Permanent Disability Form (OMB No. 0915–0204): Extension

The Health Education Assistance Loan (HEAL) program provided federally-insured loans to students of allopathic medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, allied health, or chiropractic, and graduate students in health administration or clinical psychology through September 30, 1998. Eligible lenders, such as banks, savings and loan associations, credit unions, pension funds, State agencies, HEAL schools, and insurance companies, make new refinanced HEAL loans which are insured by the Federal Government against loss due to borrower's death, disability, bankruptcy, and default. The basic purpose of the program was to assure the availability of funds for loans to eligible students who needed to borrow money to pay for their educational loans. Currently, the program monitors the federal liability, and assists in default prevention activities.

The HEAL borrower, the borrower's physician, and the holder of the loan complete the Physician's Certification form to certify that the HEAL borrower meets the total and permanent disability provisions. The Department uses this form to obtain detailed information about disability claims which includes the following: (1) The borrower's consent to release medical records to the Department of Health and Human Services and to the holder of the borrower's HEAL loans; (2) pertinent information supplied by the certifying physician; (3) the physician's certification that the borrower is unable to engage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death; and, (4) information from the lender on the unpaid balance. Failure to submit the required documentation will result in disapproval of a disability claim. No changes have been made to the current form.

The estimate of burden for the Physician's Certification form is as follows:

Respondent	Number of respondents	Responses per respondent	Total responses	Hours per response (minutes)	Total burden hours
Borrower	80	1	80	5	7
Physician	80	1	80	30	40
Loan Holder	17	5	85	10	14
Total	177	.....	425	.....	61

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 24, 2007.

Caroline Lewis,

Acting Associate Administrator for Administration and Financial Management.

[FR Doc. E7–1437 Filed 1–29–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: HRSA AIDS Education and Training Centers Evaluation Activities (OMB No. 0915–0281)—Revision

The AIDS Education and Training Centers (AETC) Program, under the Ryan White HIV/AIDS Treatment Modernization Act of 2006, supports a network of regional and cross-cutting national centers that conduct targeted, multi-disciplinary education and training programs for health care providers treating persons with HIV/AIDS. The purpose of the AETCs is to increase the number of health care providers who are effectively educated and motivated to counsel, diagnose, treat, and medically manage individuals with HIV infection, and to help prevent high risk behaviors that lead to HIV transmission.

As part of an ongoing evaluation effort of AETC activities, information is needed on AETC training sessions, consultations, and technical assistance activities. Each regional center collects forms on AETC training events, and centers are required to report aggregate data on their activities to HRSA and the HIV/AIDS Bureau (HAB). This data collection provides information on the number of training events, including clinical trainings and consultations, as well as technical assistance activities conducted by each regional center, the number of health care providers receiving professional training or consultation, and the time and effort expended on different levels of training and consultation activities. In addition, information is obtained on the populations served by the AETC trainees, and the increase in capacity achieved through training events. Collection of this information allows HRSA/HAB to provide information on training activities, types of education, and training provided to Ryan White CARE Act grantees, resource allocation, and capacity expansion.

Trainees are asked to complete the Participant Information Form (PIF) for each activity they complete, and trainers are asked to complete the Event Record (ER). The estimated annual response burden to the attendees of training programs is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
PIF	94,641	1	94,641	0.2	18,928.2
Total	94,641		94,641		18,928.2

The estimated annual burden to AETCs is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Event Record	16,417	1	16,417	0.2	3,283
Aggregate Data Set	12	2	24	32	768
Total	16,429		16,441		4,051

The total burden hours are 22,979.2.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Karen Matsuoka, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 24, 2007.

Caroline Lewis,

Acting Associate Administrator for Administration and Financial Management.

[FR Doc. E7–1438 Filed 1–29–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps.

Dates and Times: March 8, 2007, 2 p.m.–5 p.m.; March 9, 2007, 8:30 a.m.–5 p.m.; and March 10, 2007, 9 a.m.–5 p.m.

Place: Embassy Suites DC Convention Center, 900 10th Street, NW., Washington, DC 20001.

Status: The meeting will be open to the public.

Agenda: The Council will be finalizing a report outlining some recommendations for the National Health Service Corps Program. Discussions will be focused on the impact of these recommendations on the program participants, communities served by these clinicians and in the administration of the program.

For Further Information Contact: Tira Patterson, Division of National Health Service Corps, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, MD 20857; e-mail: *TPatterson@hrsa.gov;* telephone: 301–594–4140.

Dated: January 24, 2007.

Caroline Lewis,

Acting Associate Administrator for Administration and Financial Management.

[FR Doc. E7–1439 Filed 1–29–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

[Funding Announcement Number: HHS–2007–IHS–HPDP1–0001]

Office of Clinical and Preventive Services Chronic Care Collaborative

Announcement Type: Cooperative Agreement.

Catalog of Federal Domestic Number: 93.443.

Intended Recipient: Institute for Healthcare Improvement.

Award Amount: $600,000 for year 1; $800,000 for years 2 and 3.

Application Deadline: February 1, 2007.

Authorities: Snyder Act, 25 U.S.C. 13, Public Health Service (PHS) Act, 42 U.S.C. 301(a).

I. Purpose

In this cooperative agreement, the Indian Health Service (IHS) will work closely with the Institute for Healthcare Improvement (IHI) on innovating and testing new designs of care delivery systems, leveraging results for thousands of patients, and creating a system-wide emphasis on improvement. The IHI's senior leaders and faculty will work closely with the senior leadership team of the Indian health care system to design an improvement strategy to meet the following agreed upon aims:

To test adaptations and innovations in chronic conditions management in the IHS.

- To develop a strategy for spreading the lessons learned to all IHS sites as well as Tribal and urban sites.
- To create a more robust improvement infrastructure.
- To nurture the image of the IHS as an innovator in healthcare by publicizing successes.

Leadership is the critical driver for change and the IHI will work with the IHS, Tribal and Urban health programs leadership to build a culture and structure to support improved levels of performance in the delivery of health care. The IHI and the IHS will work collaboratively to build new models of care and care processes, with the intent of disseminating such learning and ''best practices'' throughout the Indian health care system. The IHS will have the opportunity to showcase the results of this work by publishing them on shared websites as well as in jointly authored publications.

II. Justification

The IHI is a non-profit organization that is leading improvement in health care throughout the world. IHI has unparalleled experience and expertise in working with health systems that care for underserved populations to improve the quality of care for their patients and build capacity for continuing improvement. IHI developed and employs a Breakthrough Series methodology (Learning Model Collaborative) to provide programmatic guidance and focus through coordinated training and support, communication,

and sharing of lessons learned. They are world leaders in this area and have worked with other programs in similar settings to improve chronic illness systems of care for underserved and vulnerable populations, including the Health Resources and Services Administration/Bureau of Primary Health Care's health center program for eight years. The IHI's intellectual capital and operational capacity are essential to the IHS. The IHI has the resources and access to an international network of experts in the area of chronic disease management and implementing chronic care models in various settings. Most other improvement agencies and organizations focus on specific steps and methodologies while IHI takes a much more comprehensive and strategic approach to improvement. Over the past 15 years they have become the recognized world leader in system change in healthcare. They have moved beyond the specifics of software into process development using a variety of techniques to make the best use of technologies and existing organizational capabilities. Their methodologies include improvement advisors who act as peer to peer coaches for organizations implementing change. This personal approach and the IHI's considerable expertise are critical to expand existing Indian Country efforts, where personal connection and effective relationships are often the difference between project success and failure.

This single source cooperative agreement will allow IHS to expedite learning from their organization as well as expedite access to IHI's vast network of strategic partners.

III. Award Information

Type of Awards: Cooperative Agreement.

Estimated Funds Available: The award is for three years. For year one $600,000 is available and for years two and three—$800,000 is available for each year for a continuation award. Award under this announcement is subject to availability of funds.

Anticipated Number of Awards: One single source award will be made under the Program.

Project Period: February 16, 2007–February 15, 2010.

Award Amount: $600,000 in year 1; $800,000 in years 2 and 3.

For information regarding the notification, please contact: Candace M. Jones, MPH, National Programs (NPABQ), 5300 Homestead Road, NE., Albuquerque, NM 87110, 505–248–4961 or *candace.jones@ihs.gov*.

Electronic Submission: The preferred method for receipt of applications is electronic submission through Grants.gov. Please refer to the following links for complete application instructions: applicant package may be found in Grants.gov (*www.grants.gov*) or *http://www.ihs.gov/NonMedicalPrograms/gogp/gogp__fund.asp*.

Dated: January 18, 2007.

Robert G. McSwain,

Deputy Director, Indian Health Service.

[FR Doc. 07–386 Filed 1–29–07; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The National Institutes of Health

Proposed Collection; Comment Request; Monitoring and Evaluation of the NIDA Goes Back to School National Dissemination Campaign

Summary: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collection of information, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Monitoring and Evaluation of the NIDA Goes Back to School National Dissemination Campaign. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This is a request for a one-time clearance to collect information on the use of the NIDA Goes Back to School (NGBTS) dissemination materials that can be requested by interested persons from the NIDA Internet site. The National Institute on Drug Abuse (NIDA) launched an initiative to increase awareness of the Institute and its mission to bring the power of science to bear on the treatment and prevention of drug abuse and addiction. NIDA has been developing science education materials for grades K–12 for use by students, teachers, parents, school counselors, school health educators, school resources officers, community organizers, and state and local government agencies. The number of requestors has been an average of 7,500 per year. These large numbers indicate that the dissemination reach is considerable. The pattern of requests also indicates that the number of requests increases dramatically in the early weeks after a dissemination activity is launched. The purpose of this information collection is to determine the level of use by school personnel and community leaders who request the NGBTS materials, and if there is a difference in use level between those requestors responding to a campaign activity and those requestors who were not reached by campaign activities. The information will identify barriers to the use of the materials among these occupational groups and the populations they serve. It will help make the materials more productive in raising the awareness of the harms from substance abuse among children, youth, and parents. It will be used to refine the focus of the dissemination activities, so that dissemination resources are used more productively. The information will be collected from requestors who have requested NIDA NGBTS materials using the requestor forms from the NIDA site, from October 2003 to September 2005. All information collection in the evaluation will be conducted on-line. The estimated total time for a survey is 5 minutes. Prior to the monitoring and evaluation study, the information collection instruments will be pilot-tested via telephone interview format, with a sample of 8 individuals who have requested these materials during the chosen study years. The surveys will include the following elements: (1) Use of the NGBTS materials, (2) Opinion of the NGBTS materials, (3) Respondent information on gender, present occupation and its duration, (4) Background information on the school or Organization/Community. *Frequency of Response:* This project will be conducted once. *Affected Public:* School personnel, and Community Leaders who have requested the NGBTS materials. *Type of Respondent:* School personnel, and Community Leaders who have requested the NGBTS materials from the NIDA site. *Estimated Total Annual Number of Respondents:* 400. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours per Response:* .08. *Estimated Total Annual Burden Hours Requested:* 32.0. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. The estimated annualized burden is summarized below.

Type of respondents	Number of respondents	Frequency of response	Average burden hours per response	Estimated total burden hours requested
Requesters—School Personnel	200	1	0.08	16
Requestors—Community Leaders	200	1	0.08	16
Total	400			32

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plans, contact Brian Marquis, Project Officer, National Institute on Drug Abuse, 6001 Executive Boulevard, Room 5216, Bethesda, MD 20892, or call non-toll-free number 301–443–1124; fax 301–443–7397; or by e-mail to *bmarquis@/nida.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Donna Jones,

Budget Officer & Acting Associate Director for Management, National Institute on Drug Abuse.

[FR Doc. 07–357 Filed 1–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; *fax:* 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Megakaryocyte Potentiation Factor as a New Serum Tumor Marker for Mesothelioma

Description of Technology: Mesothelin is a glycoprotein, whose expression has been largely restricted to mesothelial cells in normal tissues, although epithelial cells of the trachea, tonsil, fallopian tube, and kidney have shown immunoreactivity. Mesothelin has been shown to be expressed in several cancers including mesothelioma, lung cancer, pancreatic carcinomas, gastric carcinomas and ovarian carcinomas, and has the potential of being used as a tumor marker and a novel target for the development of new treatments.

Mesothelin precursor protein is a 69 kDa protein that is proteolytically cleaved into two products, the megakaryocyte potentiation factor (MPF) and mesothelin. MPF is a 33 kDa soluble protein that is shed into the blood stream of patients with mesotheliomas and other tumors including ovarian and pancreatic and thus can be used as a serum marker for the diagnosis of mesothelin expressing cancers.

This invention describes the generation of monoclonal antibodies to MPF. The antibodies can be useful for diagnosing mesotheliomas and other cancers. Additionally, it can be used by the oncological research community as a research tool.

Applications: New monoclonal antibodies against MPF; A new monoclonal antibody against MPF that can be used for diagnosis method for mesotheliomas and other cancers including ovarian and pancreatic by detecting MPF in serum of patients.

Market: Cancer diagnostic market is projected to grow to approximately $8B in the next 5 years; Potential as a research tool for oncology research market.

Inventor: Ira H. Pastan *et al.* (NCI).

Publication: M Onda et al. Megakaryocyte potentiation factor cleaved from mesothelin precursor is a useful tumor marker in the serum of patients with mesothelioma. Clin Cancer Res. 2006 Jul 15;12 (14 Pt 1):4225–4231.

Patent Status: HHS Reference No. E–293–2006/0—Research Tool.

Licensing Status: Available for licensing under a Biological Materials license.

Licensing Contact: Jesse S. Kindra, J.D.; 301/435–5559; *kindraj@mail.nih.gov.*

Enriched Natural Killer Cells for Adoptive Infusion Cancer Therapy

Description of Technology: Immunotherapy has taken a lead among the new cancer therapeutic approaches. It is one of the most promising new therapeutic approaches that exploit the innate immune mechanism of an individual to fight against a certain disease.

Natural killer (NK) cells are a form of cytotoxic lymphocytes which constitute a major portion of the innate immune system. NK cells have tumor cytotoxic properties independent of tumor specific antigens and have been shown in murine models to control and prevent tumor growth and dissemination. Inactivation of NK cells potentially allows cancer cells to evade host NK-cell-mediated immunity. Ligation of killer immunoglobulin like receptors (KIRs) by MHC class I on both normal and malignant tissues suppresses the function of NK cells.

The present invention relates to treating cancer and other hyperproliferative disorders by administering an enriched composition of allogeneic or autologous (KIR/KIR ligand incompatible) NK cell population. This enriched composition can potentially override the inactivation

of NK cells by self HLA molecules or MHC class I expressing tumors. Claims cover compositions of enriched NK cell populations and method of treating malignancies or prevent recurrence of malignancies and treating any hyperproliferative disorders with these enriched compositions. Claims also cover a method to sensitize malignancies to NK cell TRAIL-mediated killing by pretreatment with bortezomib.

Applications and Modality: New adoptive infusion immunotherapeutic method for treating solid tumors; New cancer treatment method exploiting the function of NK cells; Enriched composition of allogeneic and autologous NK cell population; Enriched NK cell composition has potential to override the natural NK cell inactivation process by HLA or MHC class I expressing tumors; Sensitizing cancers to adoptively infused NK cells by treatment with bortezomib as a method to sensitize to NK cell TRAIL cytotoxicity.

Market: In 2006, 600,000 estimated deaths from cancer related diseases; Immunotherapy market is expected to double in the next 5 years; Adoptive immunotherapy is one of the most promising new cancer therapies.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Richard W. Childs et al. (NHLBI).

Related Publications: 1. T Igarashi et al. Enhanced cytotoxicity of allogeneic NK cells with killer immunoglobulin-like receptor ligand incompatibility against melanoma and renal cell carcinoma cells. Blood. 2004 Jul 1;104(1):170–177.

2. A Lundqvist et al. Bortezomib and depsipeptide sensitize tumors to tumor necrosis factor-related apoptosis-inducing ligand: a novel method to potentiate natural killer cell tumor cytotoxicity. Cancer Res. 2006 Jul 15;66(14):7317–7325.

3. A Lundqvist et al. Reduction of GVHD and enhanced anti-tumor effects after adoptive infusion of alloreactive Ly49-mismatched NK-cells from MHC-matched donors. Blood. Prepublished online 2006 Dec 19, doi 10.1182/blood-2006–05–024315.

Patent Status: PCT Application No. PCT/ U.S. 2005/039282 filed 31 Oct 2005, entitled ''Compositions and Methods for Treating Hyperproliferative Disorders,'' which published as WO 2006/050270 on 11 May 2006 (HHS Reference No. E–183–2004/1–PCT–01).

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Thomas P. Clouse, J.D.; 301/435–4076; *clousetp@mail.nih.gov.*

Collaborative Research Opportunity: The Hematology Branch of the National Heart, Lung, and Blood Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of *in vitro* expanded adoptively infused NK cells to treat advanced and incurable cancers. Please contact Dr. Richard W. Childs at 301–496–5093 or 301–451–7128 (e-mail: *childsr@nih.gov*) for more information.

Dated: January 19, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–1377 Filed 1–29–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; *fax:* 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Diagnostics and Therapeutics for Hydrocephalus

Description of Technology: Congenital hydrocephalus is a significant public health problem, affecting approximately one in 500 live births in the United States. Congenital hydrocephalus has an adverse effect on the developing brain and may persist as neurological defects in children and adults. Some of these defects may manifest as mental retardation, cerebral palsy, epilepsy and visual disabilities. Improved diagnostics are needed for assessing the risks of developing this debilitating disease.

The inventors have shown that RFX4_v3, a splice variant of the Regulatory Factor X4 (RFX4) transcription factor, is associated with the development of neurological structures. The reduction or absence of RFX4-v3 promotes the development of congenital hydrocephalus. This invention describes RFX4_v3 polypeptides and nucleic acids, as well as methods for detection of RFX4_v3 polymorphisms associated with congenital hydrocephalus. Also described are treatment methods including the RFX4-v3 polypeptide and RFX4-v3 transgenic animals and antibodies.

Applications: Prenatal diagnostic assay for identifying children at risk for congenital hydrocephalus; Genotyping assay for congenital hydrocephalus.

Market: In the United States, the health care costs for congenital hydrocephalus are estimated at $100 million per year.

Development Status: In vitro data are available.

Inventors: Perry J. Blackshear, Darryl C. Zeldin, Joan P. Graves, and Deborah J. Stumpo (NIEHS).

Publications:

1. Perry J. Blackshear et al. Graded phenotypic response to partial and complete deficiency of a brain-specific transcript variant of the winged helix transcription factor RFX4. Development. 2003 Oct;130(19):4539–4552.

2. Donghui Zhang *et al.* Identification of potential target genes for RFX4_v3, a transcription factor critical for brain development. J Neurochem. 2006 Aug;98(3):860–875.

3. Donghui Zhang *et al.* Regulatory factor X4 variant 3 (RFX4_v3): a transcription factor involved in brain development and disease. Submitted for publication, Journal of Neuroscience Research.

Patent Status: PCT Application No. PCT/US03/12348 filed 18 Apr 2003, which published as WO 03/088919 on 30 Oct 2003 (HHS Reference No. E–163–2002/2–PCT–01); U.S. Patent Application No. 10/511,362 filed 15 Oct 2004, which published as U.S. 2005/0181369 on 18 Aug 2005 (HHS Reference No. E–163–2002/2–US–02).

Licensing Status: Available for exclusive or nonexclusive licensing.

Licensing Contact: Tara Kirby, Ph.D.; 301/435–4426; *tarak@mail.nih.gov.*

Epithelial Cell Line Expressing a Cystic Fibrosis Phenotype

Description of Technology: Cystic fibrosis (CF) is a common genetic disease that affects the entire body, producing thick, sticky mucus that clogs the lungs, pancreas, and other organs. It is the most common fatal genetic disease in the United States, and is caused by a mutation in the cystic fibrosis transmembrane conductance regulator (CFTR).

Researchers at NIEHS have developed a cell line, CF/T43, which was produced by infection of airway epithelial cells isolated from CF patients with an SV40T retrovirus. CF/T43 cells maintain the abnormal ion transport characteristics of CF while having proliferation capability beyond that of a primary epithelial cell culture. Key features of the CF/T43 cell line include the formation of functional tight junctions, reduced apical membrane chloride conductance, and activation of apical chloride channels by calcium ionophores but not by cAMP-dependent agonists. This cell line may be used for elucidation of the mechanisms of CF, testing candidate complementary genes for correction of the observed CF abnormalities, and for developing and testing therapeutic CF drugs.

Applications: Research tool for developing new therapies to treat cystic fibrosis; Research tool for studying the mechanisms of cystic fibrosis.

Inventors: Anton M. Jetten (NIEHS).

Publication: AM Jetten, JR Yankaskas, MJ Stutts, NJ Willumsen, and RC Boucher. Persistence of abnormal chloride conductance regulation in SV40 T transformed cystic fibrosis airway epithelia. Science 1989 Jun 23;244(4911):1472–1475.

Patent Status: U.S. Patent Application No. 07/368,725 filed 21 June 1989, which issued as U.S. Patent No. 5,420,033 on 30 May 1995 (HHS Reference No. E–201–1989/0–US–01).

Licensing Status: Available for exclusive or nonexclusive licensing.

Licensing Contact: Tara Kirby, Ph.D.; 301/435–4426; *tarak@mail.nih.gov.*

Dated: January 20, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–1379 Filed 1–29–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5. U.S.C., as amended. The grant applications and/or contact proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, R25 Special Emphasis Panel.

Date: February 6, 2007.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Court Hotel, 525 New Jersey Ave, NW., Washington, DC 20001.

Contact Person: David E. Maslow, PhD., Chief, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 8117, Bethesda, MD 20892–7405, (301) 496–2330.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Cancer Institute Special Emphasis Panel, Arrays for Biomarker.

Date: February 13, 2007.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

Name of Committee: National Cancer Institute Special Emphasis Panel; Multiplex Affinity Capture Technology.

Date: February 15, 2007.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

Name of Committee: National Cancer Institute Special Emphasis Panel; Manpower and Training Grants.

Date: February 27–28, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Old Town Alexandria, 1767 King Street, Alexandria, VA 22314.

Contact Person: Lynn M Amende, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard Room 8105, Bethesda, MD 20892–8328, 301–451–4759, *amendel@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Small Grants Program for Cancer Epidemiology and Cancer Prevention Research.

Date: March 6–8, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Irina Gordienko, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 703, MS 2829, Bethesda, MD 20892, 301–594–1566, *gordienoiv@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Anti-Cancer Agents.

Date: March 15, 2007.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Events Management, Executive Plaza North Conference Center, 6130 Executive Boulevard, Conference Room D, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jeannette F Korczak, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8115, Bethesda, MD 20892, 301–496–9767, *korczakj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 21, 2007.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–365 Filed 1–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, MARC Review Subcommittee A.

Date: February 15, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Mona R. Trempe, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594–3998, *trempemo@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 21, 2007.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–358 Filed 1–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Mentored Research Scientist Development Award.

Date: March 5, 2007.

Time: 7:30 a.m. to 8 a.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: John E. Richters, PhD, Chief, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd. Room 715, Bethesda, MD 20817, (301) 594–5971, *jrichters@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 21, 2007.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–359 Filed 1–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, RFA–NR–07–002/3: Culturally Appropriate Research to Prevent HIV Transmission.

Date: March 14–15, 2007.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: John E. Richters, PhD, Chief, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd. Room 715, Bethesda, MD 20817, (301) 594–5971, *jrichters@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 21, 2007.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–360 Filed 1–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Communication Disorders Review Committee, CDRC.

Date: February 15–16, 2007.

Time: February 15, 2007, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Adams Mark Denver, 1550 Court Place, Denver, CO 80202.

Time: February 16, 2007, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Adams Mark Denver, 1550 Court Place, Denver, CO 80202.

Contact Person: Sheo Singh, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Contact Person: Sheo Singh, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 22, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–362 Filed 1–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; U01 Panel A.

Date: February 15, 2007.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 22, 2007.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–363 Filed 1–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, K12 Career Development Grants.

Date: February 20, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Garden, 4620 South Miami Boulevard, Durham, NC 27703.

Contact Person: Sally Eckert-Tilotta, PhD, Scientific Review Administrator, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–1446, *eckertt1@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Cellular Responses to Oxidative Stress in Colon Cancer.

Date: February 20, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton, Durham at Southpoint, 7807 Leonardo Drive, Durham, NC 27713.

Contact Person: Teresa Nesbitt, PhD, DVM, Chief, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–7571, *nesbittt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 22, 2007.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–364 Filed 1–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Clinical Nutrition Research Unit.

Date: February 28–March 1, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Barbara A. Woynarowska, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707

Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Translational Research for the Prevention and Control of Diabetes.

Date: March 14, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Biomarkers Development for Diabetes Complications.

Date: April 11–12, 2007.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: D.G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 914, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: January 18, 2007.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–366 Filed 1–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personal qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: January 28–30, 2007.

Time: January 28, 2007, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: January 29, 2007, 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Time: January 29, 2007, 5 p.m. to 8 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: January 30, 2007, 8:30 a.m. to 11 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alan P. Koretsky, PhD, Scientific Director, Division of Intramural Research, National Institute of Neurological Disorders and Stroke, NIH, 35 Convent Drive, Room 6A–908, Bethesda, MD 20892, 301–435–2232, *koretskya@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: January 18, 2007.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–367 Filed 1–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics A Study Section.

Date: February 8–9, 2007.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Michael M. Sveda, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–3565, *svedam@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene Therapy and Inborn Errors.

Date: February 9, 2007.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz Carlton, Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Richard Panniers, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; F07 Immunology Fellowships and AREA.

Date: February 15–16, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Paek-Gyu Lee, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095D, MSC 7812, Bethesda, MD 20892, (301) 402–7391, *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Gene, Genetic, and Genomic Fellowships.

Date: February 15–16, 2007.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Mary P. McCormick, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, 301/435–1047, *mccormim@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; B Cell Signaling in Development and Tolerance.

Date: February 15, 2007.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cathleen L. Cooper, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Lung Carcinogenesis and Chemoprevention.

Date: February 16, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eun Ah Cho, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chemoprevention of Cancer.

Date: February 19, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eun Ah Cho, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; R15 Grant Application Review.

Date: February 21–22, 2007.

Time: 8 a.m. to 11:59 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Michael M. Sveda, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biophysical and Physiological Neuroscience.

Date: February 21, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin St. Francis Hotel, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Michael A. Lang, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7850, Bethesda, MD 20892, 301–435–1265, *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Delivery Systems and Nanotechnology.

Date: February 21–22, 2007.

Time: 9 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Steven J. Zullo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849, Bethesda, MD 20892, 301–435–2810, *zullost@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; International and Cooperative Projects—1 Study Section.

Date: February 22–23, 2007.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Manana Sukhareva, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–435–1116, *sukharem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; DBBD Minority and Disability Predoctoral Fellowship Review.

Date: February 22–23, 2007.

Time: 8 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Paek-Gyu Lee, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095D, MSC 7812, Bethesda, MD 20892, 301–402–7391, *leepg@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroplasticity and Neurotransmitters Study Section.

Date: February 22–23, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Suzan Nadi, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; GRIP–BB.

Date: February 22–23, 2007.

Time: 4 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Manana Sukhareva, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–435–1116, *sukharem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biomedical Imaging and Bioinformatics.

Date: February 26–27, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Guo Feng Xu, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–435–1032, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Clinical Neurophysiology, Devices and Neuroprosthetics.

Date: February 26–27, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Vinod Charles, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, 301–435–0902, *charlesvi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Devices.

Date: February 26–27, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Hotel, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Roberto J. Matus, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108,

MSC 7854, Bethesda, MD 20892, 301–435–2204, *matusr@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Child Psychopathology and Developmental Disabilities Study Section.

Date: February 26–27, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Helix, 1430 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Jane A. Doussard-Roosevelt, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Behavioral Medicine, Interventions and Outcomes Study Section.

Date: February 26–27, 2007.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Hotel, 530 West Pico Blvd., Santa Monica, CA 90405.

Contact Person: Lee S. Mann, MA, JD, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict-Anterior Eye.

Date: February 26–28, 2007.

Time: 1 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Biao Tian, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurobiology of HPA Axis Development and Hypothermia.

Date: February 26, 2007.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C. Debbas, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *debbasg@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Oral, Dental and Craniofacial Sciences Study Section.

Date: February 27–28, 2007.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Tamizchelvi Thyagarajan, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892, 301–451–1327, *tthyagar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Drug Development and Therapeutics I, SBIR/STTR.

Date: February 27–28, 2007.

Time: 8 a.m. to 11:50 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Hungyi Shau, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–435–1720, *shauhung@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Drug Development and Therapeutics II, SBIR/STTR.

Date: February 27–28, 2007.

Time: 8 a.m. to 11:50 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Hungyi Shau, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–435–1720, *shauhung@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships.

Date: February 27–28, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Ave., NW., Washington, DC 20036.

Contact Person: Judith A. Finkelstein, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, 301–435–1249, *finkels@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Resource Center in Microintegrated Optics.

Date: February 27–March 1, 2007.

Time: 7:30 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Table Mountain Inn, 1310 Washington Avenue, Golden, CO 80401.

Contact Person: Sally Ann Amero, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7849, Bethesda, MD 20892, 301–435–1159, *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Prion Diseases.

Date: February 27–March 1, 2007.

Time: 12 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Rossana Berti, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892, 301–402–6441, *bertiros@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Vector Biology Study Section.

Date: February 28, 2007.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Jefferson Hotel, 1200 16th Street, NW., Washington, DC 20036.

Contact Person: John C. Pugh, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892, 301 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts of Biological Chemistry and Macromolecular Biophysics.

Date: February 28–March 1, 2007.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Donald L. Schneider, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, 301–435–1727, *schneidd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Electromagnetic Systems.

Date: February 28.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 22, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–361 Filed 1–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review, Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Psychiatric and Behavioral Genetics.

Date: February 12–13, 2007.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Immunopathology and Immunotherapy Study Section: Quorum.

Date: February 15–16, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Steven B. Scholnick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–435–1719, *scholnis@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Molecular Neuropharmacology and Signaling Study Section.

Date: February 21–22, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20032.

Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224, *husains@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Applied Metabolomic Technologies.

Date: February 21–22, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Geoffrey White, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–435–2417, *whitege@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Bioengineering and Imaging.

Date: February 21–22, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Khalid Masood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Prokaryotic Cell and Molecular Biology Study Section.

Date: February 21–22, 2007.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Hotel, 1127 Connecticut Avenue, Washington, DC 20036.

Contact Person: Diane L. Stassi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, (301) 435–2514, *stassid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nanotechnology in Medicine and Biology—Synthesis, Theory and Analysis.

Date: February 22–23, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Nitsa Rosenzweig, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

Date: February 22–23, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel Washington, DC, 1250 22nd Street, NW., Washington, DC 20037.

Contact Person: Julius Cinque, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Social Psychology, Personality and Interpersonal Processes Study Section.

Date: February 22–23, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Wyndham Hotel, 101 West Fayette Street, Baltimore, MD 21201.

Contact Person: Anna L. Riley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group; Myocardial Ischemia and Metabolism Study Section.

Date: February 22–23, 2007.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, 301–435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular, Molecular and Integrative Reproduction Study Section.

Date: February 22–23, 2007.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Syed M. Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, 301–435–1043, *amirs@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Nuclear Dynamics and Transport.

Date: February 22, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Alessandra M. Bini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–435–1024, *binia@csr.nih.gov.*

Name of Committee: Renal and Urological Studies Integrated Review Group;

Pathobiology of Kidney Disease Study Section.

Date: February 22–23, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Krystyna E. Rys-Sikora, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016J, MSC 7814, Bethesda, MD 20892, 301–451–1325, *ryssokok@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Viral Detection and Diagnostics.

Date: February 22–23, 2007.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Soheyla Saadi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Medical Imaging and Exploratory Ultrasound.

Date: February 22–23, 2007.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Leonid V. Tsap, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, 301–435–2507, *tsapl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Retinopathy Studies.

Date: February 22, 2007.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group; Behavioral Genetics and Epidemiology Study Section.

Date: February 22–23, 2007.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.

Contact Person: Elisabeth Koss, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–0906, *kosse@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group; Neurological, Aging and Musculoskeletal Epidemiology Study Section.

Date: February 22–23, 2007.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Heidi B. Friedman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, (301) 435–1721, *hfriedman@csr.nih.gov.*

Name of Committee: Hematology Integrated Review Group; Hemostasis and Thrombosis Study Section.

Date: February 22, 2007.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Host Interactions with Bacterial Pathogens Study Section.

Date: February 22, 2007.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Palomar Hotel, 2121 P Street, Washington, DC 20037.

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, (301) 435–1148, *wachtelm@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—A Study Section.

Date: February 22–23, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; MEDI/BMIT Conflict Meeting.

Date: February 22, 2007.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Weihua Luo, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, 301–435–1170, *louw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genetics and Psychopathology.

Date: February 22, 2007.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.

Contact Person: Elisabeth Koss, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–0906, *kosse@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Microscopic Imaging Study Section.

Date: February 23, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Courtyard, San Francisco Downtown, 299 Second Street, San Francisco, CA 94105.

Contact Person: Ross D. Shonat, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1115, MSC 7849, Bethesda, MD 20892, 301–435–2786, *shonatr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nanotechnology for Heart, Lung Blood Disorders.

Date: February 23, 2007.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Alexandra M. Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Hematology.

Date: February 23, 2007.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337,

93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: January 18, 2007.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–368 Filed 1–29–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Use of Inhaled Nitrite Therapy for the Treatment of Pulmonary Conditions

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of an exclusive license to practice the invention embodied in: PCT patent applications PCT/US2004/21985 and PCT/US2004/22232, filed July 9, 2004, both entitled ''Use of Nitrite Salts for the Treatment of Cardiovascular Conditions'' [*HHS Reference Number:* E–254–2003/2–3–PCT–01], to Aires Pharmaceuticals, Inc., a portfolio company of ProQuest Investments LLC, Princeton, N.J. The field of use of inhaled administration of nitrite salts for this exclusive license may be limited to the use of inhaled formulations of nitrite salts for the treatment of Pulmonary Hypertension and pulmonary and/or cardiopulmonary conditions. The United States of America is an assignee of the patent rights in these inventions.

DATES: Only written comments and/or application for a license, which are received by the NIH Office of Technology Transfer on or before April 2, 2007 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Susan Carson, D.Phil., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; *E-mail: carsonsu@od.nih.gov*; *Telephone:* (301) 435–5020; *Facsimile:* (301) 402–0220.

SUPPLEMENTARY INFORMATION: The core invention is the unexpected finding that low, physiological and non-toxic concentrations of sodium nitrite are able to increase blood flow and produce vasodilation by infused and nebulized routes of administration. Pulmonary Hypertension (PH) occurs as a primary or idiopathic disease as well as secondary to a number of pulmonary and systemic diseases, such as neonatal PH and sickle cell disease. There is no cure for pulmonary hypertension, a nitric-oxide deficient state characterized by pulmonary vasoconstriction and systemic hypoxemia and therapies vary in efficacy and cost. Recent studies by NIH researchers and their collaborators provided evidence that the blood anion nitrite contributes to hypoxic vasodilation through a heme-based, nitric oxide (NO)-generating reaction with deoxyhemoglobin and potentially other heme proteins [*Nature Medicine 2003 9:* 1498–1505]. These initial results indicate that sodium nitrite can be used as a potential cost-effective platform therapy for a wide variety of disease indications characterized broadly by constricted blood flow or hypoxia.

These results have been further corroborated by work in the neonatal lamb model for PH. Inhaled sodium nitrite delivered by aerosol to newborn lambs with hypoxic pulmonary hypertension elicited a rapid and sustained reduction (65%) in hypoxia-induced pulmonary hypertension. Pulmonary vasodilation elicited by aerosolized nitrite was deoxyhemoglobin- and pH-dependent and was associated with increased blood levels of iron-nitrosyl-hemoglobin. Notably, short term delivery of nitrite dissolved in saline through nebulization produced selective, sustained pulmonary vasodilation with no clinically significant increase in blood methemoglobin levels. [Nature Medicine 2004 10: 1122–1127]. Method of use claims for nitrite salt formulations are directed to conditions associated with high blood pressure, decreased blood flow and for the treatment of specific conditions such as pulmonary hypertension and other indications.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 22, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–1378 Filed 1–29–07; 8:45 am]

BILLING CODE 4140–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Co-Exclusive License: Prevention and Treatment of Human Cancer and Tumors by Inhibitors of Any or All of the Adenosine Receptor Subtypes Covered by the Licensed Patent Rights

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a co-exclusive license to practice the invention embodied in Patent Applications U.S. 60/340,772, filed on 12/12/2001, U.S. 60/342,582, filed on 12/19/2001, PCT/US2002/036829, filed on 11/14/2002, and corresponding EP, CA, AU, and JP filings, as well as U.S. 10/498,416, filed on 06/10/2004; entitled ''Methods for using extracellular adenosine inhibitors and adenosine receptor inhibitors to enhance immune response and inflammation'', all by Michail V. Sitkovsky, and Akio Ohta, to Redox Therapies, Inc., having a place of business in Boston, MA. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license that are received by the NIH Office of Technology Transfer on or before April 2, 2007 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Cristina Thalhammer-Reyero, Ph.D., M.B.A., Office of Technology Transfer,

National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; *E-mail: ThalhamC@mail.nih.gov*; *Telephone:* 301–435–4507; *Facsimile:* 301–402–0220.

SUPPLEMENTARY INFORMATION: The prospective co-exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The technology described and claimed in the subject invention relates to methods to enhance and prolong the body's immune response as well as to promote targeted tissue damage, such as for tumor destruction, by inhibiting signaling through the adenosine receptor. The inventors have shown that adenosine A2a and A3a receptors play a critical and non-redundant role in down-regulation of inflammation in vivo by acting as the physiological termination mechanism that can limit the immune response. The methods described involve administering either an adenosine-degrading drug or an adenosine receptor antagonist to exert a more effective and durable immune response and inflammation, and more specifically to the subject exclusive license application, to reduce the size of tumors. Furthermore, using the claimed method in combination with conventional anti tumor agent can be an effective treatment against cancer.

The invention has potential applications in the many markets in which therapeutic and preventive uses of manipulating the adenosine pathway are involved, including the regulation of hypoxia, tissue damage, tumor destruction, inflammation, increasing the efficacy of vaccines, and other immune responses.

This invention is further described in Ohta A *et al.*, ''Role of G-protein-coupled adenosine receptors in down-regulation of inflammation and protection from tissue damage,'' Nature 2001 Dec 20–27; 414(6866):916–20.

The field of use may be limited to ''Prevention and treatment of human cancer and tumors by inhibitors of any or all of the adenosine receptor subtypes covered by the Licensed Patent Rights''.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

This announcement is a supplement to the one published in the **Federal Register** on April 11, 2005 (70 FR 18419).

Dated: January 18, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–1376 Filed 1–29–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Privacy Office; Published Privacy Impact Assessments on the Web

AGENCY: Privacy Office, Office of the Secretary, Department of Homeland Security.

ACTION: Notice of Publication of Privacy Impact Assessments.

SUMMARY: The Privacy Office of the Department of Homeland Security is making available four Privacy Impact Assessments on various programs and systems in the Department. These assessments were approved and published on the Privacy Office's Web site between December 1, 2006 and December 31, 2006.

DATES: The Privacy Impact Assessments will be available on the DHS Web site until April 2, 2007, after which they may be obtained by contacting the DHS Privacy Office (contact information below).

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528; by telephone (571) 227–3813, facsimile (866) 466–5370, or e-mail: *pia@dhs.gov.*

SUPPLEMENTARY INFORMATION: Between December 1, 2006 and December 31, 2006, the Chief Privacy Officer of the Department of Homeland Security (DHS) approved and published four Privacy Impact Assessments (PIAs) on the DHS Privacy Office Web site, *http://www.dhs.gov/privacy*, under the link for ''Privacy Impact Assessments.'' Below is a short summary of each of those systems, indicating the DHS component responsible for the system, and the date on which the PIA was approved. Additional information can be found on the Web site or by contacting the Privacy Office.

1. *System: DisasterHelp.gov.*

Component: Science and Technology.

Date of approval: December 19, 2006.

The DisasterHelp.Gov (DHelp) Web site or Web portal is operated by the Science and Technology Directorate of the Department of Homeland Security. It is intended to assist political and civil service leadership, emergency managers, homeland security advisors, and first responders in the execution of their disaster management responsibilities. The information on this Web site will be used to enhance disaster management on an interagency and intergovernmental basis by helping users find information and services. The types of personally identifiable information used will include contact information for these individuals. The collection of this personally identifiable information is the reason for this privacy impact assessment.

2. *System: Alien Flight Student Program (Amended).*

Component: Transportation Security Administration.

Date of approval: December 22, 2006.

The Transportation Security Administration (TSA) will collect personal information about flight-training candidates to conduct the security threat assessments on alien flight students required by the Aviation and Transportation Security Act and section 612 of Vision 100—Century of Aviation Reauthorization Act. For pilots seeking recurrent training, the Alien Flight Student Program will verify eligibility for such training. TSA is amending the PIA originally published in June 2004 to reflect certain updates after periodic review, including its use of commercial data for identity verification purposes, and the promulgation of an applicable record retention schedule.

3. *System: Threat Assessment for Airport Badge and Credential Holders.*

Component: Transportation Security Administration.

Date of approval: December 20, 2006.

TSA is amending the PIA for the Security Threat Assessment for Airport Badge and Credential Holders to reflect an expansion of the covered population. Recently amended airport security directives now require that each individual to whom an airport issues an identification badge or credentials undergo a security threat assessment regardless of the level of unescorted access permitted the individual. Name-based security threat assessments will be performed on all individuals seeking or holding airport identification badges or credentials. Fingerprint-based criminal history checks, in addition to the name-based security threat assessments, will continue to be

required for those individuals seeking access to the Security Identification Area or Sterile Area. TSA is amending this PIA to reflect the amended requirements.

4. *System: Transportation Worker Identification Credential Program Final Rule.*

Component: Transportation Security Administration.

Date of approval: December 29, 2006.

TSA is publishing a joint Final Rule with the United States Coast Guard to implement the Transportation Worker Identification Credential (TWIC) program to provide a biometric credential that can be used to confirm the identity of workers in the national transportation system. For each person subject to the program, TSA will conduct a security threat assessment before issuing the credential. TSA will collect identifying information, supporting documentation, a digital photograph, and fingerprints, as more fully set forth in section 1.1 of the PIA. The PIA reflects the TWIC Program as set out in the Final Rule and follows on the PIA for the TWIC Prototype, which was published at *http://www.dhs.gov* on November 5, 2004, and the PIA for the Notice of Proposed Rulemaking (NPRM), which was published at *http://www.dhs.gov* on May 9, 2006. The updated PIA reflects changes made to the TWIC program in response to public comment on the NPRM and lessons learned from the TWIC Prototype.

Dated: January 24, 2007.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. 07–388 Filed 1–29–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[Docket No. USCBP–2007–0003]

Notice of Meeting of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (popularly known as ''COAC'') will meet on February 14, 2007 in Washington, DC. The meeting will be open to the public.

DATES: COAC will meet Wednesday, February 14th from 9 a.m. to 1 p.m. Please note that the meeting may close early if the committee has completed it business.

ADDRESSES: The meeting will be held at the Ronald Reagan Building in the Rotunda Ballroom, 1300 Pennsylvania Avenue, NW., Washington, DC 20004. Written material, comments, and requests to make oral presentations at the meeting should reach the contact person listed below by February 1st. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by February 7, 2007. Comments must be identified by USCBP–2007–0003 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: traderelations@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–344–1969.
- *Mail:* Ms. Wanda Tate, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Room 2.4B, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the COAC, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of International Affairs and Trade Relations, Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Ave., NW., Room 2.4B, Washington, DC 20229; *traderelations@dhs.gov;* telephone 202–344–1440; facsimile 202–344–1969.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463). The Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (COAC) is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury.

The first meeting of the tenth term of COAC will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

Tentative Agenda

1. Introduction of the newly-appointed tenth term COAC members.
2. Collection of additional data elements for cargo security.
3. Trade Resumption.
4. International Container Security.
5. CSI (Container Security Initiative).
6. C–TPAT (Customs-Trade Partnership Against Terrorism).
7. Office of International Trade.
8. Export Enforcement—training and policy.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Participation in COAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

All visitors to the Ronald Reagan Building will have to go through a security checkpoint to be admitted to the building. Since seating is limited, all persons attending this meeting should provide notice, preferably by close of business Monday, February 12, 2007, to Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202–344–1440; facsimile 202–344–1969.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

Dated: January 26, 2007.

Michael C. Mullen,

Assistant Commissioner, Office of International Affairs and Trade Relations, Customs and Border Protection.

[FR Doc. E7–1515 Filed 1–29–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Hazard Mitigation Grant Program Application and Reporting.

OMB Number: 1660–0095.

Abstract: Grantees administer the Hazard Mitigation Grant Program, which is a post-disaster program that contributes funds toward the cost of hazard mitigation activities in order to reduce the risk of future damage hardship, loss or suffering in any area affected by a major disaster. FEMA uses applications to provide financial assistance in the grantee project activities and expenditure of funds.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 56.

Estimated Time per Respondent: 68.5 hours.

Estimated Total Annual Burden Hours: 27,160 hours.

Frequency of Response: Annually.

Comments: 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, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before March 1, 2007.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 609, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: January 19, 2007.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–1441 Filed 1–29–07; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1664–DR]

Hawaii; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Hawaii (FEMA–1664–DR), dated October 17, 2006, and related determinations.

EFFECTIVE DATE: January 23, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Hawaii is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 17, 2006:

Maui County for Individual Assistance, limited to Disaster Unemployment Assistance (DUA). DUA is further limited to the communities of Kaupo, Kipahulu, and Hana (already designated for Public Assistance, including direct Federal assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–1449 Filed 1–29–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1674–DR]

Nebraska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–1674–DR), dated January 7, 2007, and related determinations.

EFFECTIVE DATE: January 24, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nebraska is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 7, 2007:

Adams, Antelope, Blaine, Boone, Brown, Buffalo, Chase, Clay, Custer, Dawson, Dundy, Franklin, Frontier, Furnas, Garden, Garfield, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Howard, Kearney, Keith, Keya Paha, Knox, Lincoln, Logan, Loup, Madison, Merrick, Nance, Nuckolls, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Rock, Sherman, Valley, Webster, Wheeler, and York Counties for Public Assistance Categories C–G (already designated for Public Assistance Categories A and B [debris removal and emergency protective measures], including direct Federal assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance

Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–1448 Filed 1–29–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–13]

Notice of Submission of Proposed Information Collection to OMB; Energy Conservation for PHA-Owned or Leased Projects-Audits, Utility Allowances

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.

PHAs establish allowances for PHA-furnished utilities and for resident-purchased utilities. PHAs document, and provide for resident inspection, the basis upon which allowances and scheduled surcharges (and revisions thereof) are established. PHAs complete energy audits, benefit/cost analyses for individual meters vs. master-metering. Additionally, PHAs review annual and updated tenant utility allowances, as necessary.

DATES: *Comments Due Date:* March 1, 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 (2577–0062) 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: Energy Conservation for PHA-owned or Leased Projects-Audits, Utility Allowances.

OMB Approval Number: 2577–0062.

Form Numbers: HUD–50078.

Description of the Need for the Information and Its Proposed Use: PHAs establish allowances for PHA-furnished utilities and for resident-purchased utilities. PHAs document, and provide for resident inspection, the basis upon which allowances and scheduled surcharges (and revisions thereof) are established. PHAs complete energy audits, benefit/cost analyses for individual meters vs. master-metering. Additionally, PHAs review annual and updated tenant utility allowances, as necessary.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3090	1		3.01		9,330

Total Estimated Burden Hours: 9,330.

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 25, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–1451 Filed 1–29–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5124–N–02]

Notice of Proposed Information Collection for Public Comment: Restrictions on Assistance to Noncitizens

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. This collection is a joint effort with the Office of Housing. The Department is soliciting public comments on the subject proposal. HUD is requesting extension of OMB approval for the applications for the Document Package for Applicant/Tenant's Consent to the Release of Information and the Authorization for the Release of Information/Privacy Act Notice.

DATES: *Comments Due Date:* April 2, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Aneita Waites, (202) 708–0713, extension 4114, for copies of the proposed forms (if any) and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected 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: Restrictions on Assistance to Noncitizens.

OMB Approval Number: 2501–0014.

Form Numbers: HUD–9886, HUD–9887.

Description of the need for the information and its proposed use: HUD is prohibited from making financial assistance available to other than citizens or persons of eligible immigration status. This is a request for an extension of the current approval for HUD to require a declaration of citizenship or eligible immigration status from individuals seeking certain housing assistance. Eligible immigrants must provide (1) The original alien registration documents and submission of a (2) verification consent form.

Members of Affected Public: Individuals or households, Business or other for-profit, State, Local, or Tribal Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents:

Frequency of Submission: On occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,886,392	10,794,339		0.0333		360,214

Total Estimated Burden Hours: 360,214.

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 24, 2007.

Bessy Kong,

Deputy Assistant Secretary, Office of Policy, Program and Legislative Initiatives.

[FR Doc. E7–1452 Filed 1–29–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5004–N–02]

Emergency Capital Repair Grants for Multifamily Housing Projects Designated for Occupancy by the Elderly; Revised Eligibility Requirements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: On May 22, 2006, HUD published a notice entitled, ''Emergency Capital Repair Grants for Multifamily Housing Projects Designated for Occupancy by the Elderly,'' which announced the availability of approximately $30 million in grant funds to make emergency capital repairs to eligible multifamily projects designated for occupancy by elderly tenants. The notice published in today's **Federal Register** revises the May 22, 2006 notice to expand the eligibility requirements to include those eligible projects located in presidentially declared disaster areas regardless of when final closing occurred. Those projects not located in presidentially declared disaster areas must have had final closing on or before January 1, 1999.

DATES: HUD will accept applications on a first-come, first-serve basis upon publication of this notice and will award emergency capital repair grants until available amounts are expended. Applicants should submit emergency capital repair applications as soon as they have prepared an application that complies with the procedures and requirements contained in this notice.

FOR FURTHER INFORMATION CONTACT: G. DeWayne Kimbrough, Director, Grant and Housing Assistance Field Support Division, Office of Multifamily Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6146, Washington, DC 20410; telephone (202) 708–3000 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On May 22, 2006 (71 FR 29538), HUD published a notice that announced the availability of approximately $30 million in grant funds to make emergency capital repairs to eligible multifamily projects owned by private nonprofit entities that are designated for occupancy by elderly tenants. The capital repair needs must relate to items that present an immediate threat to the health, safety, and quality of life of the tenants. The intent of these grants is to provide one-time assistance for emergency items that could not be absorbed within the project's operating budget and other project resources, and where the tenants' continued occupancy in the immediate near future would be jeopardized by a delay in initiating the proposed cure. The notice provided instructions for owners of multifamily projects to request funding and instructions for the HUD field offices to process requests.

This notice revises the eligibility criteria set forth in the May 22, 2006 notice. Under that notice, in order to be eligible, projects must have had final closing on or before January 1, 1999. This notice expands the eligibility criteria to include those projects located in presidentially declared disaster areas, regardless of the date of final closing.

HUD believes that by expanding eligibility to projects located in presidentially declared disaster areas, HUD will be able to assist nonprofit owners repair their projects have that been damaged by flooding, earthquakes and other disasters, to ensure the health, safety and quality of life for their tenants.

Accordingly, in the notice, Emergency Capital Repair Grants for Multifamily Housing Projects Designated for Occupancy by the Elderly published in the **Federal Register** on May 22, 2006 (71 FR 29538), the following revision is made:

On page 29538, third column, Section III. Eligibility Requirements, the introductory paragraph is revised to read as follows:

Eligibility for emergency capital repair grants under this notice is restricted to: private nonprofit owners of eligible multifamily-assisted housing developments designated for occupancy by elderly tenants, as specified in sections 683(2)(B), (C), (D), (E), (F), or (G) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992). Those eligible projects not located in presidentially declared disaster areas, as identified below, must have had final closing on or before January 1, 1999. Those eligible projects that are located in presidentially declared disaster areas are eligible, without regard to date of final closing. The eligible projects are:

Dated: January 23, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E7–1453 Filed 1–29–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Scientific Earthquake Studies Advisory Committee

AGENCY: U.S. Geological Survey.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 106–503, the Scientific Earthquake Studies Advisory Committee (SESAC) will hold its 15th meeting. The meeting location is the U.S. Geological Survey, John Wesley Powell National Center, Room 1B215, 12201 Sunrise Valley Drive, Reston, Virginia 20192. The Committee is comprised of members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

The Committee will receive updates and provide guidance on Earthquake Hazards Program activities and the status of teams supported by the Program, as well as a report from the Advanced National Seismic System steering committee.

Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

DATES: February 12, 2007, commencing at 8:30 a.m. and adjourning at Noon on February 13, 2007.

Contact: Dr. David Applegate, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6714, *applegate@usgs.gov*.

Dated: January 22, 2007.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 07–375 Filed 1–29–07; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–065–5870–EU; N–76679]

Notice of Realty Action: Direct (Non-Competitive) Sale of Public Lands, Nye County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: A 105-acre parcel of public land located near Hadley, Nye County, Nevada, has been examined and found suitable for sale utilizing direct sale procedures. The authority for the sale is found under Sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) [Public Law 94–579].

DATES: Comments regarding the proposed sale or the environmental assessment (EA) must be received by the Bureau of Land Management (BLM) on or before March 16, 2007.

ADDRESSES: Comments regarding the proposed sale or EA should be addressed to the Assistant Field Manager, BLM, Tonopah Field Station, 1553 South Main Street, P.O. Box 911, Tonopah, Nevada 89049.

FOR FURTHER INFORMATION CONTACT: Information regarding the proposed sale and the lands involved can be obtained at the public reception desk at the BLM, Tonopah Field Station from 7:30 a.m. to 4:30 p.m., Monday through Friday (except Federal holidays), or by contacting Wendy Seley, Realty Specialist, at the above address, or at (775) 482–7800 or by e-mail at *wseley@nv.blm.gov.* For general information on BLM's public land sale procedures, refer to the following Web address: *http://www.blm.gov/nhp/what/lands/realty/sales.htm.*

SUPPLEMENTARY INFORMATION: The land is located approximately one mile east of the Hadley Subdivision near Round Mountain, Nevada and is described as follows:

Mount Diablo Meridian, Nevada

T. 10 N., R. 43 E.,
Sec. 21, E½NE¼NE¼SE¼SE¼, E½SE¼NE¼SE¼SE¼, E½NE¼SE¼SE¼SE¼, and E½SE¼SE¼SE¼SE¼;
Sec. 22, W½NW¼SW¼SW¼, W½NE¼NW¼SW¼SW¼, W½SE¼NW¼SW¼SW¼, W½SW¼SW¼SW¼, W½NE¼SW¼SW¼SW¼, W½SE¼SW¼SW¼SW¼;
Sec. 27, W½NW¼NW¼NW¼, W½SW¼NW¼NW¼, W½NW¼SW¼NW¼, W½SW¼SW¼NW¼, W½NW¼NW¼SW¼, W½SW¼NW¼SW¼, W½NW¼SW¼SW¼, and W½SW¼SW¼SW¼;
Sec. 28, E½NE¼SE¼SE¼, E½NW¼NE¼SE¼SE¼, E½SW¼NE¼SE¼SE¼, NE¼SE¼SE¼SE¼, E½NW¼SE¼SE¼SE¼, and E½SE¼SE¼SE¼SE¼;
Sec. 33, E½NE¼NE¼NE¼NE¼, E½SE¼NE¼NE¼NE¼, E½NE¼SE¼NE¼NE¼, E½SE¼SE¼NE¼NE¼, E½NE¼NE¼SE¼NE¼, E½SE¼NE¼SE¼NE¼, and N½NE¼SE¼SE¼NE¼;
Sec. 34, W½NW¼NW¼NW¼, W½SW¼NW¼NW¼, W½NE¼SW¼NW¼NW¼, W½SE¼SW¼NW¼NW¼, W½NW¼SW¼NW¼, W½NE¼NW¼SW¼NW¼, W½SE¼NW¼SW¼NW¼, NW¼SW¼SW¼NW¼, and W½NE¼SW¼SW¼NW¼.

The area described contains 105 acres, more or less, in Nye County.

These lands are being offered for sale to Round Mountain Gold Corporation of Round Mountain, Nevada, at no less than the appraised fair market value (FMV) of $135,000.00, as determined by the authorized officer after appraisal. An appraisal report has been prepared by a State certified appraiser for the purposes of establishing FMV.

This parcel of land located near Hadley, Nevada, is being offered for sale through direct sale procedures. The land meets the criteria for direct sale, pursuant to 43 CFR 2711.3–3(a)(5), to resolve inadvertent unauthorized use and occupancy of the lands and pursuant to 43 CFR 2710.0–3(a)(3) which states, ''Such tract, because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency.'' During

construction of the Hadley Airport, authorized by Public Airport Lease (N–46058) in 1987, to Round Mountain Gold Corporation, a portion of the aircraft parking area and landing strip was inadvertently developed on public land outside of the airport lease area. These lands are not required for Federal purposes. Direct sale would not change the status quo in that no other land uses are expected for these lands. These lands are identified as suitable for disposal in the BLM Tonopah Resource Management Plan (RMP) approved in October 1997. The proposed disposal action is consistent with the objectives, goals, and decisions of the RMP.

The BLM provided a 30-day comment period for the preliminary EA as part of its public involvement. All comments received have been considered and incorporated into the EA and Decision Record. The environmental assessment, EA Number NV065–EA06–061, Decision Record, Environmental Site Assessment, map, and approved appraisal report covering the proposed sale, are available for review at the BLM, Tonopah Field Station, Tonopah, Nevada.

Segregation:

Publication of this Notice in the **Federal Register** segregates the subject lands from all appropriations under the public land laws, including the general mining laws, except sale under the Federal Land Policy and Management Act of 1976. The segregation will terminate upon issuance of the patent, upon publication in the **Federal Register** of a termination of the segregation or January 30, 2009, whichever occurs first.

Terms and Conditions of Sale:

The patent issued would contain the following numbered reservations, covenants, terms and conditions:

1. A right-of-way thereon for ditches and canals constructed by authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Geothermal resources are reserved on the land sold; permittees, licensees, and lessees retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

3. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (43 U.S.C. 1761) for an access road granted to Nye County, its successor or assignees, by right-of way NVN–46508;

4. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (43 U.S.C. 1761) for a buried telephone line granted to Nevada Bell, its successor or assignees, by right-of-way NVN–46314;

5. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (43 U.S.C. 1761) for a fiber optic line granted to Nevada Bell, its successor or assignees, by right-of-way NVN–63200;

6. All existing and valid land uses, including livestock grazing leases, unless waived.

7. Valid existing rights.

8. The purchaser/patentee, by accepting patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind arising from the past, present or future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party arising out of or in connection with the patentee's use and/or occupancy of the patented real property resulting in: (1) Violations of Federal, State, and local laws and regulations that are now, or in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws, off, on, into or under land, property, and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

9. Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), (42 U.S.C. 9620(h)), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670), notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, express or implied, is given by the United States as to the title, physical condition or potential uses of the parcel of land proposed for sale, and the conveyance of any such parcel 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 prospective uses of nearby properties. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

In the event of a sale, the unreserved mineral interests will be conveyed simultaneously with the sale of the land. These remaining unreserved mineral interests have been determined to have no known mineral value pursuant to 43 CFR 2720.2(a). Acceptance of the sale offer will constitute an application for conveyance of those unreserved mineral interests. The purchaser will be required to pay a $50.00 non-refundable filing fee for conveyance of the available mineral interests. The purchaser will have 30 days from the date of receiving the sale offer to accept the offer and to submit a deposit of 20 percent of the purchase price, the $50.00 filing fee for conveyance of mineral interests, and for payment of publication costs. The purchaser must remit the remainder of the purchase price within 180 days from the date the sale offer is received. Payments must be by certified check, postal money order, bank draft or cashiers check payable to the U.S. Department of the Interior—BLM. Failure to meet conditions established for this sale will void the sale and any monies received will be forfeited.

Round Mountain Gold Corporation would be required to relinquish the only active mining claims on the lands identified for the proposed sale prior to conveyance in order to complete the sale as proposed.

A portion of the subject lands (34.06 acres, according to the survey records as of June 8, 2006) were previously segregated authorizing a public airport (N–46058) pursuant to the Act of May 24, 1928, as amended (49 U.S.C. 211–214) on November 19, 1987. This Notice does not operate or serve as an opening order.

Public Comments

The subject parcel of land will not be offered for sale prior to the 60-day publication of this notice of realty action. For a period until March 16, 2007, interested parties may submit

written comments to the Tonopah Field Station, P.O. Box 911, Tonopah, Nevada 89049. Facsimiles, telephone calls, and electronic mails are unacceptable means of notification. Comments including names and street addresses of respondents will be available for public review at the BLM, Tonopah Field Station (address above) during regular business hours, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. 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. Such requests will be honored to the extent allowed by law.

Any adverse comments will be reviewed by the Nevada State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2711.1–2(a)).

Dated: November 6, 2006.

William S. Fisher,

Assistant Field Manager, Tonopah.

[FR Doc. E7–1428 Filed 1–29–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Fish Passage Improvement Project at the Red Bluff Diversion Dam, Tehama County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability (NOA) of the Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR), recirculation of the document.

SUMMARY: The Bureau of Reclamation (Reclamation) and the Tehama-Colusa Canal Authority (TCCA) are re-circulating the DEIS/EIR for the Fish Passage Improvement Project at the Red Bluff Diversion Dam for public review and comment. The document is being re-circulated for any additional comments since it was originally available to the public from August 14 through October 29, 2002, given the length of lapsed time and the recent selection of Alternative 2B as Reclamation's Preferred Alternative. The public comments sent in 2002 are also available although no responses have yet been completed. The final EIS/EIR will be prepared after the end of the new comment period.

DATES: Comments on the DEIS/EIR will be accepted on or before March 16, 2007.

ADDRESSES: Written comments on the DEIS/EIR should be sent to Mr. David Bird, General Manager, Tehama-Colusa Canal Authority, P.O. Box 1025, Willows, CA 95988. Comments may be submitted electronically by e-mailing the project team: *dbird@tccanal.com.*

A copy of the Executive Summary, DEIS/EIR, and/or technical appendices may be obtained by calling Mr. Bird at the telephone number below.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Freeman, Bureau of Reclamation, telephone: 530–529–3890, fax: 530–529–3895, e-mail: *pfreeman@mp.usbr.gov*; or Mr. David Bird, Tehama-Colusa Canal Authority, telephone: 530–934–2125, e-mail: *dbird@tccanal.com.*

SUPPLEMENTARY INFORMATION: Since construction of the Red Bluff Diversion Dam, concern has been expressed regarding the dam's effect on both upstream and downstream fish migration. The dam was built with 11 movable gates. Raising the gates eliminates the dam's effect and allows the river to flow unimpeded. Lowering the dam gates allows for gravity diversion into canals and results in the creation of Lake Red Bluff.

Over the years, the dam gates have been raised more frequently in an attempt to enhance fish passage. Therefore, the ability to divert irrigation water has been gradually decreased from year-round to the current 4-month (gates-in) operations from May 15 to September 14. During the remainder of the year, the dam gates are open, allowing a free flowing, unimpeded river. Detailed studies show the current design of the fish ladders and the operations of the dam gates do not adequately allow passage of all threatened and endangered fish species.

The DEIS/EIR outlines the proposed project alternatives that seek to address issues related to the Red Bluff Diversion Dam, including fish passage and water supply. Current dam operations do not adequately allow passage of threatened and endangered fish species. Additionally, current dam operations limit the dam's capacity to meet the agricultural demand. To address these critical issues, TCCA and Reclamation are working together to determine an appropriate solution.

The project goals are to:

- Substantially improve the long-term reliable level of anadromous fish passage, both upstream and downstream, past the Red Bluff Diversion Dam.
- Substantially improve the long-term ability to reliably and cost-effectively move sufficient water into the Tehama-Colusa Canal and the Corning Canal systems to meet the needs of the water districts served by the TCCA.

The TCCA and Reclamation are working together as ''co-lead'' agencies on this project to achieve the project purpose and need. However, they are independent agencies with various interests and methods for approaching a project such as this one. Work conducted to date has built upon a wide array of previous studies conducted at the dam.

Through detailed feasibility studies, six alternatives, including the No Action alternative, were created based on various combinations of new facilities and operational changes. These have been created to encompass the range of options available to address the identified water delivery and fish passage issues.

The alternatives identified in the DEIS/EIR are:

No action—The current operating conditions remain the same with a 4-month dam ''gates-in,'' that creates Lake Red Bluff from May 15 to September 14. The impacts of this option must be studied to a similar level of detail as the others. It is used as a benchmark for comparison of the other alternatives.

1B—4-Month Bypass—This option creates a fish-friendly channel around the dam with sufficient water flow to attract and transport fish moving upstream and deliver juvenile fish moving downstream when the dam gates are lowered in late spring and early fall. Gates would continue to be lowered in the May 15 to September 14 period. A new pumping station would be required to provide reliable agricultural water supply from the river into the water delivery canals.

1A and 2A—Improved fish ladders—These two alternatives are being considered and are aimed at improving the efficiency of the ''fish ladders'' designed to create a passage for fish to swim around the dam. The design improvements will increase the flow of water through the fish ladders. By increasing the flow, more fish will be attracted to the ladders and successfully pass the dam. The two alternatives differ in the operations of the dam gates. Alternative 1A proposes lowering the dam gates for the current 4-month operation and Alternative 2A for a 2-month operation (July 1 through August

31). A new pumping station would be required to provide reliable agricultural water supply from the river into the water delivery canals under Alternative 2A.

2B—Existing fish ladders with gates up 10 months—Alternative 2B retains the current fish ladders and decreases lowering of the dam gates to 2 months (July 1 through August 31). The source of improved fish passage would be the reduction in gate operations. A new pumping station would be required to provide reliable agricultural water supply from the river into the water delivery canals. Reclamation has identified Alternative 2B as the preferred alternative.

3—Gates out—Alternative 3 keeps the dam gates open year round, creating a free flowing river, unimpeded by the dam. Fish ladders or other bypass options would no longer be necessary and Lake Red Bluff would no longer be created. A new pumping station would be required to provide reliable agricultural water supply from the river into the water delivery canals.

Additional Information

Comments received in response to this notice will become part of the administrative record and are subject to public inspection. Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: December 28, 2006.

Frank Michny,

Assistant Regional Director, Mid-Pacific Region.

[FR Doc. E7–1405 Filed 1–29–07; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–413 and 731–TA–913–916 and 918 (Review)]

Stainless Steel Bar From France, Germany, Italy, Korea, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty order on stainless steel bar from Italy and the antidumping duty orders on stainless steel bar from France, Germany, Italy, Korea, and the United Kingdom.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on stainless steel bar from Italy and the antidumping duty orders on stainless steel bar from France, Germany, Italy, Korea, and the United Kingdom would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is March 23, 2007. Comments on the adequacy of responses may be filed with the Commission by April 16, 2007. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: February 1, 2007.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On March 7, 2002, the Department of Commerce (''Commerce'') issued antidumping duty orders on imports of stainless steel bar from France, Germany, Italy, Korea, and the United Kingdom (67 FR 10381–10385). On March 8, 2002, Commerce issued a countervailing duty order on imports of stainless steel bar from Italy (67 FR 10670). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are France, Germany, Italy, Korea, and the United Kingdom.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined a single *Domestic Like Product* consisting of all stainless steel bar meeting the specifications described in Commerce's scope determination.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single *Domestic Industry* encompassing all U.S. producers of stainless steel bar. The Commission also concluded that service centers were not part of the *Domestic Industry*.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117–0016/USITC No. 07–5–166, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

(5) The *Order Dates* are the dates that the countervailing and antidumping duty orders under review became effective. In these reviews, the Order Date concerning the antidumping duty orders is March 7, 2002, and the Order Date concerning the countervailing duty order is March 8, 2002.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 23, 2007. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is April 16, 2007. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided In Response To This Notice Of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing and antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and

likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Countries* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Dates*.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2006 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies)*, provide the following information on your firm's(s') operations on that product during calendar year 2006 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies)*, provide the following information on your firm's(s') operations on that product during calendar year 2006 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Countries* since the *Order Dates*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Countries*, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 25, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–1446 Filed 1–29–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 20, 2006, and published in the **Federal Register** on September 29, 2006, (71 FR 57570), Abbott Laboratories, DBA Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The company plans to manufacture bulk product and dosage units for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Abbott Laboratories to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Abbott Laboratories to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: January 23, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–1403 Filed 1–29–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 25, 2006 and published in the **Federal Register** on November 1, 2006, (71 FR 64298), Alcan Packaging-Bethlehem, 2400 Baglyos Circle, Bethlehem, Pennsylvania 18020, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Nabilone (7379), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for packaging and for distribution.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. § 823(a) and § 952(a) and determined that the registration of Alcan Packaging-Bethlehem to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Alcan Packaging-Bethlehem to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. § 952(a) and § 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: January 23, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

FR Doc. E7–1399 Filed 1–29–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 16, 2006, American Radiolabeled Chemical, Inc., 101 Arc Drive, St. Louis, Missouri 63146, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
1–[1–(2–Thienyl)cyclohexyl]piperidine; TCP (7470).	I
Normorphine (9313)	I
Dextropropoxyphene, bulk (non-dosage form) (9273).	II

The company plans to manufacture small quantities of the listed controlled substances as radiolabeled compounds for biochemical research.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, *Attention:* DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than April 2, 2007.

Dated: January 23, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–1385 Filed 1–29–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 11, 2006 and published in the **Federal Register** on October 18, 2006, (71 FR 61510–61511), Boehringer Ingelheim Chemical, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance to bulk manufacture amphetamine.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. § 823(a) and § 952(a) and determined that the registration of Boehringer Ingelheim Chemical, Inc. to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Boehringer Ingelheim Chemical, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. § 952(a) and § 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: January 23, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–1400 Filed 1–29–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 20, 2006, and published in the **Federal Register** on September 29, 2006, (71 FR 57569), Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Morphine (9300), a basic class of controlled substance listed in schedule II.

The company plans to utilize small quantities of the listed controlled substance in the preparation of analytical standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cambridge Isotope Lab to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Cambridge Isotope Lab to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: January 23, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–1404 Filed 1–29–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 24, 2006 and published in the **Federal Register** on October 31, 2006, (71 FR 63781), Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78664, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Gamma Hydroxybutyric Acid (2010).	I
Ibogaine (7260)	I
Alpha-methyltryptamine (7432)	I
Dimethyltryptamine (7435)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Etorphine (except HCl) (9056)	I
Heroin (9200)	I
Pholcodine (9314)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene bulk (9273) (non-dosage form).	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II

The company plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Cerilliant Corporation to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Cerilliant Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: January 23, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–1401 Filed 1–29–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 24, 2006 and published in the **Federal Register** on October 31, 2006, (71 FR 63781–63782), ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import the Phenylacetone to manufacture Amphetamine.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of ISP Freetown Fine Chemicals, Inc. to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated ISP Freetown Fine Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: January 23, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–1197 Filed 1–29–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 17, 2006, Mallinckrodt Inc., 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Codeine-N-oxide (9053)	I
Difenoxin (9168)	I
Dihydromorphine (9145)	I
Morphine-N-oxide (9307)	I
Norlevorphanol (9634)	I
Normorphine (9313)	I
Tetrahydrocannabinols (7370)	I
Nabilone (7379)	II
Alfentanil (9737)	II
Amphetamine (1100)	II
Ecgonine (9180)	II
Codeine (9050)	II
Dextropropoxyphene, bulk (9273)	II
Dihydrocodeine (9120)	II
Diphenoxylate (9170)	II
Diprenorphine (9058)	II
Etorphine HCL (9059)	II
Fentanyl (9801)	II
Hydrocodone (9193)	II
Hydromorphone (9150)	II
Levo-alphacetylmethadol (9648)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Metopon (9260)	II
Morphine (9300)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, granulated (9640)	II
Opium, powdered (9639)	II
Oxycodone (9143)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Phenazocine (9715)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Thebaine (9333)	II

The firm plans to manufacture the listed controlled substances for internal use and for sale to other companies.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA **Federal Register** Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA **Federal Register** Representative/ ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than April 2, 2007.

Dated: January 23, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–1402 Filed 1–29–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

January 24, 2007.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number) / e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316 / Fax: 202–395–6974 (these are not toll-free numbers), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of currently approved collection.

Title: Summary Plan Description Requirements Under ERISA.

OMB Number: 1210–0039.

Type of Response: Third party disclosure.

Affected Public: Private Sector: Business or other for-profit and Not-for-profit institutions.

Estimated Number of Respondents: 3,200,000.

Estimated Number of Annual Responses: 93,457,000.

Estimated Total Burden Hours: 262,000.

Estimated Total Annualized capital/ startup costs: $0.

Estimated Total Annual Costs (operating/maintaining systems or purchasing services): $257,914,000.

Description: Section 104(b)(1) of the Employee Retirement Security Act of 1974 (ERISA) requires the administrator of an employee benefit plan to furnish each plan participant and each beneficiary receiving benefits under the plan a copy of the plan's summary plan description (SPD) within 90 days after an individual becomes a participant and (in the case of a beneficiary) within 90 days after an individual first receives benefits, or, if later, within 120 days after the plan first becomes subject to Part 2 of Title I of ERISA. Section 104(b)(1) further specifies that an updated SPD must be furnished subsequently every fifth year, integrating all plan amendments made within such five-year period. The information required to be contained in the SPD is set forth in section 102(b) of ERISA.

If a plan is amended to make a material modification in its terms or to change the information required to be contained in the SPD (other than a material reduction in covered services or benefits under a group health plan), section 104(b)(1) requires the plan administrator to furnish participants and beneficiaries receiving benefits a summary of the material modifications

(SMM) within 210 days following the end of the plan year in which the change was adopted. Section 104(b)(1) separately provides that, in the case of any modification or change that is a ''material reduction in covered services or benefits provided under a group health plan,'' the plan must provide a summary of such material reduction (SMR) not later than 60 days after the adoption of the modification or change, unless the plan routinely provides summaries of modifications or changes at regular intervals of not more than 90 days.

Section 109(c) of ERISA grants the Secretary of Labor the authority to prescribe the form and content of the SPD, as well as other documents required to be furnished or made available to plan participants and beneficiaries receiving benefits under a plan.

The Department has promulgated regulations governing the content and furnishing of SPDs, SMMs, and SMRs at 29 CFR 102–2 (Style and Format of Summary Plan Descriptions); 29 CFR 2520.102–3 (Contents of Summary Plan Descriptions); 29 CFR 2520.102–4 (Option for Different Summary Plan Descriptions); 29 CFR 2520.2520.104b–1 (Disclosure); 29 CFR 2520.104b–2 (Summary Plan Descriptions); 29 CFR 104b–3 (Summary of Material Modifications to the Plan and Changes in the Information Required to be Included in the Summary Plan Description); and 29 CFR 104b–4 (Alternative Methods of Compliance for Furnishing the Summary Plan Description and Summaries of Material Modifications of a Pension Plan to a Retired Participant, a Separated Participant, and a Beneficiary Receiving Benefits). These regulations set standards for the content of these disclosure documents, the methods of furnishing that will satisfy the statutory disclosure requirements, and alternative methods of compliance. In particular, regulations at 29 CFR 2520.104b–1(c) specifically describe the circumstances under which the administrator of an employee benefit plan may furnish required disclosure documents, including the SPD/SMM/SMR, through electronic media.

The Department's regulations contain information collections that constitute mandatory third-party disclosure requirements applicable to the majority of ERISA-covered pension and welfare benefit plans. The Department has determined that these information collections are necessary in order to ensure the participants and beneficiaries in employee benefit plans covered under ERISA receive adequate information about the benefits due to them and their rights under the plans.

The information collections covered by the subject regulations are necessary to ensure that participants and beneficiaries are adequately and timely informed about their rights and benefits under their plans. The SPD, together with the revelant SMMs and SMRs, constitutes the single most important source of information about a plan for the plan participants, and, if properly updated through SMMs and SMRs, it provides participants and beneficiaries with complete knowledge about how to manage their benefits, including how to file benefit claims, what rights they may have under different situations, under what circumstances benefits can be lost, whom to contact about benefits, and many other essential matters. In order to insure that participants and beneficiaries receive this information, the regulations require SPDs to be written in language calculated to be understood by the average plan participant and to be provided through a method that ensures receipt. ERISA also requires that the information in the SPD be kept current. This is accomplished through the use of the SMM or SMR, which inform plan participants and beneficiaries about material plan changes, and the requirement for periodic updated SPDs.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–1387 Filed 1–29–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

January 24, 2007.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *Mills.Ira@dol.gov*, or by accessing *http://www.reginfo.gov/public/do/PRAMain*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for U.S. Department of Labor/Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 45 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Workforce Investment Act: National Emergency Grant (NEG) Assistance—Application and Reporting Procedures.

OMB Number: 1205–0439.

Frequency: Quarterly.

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Number of Respondents: 150.

Annual Responses: 1,565.

Average Response Time: 42 minutes.

Total Annual Burden Hours: 1,096.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: These application and reporting procedures for states and local entities enable them to access funds for National Emergency Grant (NEG) programs. NEGs are discretionary grants intended to complement the resources and service capacity at the state and local area levels by providing supplementary funding for workforce development and employment services and other adjustment assistance for dislocated workers and other eligible individuals as defined in sections 101, 134 and 173 of WIA: sections 113, 114,

and 203 of the Trade Act of 2002 and 20 CFR 671.140.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. E7–1388 Filed 1–29–07; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Submission for OMB Review: Comment Request

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 [P.L. 104–13, 44 U.S.C. Chapter 35]. Copies of this ICR, with applicable supporting documentation, may be obtained by contacting Sunil Iyengar via telephone at 202–682–5424 (this is not a toll-free number) or e-mail at *research@arts.endow.gov.* Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202–682–5496 between 10 a.m. and 4 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316, within 30 days from the date of this publication in the **Federal Register**.

The Office of Management and Budget (OMB) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Agency: National Endowment for the Arts.

Title: Big Read Program Evaluation.

OMB Number: New.

Frequency: One Time.

Affected Public: Individuals.

Estimated Number of Respondents: 14,120.

Estimated Time Per Respondent: 8 minutes.

Total Burden Hours: 1,883.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0.

Description: The National Endowment for the Arts plans to conduct an evaluation to assess the Big Read program at the national level. The Big Read is an initiative of the National Endowment for the Arts (NEA), in partnership with the Institute of Museum and Library Services (IMLS) and in cooperation with Arts Midwest, designed to revitalize the role of literature in American popular culture by providing citizens with the opportunity to read and discuss a single book of fiction within their communities. The evaluation is aimed at assessing the design of the 2007–08 Big Read program and to assess the program's impact on literary reading habits in participating communities. The activities include collecting uniform data from all sites, coordinating local and national data collection—and still keep data collection burdens to a minimum.

As a national study, the Big Read Evaluation will serve as a sound base from which to make estimates of the impact of the initiatives on partnering organizations, communities, and individuals. The Big Read evaluation data will also provide information on the characteristics of those who participate in the initiative and the degree to which the initiative is reaching previously under-represented groups.

ADDRESSES: Sunil Iyengar, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 616, Washington, DC 20506–0001, telephone (202) 682–5424 (this is not a toll-free number), fax 202/682–5677.

Murray Welsh,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. E7–1391 Filed 1–29–07; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power and Light; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Renewed Facility Operating License No. DPR–23 issued to Carolina Power and Light (the licensee) for operation of the H. B. Robinson Steam Electric Plant (HBRSEP), Unit No. 2 located in Darlington County, South Carolina.

The proposed amendment would modify Technical Specification (TS) 5.5.9 to add steam generator (SG) alternate repair criteria and TS 5.6.8 to add additional SG reporting requirements.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the CODE OF FEDERAL REGULATIONS (10 CFR), Section 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. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change does not involve physical changes to any plant structure, system, or component. The inspection of the portion of the steam generator tubes within the tubesheet region is being changed to identify the appropriate scope of inspection and the criteria for plugging tubes that are found with degradation. The proposed requirements will continue to ensure that the probability of a steam generator tube rupture accident is not increased. Therefore, the probability of occurrence for a previously analyzed accident is not significantly

increased. The consequences of a previously analyzed accident are dependent on the initial conditions assumed for the analysis, the behavior of the fission product barriers during the analyzed accident, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. The proposed inspection and repair requirements will ensure that the plant continues to meet applicable design and safety analyses acceptance criteria. The proposed change does not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. As a result, no analysis assumptions are impacted and there are no adverse effects on the factors that contribute to offsite or onsite dose as a result of an accident. The proposed change does not affect setpoints that initiate protective or mitigative actions. The proposed change ensures that plant structures, systems, and components are maintained consistent with the safety analysis and licensing bases. Based on this evaluation, there is no significant increase in the consequences of a previously analyzed accident. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed change does not involve any physical alteration of plant systems, structures, or components. No new or different equipment is being installed. No installed equipment is being operated in a different manner. There is no change to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. The proposed inspection and repair criteria will establish appropriate requirements to ensure that the steam generator tubes are properly maintained. As a result, no new failure modes are being introduced. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

There is no impact on any margin of safety resulting from the proposed steam generator tube inspection and repair criteria. The integrity of the steam generator tubes and associated primary to secondary leakage criteria will be maintained consistent with the applicable safety margins as established for HBRSEP, Unit No. 2, by use of the proposed steam generator alternate repair criteria. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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.

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 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for 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 O1 F21, 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 by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The

petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

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, 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.

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(c)(1)(i)–(viii).

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 David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated January 19, 2007, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 23rd day of January 2007.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–1417 Filed 1–29–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Dockets No. 50–155 and 72–043]

Consumers Energy Company Big Rock Point Plant; Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 and 10 CFR 72.50 approving the transfer of Facility Operating License No. DPR–6 for Big Rock Point (BRP) Plant and Independent Spent Fuel Storage Installation (ISFSI) License No. SFGL–16 for BRP currently held by Consumers Energy Company (Consumers). The transfer would be to Entergy Nuclear Palisades, LLC (Entergy Nuclear Palisades) to possess and own, and Entergy Nuclear Operations, Inc. (ENO), to control and operate, the ISFSI. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by Consumers, Entergy Nuclear Palisades, and ENO, Entergy Nuclear Palisades would acquire ownership of the facility following approval of the proposed license transfer, and ENO would control and operate ISFSI. No physical change to the BRP facility or operational changes are being proposed in the application.

The proposed amendment would replace references to Consumers in the license with references to Entergy Nuclear Palisades and ENO to reflect the proposed transfer.

Pursuant to 10 CFR 50.80 and 10 CFR 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of any license unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or to the license of an ISFSI which does no more than conform the license to reflect the transfer action involves no significant hazards consideration and no genuine issue as to whether the health and safety of the public will be significantly affected. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon Douglas E. Levanway, Wise, Carter, Child, and Caraway, P.O. Box 651, Jackson, MS 39205, 601–968–5524, Facsimile: 601–968–5593, E-mail: *DEL@wisecarter.com*, and Sam Behrends, LeBoeuf, Lamb, Greene & MacRae, 1875 Connecticut Ave., NW, Suite 1200, Washington, DC 20009, 202–986–8108, Facsimile: 202–986–8102, E-mail: *Sbehrend@llgm.com*; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this FR Notice.

For further details with respect to this action, see the application dated October 31, 2006, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 18th day of January 2007.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery, Licensing Directorate, Division of Waste Management, and Environmental Protection, Office of Federal and State Materials, and Environmental Management Programs.

[FR Doc. E7–1418 Filed 1–29–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on February 26–27, 2007, 11545 Rockville Pike, Rockville, Maryland in Room T–2B3.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, February 26, 2007—8:30 a.m. until the conclusion of business.

Tuesday, February 27, 2007—8:30 a.m. until the conclusion of business.

The Subcommittee will review the final staff reports on Chemical Effects Testing related to Generic Safety Issue–191, ''PWR Sump Performance.'' 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. Ralph Caruso (Telephone: 301–415–8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 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 to the agenda.

Dated: January 24, 2007.

Eric A. Thornsbury,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E7–1411 Filed 1–29–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of January 29, February 5, 12, 19, 26, March 5, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED

Week of January 29, 2007

Monday, January 29, 2007

10:50 a.m. Affirmation Session (Public Meeting) (Tentative).

a. Final Rulemaking to Revise 10 CFR 73.1, Design Basis Threat (DBT) Requirements (Tentative).

b. AmerGen Energy Company, LLC (License Renewal for Oyster Creek Nuclear Generating Station) Docket No. 50–0219, Remaining Legal challenges to LBP–06–07 (Tentative).

c. Nuclear Management Co., LLC (Palisades Nuclear Plant, license renewal application); response to ''Notice'' relating to San Louis Obispo Mothers for Peace

(Tentative).
d. System Energy Resources, Inc. (Early Site Permit for Grand Gulf ESP Site); response to NEPA/terrorism issue (Tentative).

Tuesday, January 30, 2007

10 a.m. Discussion of Security Issues (Closed-Ex. 3).
1:30 p.m. Discussion of Security Issues (Closed-Ex. 1).

Thursday, February 1, 2007

9:25 a.m. Affirmation Session (Public Meeting) (Tentative)
a. USEC, Inc. (American Centrifuge Plant) (Tentative).
9:30 a.m. Discussion of Management Issues (Closed-Ex. 2).
1:30 p.m. Briefing on Strategic Workforce Planning and Human Capital Initiatives (Public Meeting) (Contact: Mary Ellen Beach, 301 415–6803). This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of February 5, 2007—Tentative

There are no meetings scheduled for the Week of February 5, 2007.

Week of February 12, 2007—Tentative

Thursday, February 15, 2007

9:30 a.m. Briefing on Office of Chief Financial Officer (OCFO) Programs, Performance, and Plans (Public Meeting) (Contact: Edward New, 301–415–5646).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of February 19, 2007—Tentative

There are no meetings scheduled for the Week of February 19, 2007.

Week of February 26, 2007—Tentative

Wednesday, February 28, 2007

9:30 a.m. Periodic Briefing on New Reactor Issues (Public Meeting) (Contact: Donna Williams, 301–415–1322).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of March 5, 2007—Tentative

Monday, March 5, 2007

1 p.m. Meeting with Department of Energy on New Reactor Issues (Public Meeting).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Tuesday, March 6, 2007

1 p.m. Discussion of Management Issues (Closed-Ex. 2) (Tentative).

Wednesday, March 7, 2007

9:30 a.m. Briefing on Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Public Meeting).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

1 p.m. Discussion of Security Issues (Closed-Ex. 1 and 3).

Thursday, March 8, 2007

10 a.m. Briefing on Nuclear Materials Safety and Safeguards (NMSS) Programs, Performance, and Plans (Public Meeting).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

1 p.m. Briefing on Office of Nuclear Reactor Regulation (NRR) Programs, Performance, and Plans (Public Meeting).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

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Additional Information

Affirmation of ''Pacific Gas & Electric Co. (Diablo Canyon ISFSI), Docket No. 72–26–ISFSI, response to the Supreme Court's potential denial of certiorari'' tentatively scheduled on Monday, January 29, 2007, at 10:50 a.m. has been postponed and will be rescheduled.

''Discussion of Security Issues (Closed-Ex. 1 & 3)'' previously scheduled on Wednesday, January 31, 2007, at 9:30 a.m. has been postponed and will be rescheduled.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, D.C. 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: January 25, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–415 Filed 1–26–07; 1:50 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 5, 2007 to January 18, 2007. The last biweekly notice was published on January 16, 2007 (72 FR 1779).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3)

involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and

Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: November 16, 2006.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 3.6.5.1, ''Drywell,'' Surveillance Requirement (SR) 3.6.5.1.3 to delay the performance of the next drywell bypass leakage rate test (DBLRT) from the current requirement of ''November 23, 2008'' to ''prior to startup from the C1R12 refueling outage'' which is currently scheduled for January 2010. This request would also revise TS 5.5.13, ''Primary Containment Leakage Rate Testing Program,'' to delay the performance of the next primary containment Type A integrated leak rate test (ILTR) from the current requirement of ''no later than November 23, 2008'' to ''prior to startup from the C1R12 refueling outage.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will revise TS 3.6.5.1, ''Drywell,'' SR 3.6.5.1 .3 to defer the performance of the next DBLRT to prior to startup from the C1R12 refueling outage. This request will also revise CPS TS 5.5.13, ''Primary Containment Leakage Rate Testing Program,'' to reflect a one-time deferral of the primary containment Type A test to prior to startup from the C1R12 refueling outage. The current Type A test and DBLRT interval of 15 years, based on past performance, would be extended on a onetime basis to 16.25 years (i.e., approximately 15 years plus 15 months) from the last Type A test and DBLRT.

The drywell houses the reactor pressure vessel, the reactor coolant recirculation loops, and branch connections of the Reactor Coolant System (RCS), which have isolation valves at the primary containment boundary. The function of the drywell is to maintain a pressure boundary that channels steam resulting from a Loss of Coolant Accident (LOCA) to the suppression pool, where it is condensed. Air forced from the drywell is released into the primary containment through the suppression pool. The suppression pool is a concentric open container of water with a stainless steel liner that is located at the bottom of the primary containment. The suppression pool is designed to absorb the decay heat and sensible heat released during a reactor blowdown from safety/relief valve (SRV) discharges or from a LOCA.

The function of the Mark III containment is to isolate and contain fission products released from the RCS following a design basis LOCA and to confine the postulated release of radioactive material to within limits. The test interval associated with the drywell bypass leakage and Type A testing is not a precursor of any accident previously evaluated. Therefore, extending these test intervals on a one-time basis from 15 years to 16.25 years does not result in an increase in the probability of occurrence of an accident. The successful performance history of the drywell bypass leakage and Type A testing provides assurance that the CPS drywell and primary containment will not exceed allowable leakage rate values specified in the TS and will continue to perform its design function following an accident. The risk assessment of the proposed changes has concluded that there is an insignificant increase in total population dose rate and an insignificant increase in the conditional containment failure probability.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes for a one-time extension of the DBLRT and Type A test will not affect the control parameters governing unit operations or the response of plant equipment to transient and accident conditions. The proposed changes do not introduce any new equipment or modes of system operation. No installed equipment will be operated in a new or different manner. As such, no new failure mechanisms are introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

CPS is a General Electric BWR/6 plant with a Mark III containment system. The Mark III containment design is a single-barrier pressure containment and a multi-barrier fission containment system consisting of the drywell and primary containment. The drywell houses the reactor pressure vessel, the reactor coolant recirculation loops, and branch connections of the RCS, which have isolation valves at the primary containment boundary. The function of the drywell is to maintain a pressure boundary that channels steam from a LOCA to the suppression pool, where it is condensed. The suppression pool is an annular pool of demineralized water between the drywell and the outer primary containment boundary. This pool covers the horizontal vent openings in the drywell to maintain a water seal between the drywell interior and the remainder of the containment volume. The primary containment consists of a steel-lined, reinforced concrete vessel, which surrounds the RCS and provides an essentially leak-tight barrier against an uncontrolled release of radioactive material to the environment. Additionally, the containment structure provides shielding from the fission products that may be present in the primary containment atmosphere following accident conditions. The primary containment is penetrated by access, piping and electrical penetrations.

The integrity of the drywell is periodically verified by performance of the DBLRT. This test ensures that the measured drywell bypass leakage is bounded by the safety analysis assumptions. The drywell integrity is further verified by a number of additional tests, including drywell airlock door seal leakage tests, overall drywell airlock leakage tests and periodic visual inspections of exposed accessible interior and exterior drywell surfaces. Additional confidence that significant degradation in the drywell leaktightness has not developed is provided by the periodic qualitative assessment of drywell performance.

The integrity of the primary containment penetrations and isolation valves is verified

through Type B and Type C local leak rate tests (LLRTs) and the overall leak-tight integrity of the primary containment is verified by a Type A integrated leak rate test (ILRT) as required by 10 CFR 50, Appendix J. These tests are performed to verify the essentially leak-tight characteristics of the primary containment at the design basis accident pressure. The proposed changes for a one-time extension of the drywell bypass leakage and Type A tests do not affect the method for drywell or containment testing or the test acceptance criteria.

AmerGen has conducted a risk assessment to determine the impact of a change to the CPS Type A ILRT and DBLRT schedule from the originally licensed baseline frequency of three tests in 10 years to one test in 15 years plus 15 months (*i.e.*, approximately 16.25 years) for the risk measures of Large Early Release Frequency (*i.e.*, LERF), Population Dose, and Conditional Containment Failure Probability (*i.e.*, CCFP). This assessment indicated that the proposed CPS interval extension has a small change in risk to the public and is an acceptable plant change from a risk perspective.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, AmerGen concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' paragraph (c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.

NRC Branch Chief: Michael L. Marshall, Jr.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: November 2, 2006.

Description of amendment request: The proposed amendment would modify requirements for inoperable snubbers consistent with the Technical Specification Task Force 372, Revision 4.

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:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change allows a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an inoperable snubber if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on allowance provided by proposed LCO [limiting condition for operation] 3.0.8 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.8. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to inoperable snubbers, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety.

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in RG [Regulatory Guide] 1.177. A bounding risk assessment was performed to justify the proposed TS changes. This application of LCO 3.0.8 is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360–5599

NRC Branch Chief: Richard Laufer.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: November 7, 2006.

Description of amendment request: The proposed change revises Technical Specification (TS) Surveillance Requirement (SR) 3.4.3.1 to increase the allowable as-found main steam safety valve (MSSV) lift setpoint tolerance from ± 1 percent to ± 3 percent. In addition, the proposed change revises SR 3.1.7.10 to increase the enrichment of sodium pentaborate used in the Standby Liquid Control (SLC) system from ≥ 30.0 atom percent boron-10 to ≥ 45.0 atom percent boron-10.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change increases the allowable as-found MSSV lift setpoint tolerance, determined by test after the valves have been removed from service, from ± 1% to ± 3%. The proposed change does not alter the TS requirements for the number of MSSVs required to be operable, the nominal lift setpoints, the allowable as-left lift setpoint tolerance, the MSSV testing frequency, or the manner in which the valves are operated.

Consistent with current TS requirements, the proposed change continues to require that the MSSVs be adjusted to within ± 1% of their nominal lift setpoints following testing. Since the proposed change does not alter the manner in which the valves are operated, there is no significant impact on reactor operation.

The proposed change does not involve a physical change to the valves, nor does it change the safety function of the valves. The proposed TS revision involves no significant changes to the operation of any systems or components in normal or accident operating

conditions and no changes to existing structures, systems, or components, with the exception of the SLC system enrichment change. The proposed change to increase the enrichment of sodium pentaborate used in the SLC system will ensure that the requirements of 10 CFR 50.62, ''Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants,'' continue to be met. The SLC system is not an initiator to an accident; rather, the SLC system is used to mitigate an ATWS event. Therefore, these changes will not increase the probability of an accident previously evaluated.

Generic considerations related to the change in setpoint tolerance were addressed in NEDC–3175310, ''BWROG In-Service Pressure Relief Technical Specification Revision Licensing Topical Report,'' and were reviewed and approved by the NRC in a safety evaluation dated March 8, 1993. General Electric Company (GE) completed plant-specific analyses to assess the impact of the setpoint tolerance increase on Dresden Nuclear Power Station Units 2 and 3 and QCNPS [Quad Cities Nuclear Power Station] Units 1 and 2. The impact of the MSSV setpoint tolerance increase, as addressed in this analysis, included vessel overpressure, Updated Final Safety Analysis Report (UFSAR) Chapter 15 events, ATWS, Loss of Coolant Accident (LOCA), containment response and loads, high pressure systems performance, Appendix R fire protection, vessel thermal cycle, operating mode and equipment out of service review, and extended power uprate evaluation review. The proposed change to 3% setpoint tolerance is supported by Westinghouse SVEA–96 Optimal fuel analysis of events that credit the MSSVs.

The plant specific evaluations, required by the NRC's safety evaluation and performed to support this proposed change, show that there is no change to the design core thermal limits and adequate margin to the reactor vessel pressure limits using a ±3% lift setpoint tolerance. These analyses also show that operation of Emergency Core Cooling Systems is not affected, and the containment response following a LOCA is acceptable. The plant systems associated with these proposed changes are capable of meeting applicable design basis requirements and retain the capability to mitigate the consequences of accidents described in the UFSAR. The accident analyses that credit the initiation of SLC as a dose mitigation feature are not impacted by the proposed change because the chemical properties of the SLC boron solution are not affected. Therefore, these changes do not involve an increase in the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change increases the allowable as-found lift setpoint tolerance for the QCNPS MSSVs, and increases the required enrichment of sodium pentaborate used in the SLC system. The proposed change to increase the enrichment of sodium pentaborate used in the SLC system will ensure that the requirements of 10 CFR 50.62 continue to be met.

The proposed change to increase the MSSV tolerance was developed in accordance with the provisions contained in the NRC safety evaluation for NEDC–31753P. MSSVs installed in the plant following testing or refurbishment will continue to meet the current tolerance acceptance criteria of ± 1% of the nominal setpoint. The proposed change does not affect the manner in which the overpressure protection system is operated; therefore, there are no new failure mechanisms for the overpressure protection system. The proposed change to allow an increase in the MSSV setpoint tolerance does not alter the nominal MSSV lift setpoints or the number of MSSVs currently required to be operable by QCNPS TS. The proposed change does not involve physical changes to the valves, nor does it change the safety function of the valves. There is no alteration to the parameters within which the plant is normally operated. As a result, no new failure modes are being introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event. The proposed change does not modify the safety limits or setpoints at which protective actions are initiated, and does not change the requirements governing operation or availability of safety equipment assumed to operate to preserve the margin of safety.

Establishment of the ± 3% MSSV setpoint tolerance limit does not adversely impact the operation of any safety-related component or equipment. Evaluations performed in accordance with the NRC safety evaluation for NEDC–31753P have concluded that all design limits will continue to be met.

The proposed change to increase the enrichment of sodium pentaborate used in the SLC system will ensure that the requirements of 10 CFR 50.62 continue to be met.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the above, EGC [Exelon Generation Company] concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92 (c), and, accordingly, a finding of no significant hazards consideration is justified.

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 requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.

NRC Branch Chief: Michael L. Marshall, Jr.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 20, 2006.

Description of amendment request: The proposed amendment would remove annotations referencing Technical Data Book (TDB)–VIII, ''Equipment Operability Guidance,'' and annotations referencing Technical Specification Interpretations (TSIs) from the NRC Authority File. These documents are used by Omaha Public Power District (OPPD) personnel for additional guidance in applying certain Limiting Conditions for Operation requirements to specific equipment and/or situations. OPPD has annotated references to these documents in the Technical Specification (TS) copies used at Fort Calhoun Station (FCS); however, the annotations are ''pointers'' to additional guidance and are not officially a part of the FCS TS. The proposed amendment also corrects an administrative discrepancy in TS 2.10.4(1)(c).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The correction of administrative discrepancies in the Fort Calhoun Station (FCS) Technical Specifications (TS) is not an initiator of any previously evaluated accident. The proposed changes will not prevent safety systems from performing their accident mitigation function as assumed in the safety analysis.

Therefore, this change does not involve an increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes only affect the Technical Specifications and do not involve a physical change to the plant. Modifications

will not be made to existing components nor will any new or different types of equipment be installed. This change will not alter assumptions made in safety analysis and licensing bases.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The correction of administrative discrepancies in the Technical Specifications has no impact on any safety analysis assumptions and thus this TS change does not involve a 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: James R. Curtiss, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: David Terao.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 20, 2006.

Description of amendment request: The proposed amendment would delete the Technical Specification (TS) requirements related to the hydrogen purge system in TS 2.6(3) and TS Table 3–5, Item 17. The proposed TS changes support implementation of the revisions to 10 CFR 50.44, ''Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors,'' that became effective on September 16, 2003. The changes are consistent with Revision 1 of NRC-approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–447, ''Elimination of Hydrogen Recombiners and Change to Hydrogen and Oxygen Monitors.''

The NRC staff issued a notice of opportunity to comment in the **Federal Register** dated August 2, 2002 (67 FR 50374), on possible amendments for the elimination of requirements for hydrogen recombiners, and hydrogen and oxygen monitors from the TSs, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the model for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the NSHC in its application dated December 20, 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen [and oxygen] monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG 1.97 Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen [and oxygen] monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents. [Also, as part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 2, as defined in RG 1.97, is an appropriate categorization for the oxygen monitors, because the monitors are required to verify the status of the inert containment.]

The regulatory requirements for the hydrogen [and oxygen] monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, [classification of the oxygen monitors as Category 2] and removal of the hydrogen [and oxygen] monitors from TS will not prevent an accident management strategy through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen [and oxygen] monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen [and oxygen] monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen [and oxygen] monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen [and oxygen] monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen [and oxygen] monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. [The intent of the requirements established as a result of the TMI, Unit 2 accident can be

adequately met without reliance on safety-related oxygen monitors.] Removal of hydrogen [and oxygen] monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: David Terao.

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.*

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: December 27, 2004, as supplemented by letters dated October 27, 2005, March 10, and October 6, 2006.

Brief description of amendments: The amendments revised the San Onofre Nuclear Generating Station, Units 2 and 3, accident source term used in the design-basis radiological consequence analyses. The amendments were in accordance with the requirements of 10 CFR 50.67, which addresses the use of an alternative source term (AST) at operating reactors, and relevant guidance of Regulatory Guide (RG) 1.183. The amendments represent full-scope implementation of the AST described in RG 1.183.

Date of issuance: December 29, 2006.

Effective date: As of the date of issuance and shall be implemented within 180 days of issuance.

Amendment Nos.: Unit 2—210; Unit 3—202.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** February 1, 2005 (70 FR 5248). The supplemental letters dated October 27, 2005, March 10, and October 6, 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 December 29, 2006.

No significant hazards consideration comments received: No.

*Southern California Edison Company, et al.***,** *Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California*

Date of application for amendments: March 10, 2006, as supplemented by submittal dated May 16, 2006.

Brief description of amendments: The amendments conform the Facility Operating Licenses NPF–10 and NPF–15 for the San Onofre Nuclear Generating Station, Units 2 and 3 (SONGS 2 and 3) to reflect their transfer from the City of Anaheim (Anaheim) to Southern California Edison (SCE). The license transfers, which were approved by the Order dated September 27, 2006, permitted the transfer of the 3.16-percent undivided ownership interest in the facilities held by Anaheim to SCE, excluding Anaheim's interest in its spent fuel and in the SONGS 2 and 3 independent spent fuel storage installation. SCE retains exclusive responsibility and control over the operation of SONGS 2 and 3.

Date of issuance: December 29, 2006.

Effective date: At the time the transfer is completed.

Amendment Nos.: Unit 2—209; Unit 3—201.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Facility Operating Licenses.

Date of initial notice in ***Federal Register:*** June 8, 2006 (71 FR 33321) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 27, 2006.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–259 Browns Ferry Nuclear Plant, Unit 1, Limestone County, Alabama

Date of application for amendment: January 6, 2006 (TS–443), as supplemented by letter dated October 2, 2006.

Brief description of amendment: Activation of thermal-hydraulic stability monitoring instrumentation. The Oscillation Power Range Monitor System is designed to provide the licensee's solution regarding reactor stability.

Date of issuance: December 29, 2006.

Effective date: Date of issuance, to be implemented within 60 days.

Amendment No.: 266.

Renewed Facility Operating License No. DPR–33: Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** April 5, 2006 (71 FR 23962). The October 2, 2006, supplement, contained clarifying information and

did not change the NRC staff's initial proposed finding of no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 2006.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/

requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. *Technical*—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. *Environmental*—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. *Miscellaneous*—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory 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 or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

STP Nuclear Operating Company, Docket No. 50–498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: December 20, 2006, as supplemented by letter dated December 28, 2006.

Description of amendment request: The amendment, for a one-time change, revised Technical Specification (TS) 3.3.2 for the loss of power (LOP) instrumentation (Functional Unit 8, ''loss of power'') in TS Table 3.3–3, ''Engineered Safety Features Actuation System Instrumentation.'' A note is added to TS Table 3.3–3, Action 20, which is the TS-required action for inoperable LOP instrumentation, to allow a one-time provision for corrective maintenance on an inoperable Unit 1 LOP instrumentation channel when the number of operable channels are more than one less than the total number of channels. This provision for corrective maintenance expires 30 days after the amendment is approved.

Date of issuance: January 11, 2007.

Effective date: Effective as of its date of issuance and shall be implemented by January 15, 2007.

Amendment No.: 176.

Facility Operating License No. NPF–76: The amendment revised the Technical Specifications and Facility Operating License.

Public comments requested as to proposed no significant hazards consideration (NSHC): No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated January 11, 2007.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Branch Chief: David Terao.

Dated at Rockville, Maryland, this 22nd 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. E7–1259 Filed 1–29–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Number IC–27677; File No. 812–13321]

Integrity Life Insurance Company, et al.

January 24, 2007.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for an order of approval pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the ''Act'').

APPLICANTS: Integrity Life Insurance Company (''Integrity''), Separate

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

Account I of Integrity Life Insurance Company (''Integrity Separate Account I''), Separate Account II of Integrity Life Insurance Company (''Integrity Separate Account II''), National Integrity Life Insurance Company (''National Integrity''), Separate Account I of National Integrity Life Insurance Company (''National Integrity Separate Account I''), and Separate Account II of National Integrity Life Insurance Company (''National Integrity Separate Account II,'' together with Integrity Separate Account I, Integrity Separate Account II, and National Integrity Separate Account I, the ''Separate Accounts'').

SUMMARY: Applicants seek an order approving the proposed substitution of shares of DWS Equity 500 Index VIP Fund: Class A with Fidelity VIP Index 500: Initial Class; DWS Equity 500 Index VIP Fund: Class B with Fidelity VIP Index 500: Service Class 2; JPMorgan Bond Portfolio with Fidelity VIP Investment Grade Bond: Initial Class; JPMorgan International Equity Portfolio with Fidelity VIP Overseas: Initial Class; MFS VIT Capital Opportunities Series: Service Class with Franklin VIP Growth and Income Securities Fund: Class 2; MFS VIT Emerging Growth Series: Service Class with Touchstone VST Eagle Capital Appreciation Fund; MFS VIT Investors Growth Stock Series: Service Class with Touchstone VST Eagle Capital Appreciation Fund; MFS VIT Mid Cap Growth Series: Service Class with Touchstone VST Mid Cap Growth Fund; MFS VIT New Discovery Series: Service Class with Fidelity VIP Disciplined Small Cap: Service Class 2; MFS VIT Total Return Series: Service Class with Franklin VIP Growth and Income Securities Fund: Class 2; Putnam VT Discovery Growth: Class IB with Fidelity VIP Mid Cap: Service Class 2; Putnam VT George Putnam Fund of Boston: Class IB with Fidelity VIP Balanced: Service Class 2; Putnam VT Growth and Income Fund: Class IB with Franklin VIP Growth and Income Securities Fund: Class 2; Putnam VT International Equity Fund: Class IB with Fidelity VIP Overseas: Service Class 2; Putnam VT Small Cap Value Fund: Class IB with Touchstone VST Third Avenue Value Fund; Putnam VT Voyager Fund: Class IB with Fidelity VIP Growth: Service Class 2.

FILING DATE: The application was filed on August 4, 2006, and an amended and restated application was filed on January 23, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on February 16, 2007, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Applicants, c/o Rhonda S. Malone, Esq., Associate Counsel—Securities, Western and Southern Financial Group, 400 Broadway, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: Alison T. White, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the amended and restated application. The complete application is available for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Washington, DC 20549 (202–551–8090).

Applicants' Representations

1. Integrity is a stock life insurance company organized under the laws of Ohio. Integrity is a wholly owned subsidiary of The Western and Southern Life Insurance Company. The Western and Southern Life Insurance Company is wholly owned by Western and Southern Financial Group, Inc., which is wholly owned by Western and Southern Mutual Holding Company.

2. Integrity Separate Account I and Integrity Separate Account II are registered under the Act as unit investment trusts (File Nos. 811–04844 and 811–07134, respectively). They are used to fund variable annuity contracts of Integrity.

3. National Integrity is a stock life insurance company organized under the laws of New York. National Integrity is a direct subsidiary of Integrity and an indirect subsidiary of The Western and Southern Life Insurance Company.

4. National Integrity Separate Account I and National Integrity Separate Account II are registered under the Act as unit investment trusts (File Nos. 811–04846 and 811–07132, respectively). They are used to fund variable annuity contracts of National Integrity.

5. The fifteen variable annuity Contracts affected by this application are flexible premium deferred variable annuities and hereinafter are collectively referred to as the ''Contracts.''

6. Each Contract permits allocations of value to certain fixed subaccounts and variable subaccounts that invest in specific investment portfolios of underlying mutual funds. The Contracts currently offer between 12 and 54 portfolios. All of the Contracts currently being sold offer the same portfolios and same series of the Putnam Variable Trust Funds (''Putnam''), MFS Variable Insurance Trust (''MFS''), DWS Investments VIP Funds (''DWS''), and J.P. Morgan Series Trust II (''JP Morgan'') that are the subject of this Substitution. One contract that is no longer sold currently offers 12 portfolios including only one of the replaced portfolios, and will continue to offer 12 portfolios after the substitution.

7. Each Contract permits transfers from one subaccount to another subaccount at any time prior to annuitization, subject to certain restrictions and charges described below. No sales charge applies to such a transfer of value among subaccounts. The Contracts permit up to twelve free transfers during any contract year. A fee of $20 is imposed on transfers in excess of twelve transfers in a contract year.

8. Each Contract reserves the right, upon notice to Contract owners and compliance with applicable law, to add, combine or remove subaccounts, or to withdraw assets from one subaccount and put them into another subaccount.

9. The Applicants propose the Substitution of 16 separate portfolios, representing all the currently available portfolios, except one, of four unaffiliated companies: Putnam, MFS, DWS, and JP Morgan (the ''Replaced Portfolios''). As replacements, the Applicants propose 12 portfolios: eight from Fidelity VIP Funds (''Fidelity''), one from Franklin Templeton Variable Insurance Product Trust (''Franklin''), and three from Touchstone VST Funds (the ''Replacement Portfolios''). Each of these fund companies currently offers portfolios in the Contracts, and 11 of the 12 proposed replacement portfolios are currently or were previously available in the Contracts.

10. The investment objective, strategies and risks of each Replacement Portfolio are the same as, or substantially similar to, the investment objective, strategies and risks of the corresponding Replaced Portfolio. For each Replaced Portfolio and each Replacement Portfolio, the investment objective, strategies, and risks, along

with the Morningstar Style Category, are shown in the tables that follow:

	Replaced Portfolio	Replacement Portfolio (Unless otherwise indicated, the Replacement Portfolios are not affiliated with the Integrity Companies.)
	Replacements 1 and 2	
Name	DWS Equity 500 Index	Fidelity Index 500.
Investment Objective	Match the performance of the S&P 500 Index, which emphasizes stocks of large U.S. companies.	Results that correspond to the total return of common stocks in the US, as represented by the S&P 500.
Strategy	Invests in stocks and other securities of a statistically selected sample of the companies included in the benchmark and derivative instruments that are representative of the S&P 500 Index as a whole, using a process called optimization.	Invests at least 80% of assets in common stocks included in the S&P 500 using statistical sampling techniques; lends securities to earn income for the fund.
Principal Risks	• Market Risk • Tracking Error Risk. • Issuer-Specific Changes. • Index Fund Risk. • Futures and Options Risk. • Pricing Risk. • Securities Lending Risk.	• Stock Market Volatility.
Morningstar Category	Large Cap Blend	Large Cap Blend.
	Replacement 3	
Name	JPMorgan Bond	Fidelity Investment Grade Bond.
Investment Objective	Provide a high total return consistent with moderate risk of capital and maintenance of liquidity.	Provide a high level of current income consistent with the preservation of capital.
Strategy	Invests at least 80% of its assets in debt investments, including U.S. government and agency securities, corporate bonds, private placements, asset backed and mortgage backed securities it believes have the potential to provide a high total return over time.	Invests at least 80% of assets in investment-grade debt securities of all types and repurchase agreements for those securities; allocates assets across different market sectors and maturities, and analyzes a security's structural features and current pricing, trading opportunities, and the credit quality of the issuer; may invest up to 10% in lower-quality debt securities.
Principal Risks	• Interest Rate Risk • Junk Bond Risk • Foreign Exposure • Prepayment Risk • Issuer-Specific Change. • Short Sales Risk. • Futures and Options Risk.	• Interest Rate Risk. • Foreign Exposure. • Prepayment Risk. • Issuer-Specific Changes.
Morningstar Category	Intermediate Term Bond	Intermediate Term Bond.
	Replacement 4	
Name	JPMorgan International Equity	Fidelity Overseas.
Investment Objective	Provide a high total return of capital growth and current income.	Provide long-term growth of capital.
Strategy	Invests at least 80% of its assets in equity investments of primarily foreign companies of various sizes, including foreign subsidiaries of U.S. companies.	Invests at least 80% of assets in non-U.S. common stocks; allocates investments across countries and regions considering the size of the market in each country and region relative to the size of the international market as a whole, using fundamental analysis of each issuer, its industry position, and market and economic conditions.
Principal Risks	• Market Risk • Foreign Exposure • Futures and Options Risk • Emerging Market Risk. • Small Company Risk. • Prepayment Risk. • Interest Rate Risk.	• Market Risk. • Foreign Exposure. • Issuer-Specific Changes.
Morningstar Category	Foreign Large Cap Blend	Foreign Large Cap Blend.
	Replacement 5	
Name	MFS Capital Opportunities	Franklin Growth and Income Securities.
Investment Objective	Capital appreciation	Capital appreciation with current income as a secondary goal.

	Replaced Portfolio	Replacement Portfolio (Unless otherwise indicated, the Replacement Portfolios are not affiliated with the Integrity Companies.)
Strategy	Invests at least 65% of its net assets in common stocks and related securities; focuses on companies it believes have favorable growth prospects and attractive valuations based on current and expected earnings or cash flow, using fundamental research and a ''bottom-up'' investment style.	Invests predominantly in a broadly diversified portfolio of equity securities that the advisor considers to be financially strong but undervalued by the market.
Principal Risks	• Market Risk • Company Risk • Over-the-Counter Risk • Foreign Securities Risk • Emerging Market Risk	• Market Risk. • Undervalued Securities Risk. • Interest Rate Risk. • Sector Risk. • Foreign Securities Risk. • Emerging Market Risk.
Morningstar Category	Large Cap Blend	Large Cap Value.

Replacement 6

Name	MFS Emerging Growth	Touchstone Eagle Capital Appreciation (affiliated with the Integrity Companies).
Investment Objective	Long-term growth of capital	Long-term capital appreciation.
Strategy	Invests at least 65% of its net assets in common stocks and related securities of emerging growth companies it believes are either (1) early in their life cycle but which have the potential to become major enterprises, or (2) major enterprises whose rates of earnings growth are expected to accelerate because of special factors, such as rejuvenated management, new products, changes in consumer demand, or basic changes in the economic environment; emerging growth companies may be of any size.	Invests in a diversified portfolio of common stocks in large cap companies, selected from the largest 500 stocks by market cap size, screened using fundamental research to develop five-year earnings estimates for each company based on historical data, current comparables and a thorough understanding of each company and the relevant industry drivers; assigned either a premium or discount multiple; then ranked using a proprietary valuation model which ranks each stock based on the five year expected rates of return.
Principal Risks	• Market Risk • Over-the-Counter Risk • Foreign Securities Risk • Emerging Markets Risk • Emerging Growth Risk • Frequent Trading Risk	• Market Risk. • Large-cap Company Risk. • Analysis Risk. • Sector Risk. • Growth Company Risk. • Management Risk.
Morningstar Category	Large Cap Growth	Large Cap Growth.

Replacement 7

Name	MFS Investors Growth Stock	Touchstone Eagle Capital Appreciation (affiliated with the Integrity Companies).
Investment Objective	Provide long-term growth of capital and future income rather than current income.	Long-term capital appreciation.
Strategy	Invests at least 80% of its net assets in common stocks and related securities of companies it believes offer better than average prospects for long-term growth.	Invests in a diversified portfolio of common stocks in large cap companies, selected from the largest 500 stocks by market cap size, screened using fundamental research to develop five-year earnings estimates for each company based on historical data, current comparables and a thorough understanding of each company and the relevant industry drivers; assigned either a premium or discount multiple; then ranked using a proprietary valuation model which ranks each stock based on the five year expected rates of return.
Principal Risks	• Market Risk • Growth Company Risk • Foreign Securities Risk • Frequent Trading Risk	• Market Risk. • Growth Company Risk. • Large-cap Company Risk. • Sector Risk. • Management Risk.
Morningstar Category	Large Cap Growth	Large Cap Growth.

Replacement 8

Name	MFS Mid Cap Growth	Touchstone Mid Cap Growth (affiliated with the Integrity Companies).
Investment Objective	Long-term growth of capital	Increase the value of fund shares as a primary goal and earn income as a secondary goal.

	Replaced Portfolio	Replacement Portfolio (Unless otherwise indicated, the Replacement Portfolios are not affiliated with the Integrity Companies.)
Strategy	Invests at least 80% of its net total assets in common stocks and related securities of companies with medium market capitalization that it believes have above-average growth potential.	Invests at least 80% of assets in common stocks of mid cap companies including companies that have earnings that the portfolio manager believes may grow faster than the U.S. economy in general or companies that are believed to be undervalued, including those with unrecognized asset values, undervalued growth or those undergoing turnaround.
Principal Risks	• Mid Cap Growth Company Risk • Over-the-Counter Risk • Foreign Securities Risk • Emerging Markets Risk • Short Sales Risk.	• Market Risk. • Mid Cap Company Risk. • Sector Risk. • Management Risk.
Morningstar Category	Mid Cap Growth	Mid Cap Growth.
Replacement 9		
Name	MFS New Discovery	Fidelity Disciplined Small Cap.
Investment Objective	Capital appreciation	Capital appreciation.
Strategy	Invests at least 65% of assets in common stocks and related securities of emerging growth companies it believes offer superior prospects for growth and are either (1) early in their life cycle but which have the potential to become major enterprises, or (2) enterprises whose rates of earnings growth are expected to accelerate because of special factors; the Portfolio will generally focus on smaller cap companies within the range of market capitalizations in the Russell 2000 Growth Index.	Invests at least 80% of assets in securities of Companies with small market capitalizations similar to companies in the Russell 2000 Index; invest in domestic and foreign issuers, in either growth or value stocks; uses computer aided quantitative analysis of historical valuation, growth, profitability and other factors.
Principal Risks	• Market Risk • Company Risk • Over-the-Counter Risk • Foreign Securities Risk • Short Sales Risk • Emerging Growth Companies. • Small Cap Companies Risk.	• Stock Market Volatility. • Foreign Exposure. • Issuer-Specific Changes. • Quantitative Investing. • Small Cap Investing.
Morningstar Category	Small Cap Growth	Small Cap Growth.
Replacement 10		
Name	MFS Total Return	Franklin Growth and Income Securities.
Investment Objective	Provide above-average income (compared to a portfolio invested entirely in equity securities) consistent with the prudent employment of capital, and secondarily to provide a reasonable opportunity for growth of capital and income.	Capital appreciation with current income as a secondary goal.
Strategy	Invests in a combination of equity and fixed income securities (1) at least 40%, but not more than 75%, of its net assets in common stocks and related securities and (2) at least 25% of its net assets in non-convertible fixed income securities.	Invests predominantly in a broadly diversified portfolio of equity securities that the advisor considers to be financially strong but undervalued by the market.
Principal Risks	• Allocation Risk • Undervalued Securities Risk • Market Risk • Foreign Securities Risk • Interest Rate Risk • Convertible Securities Risk • Maturity Risk. • Credit Risk. • Junk Bond Risk. • Liquidity Risk. • Prepayment Risk.	• Market Risk. • Undervalued Securities Risk. • Interest Rate Risk. • Sector Risk. • Foreign Securities Risk. • Emerging Market Risk.
Morningstar Category	Moderate Allocation	Large Cap Value.
Replacement 11		
Name	Putnam Discovery Growth	Fidelity Mid Cap.
Investment Objective	Long-term growth of capital	Long-term growth of capital.
Strategy	Invests mainly in common stocks of U.S. companies with a focus on growth stocks.	Invests at least 80% of assets in securities of U.S. and foreign companies with medium market caps.
Principal Risks	• Market Risk • Small Cap Company Risk • Mid Cap Company Risk	• Stock Market Volatility Risk. • Foreign Exposure. • Mid Cap Company Risk.

	Replaced Portfolio	Replacement Portfolio (Unless otherwise indicated, the Replacement Portfolios are not affiliated with the Integrity Companies.)
Morningstar Category ...	Mid Cap Growth	Mid Cap Growth.
	Replacement 12	
Name	Putnam The George Putnam Fund of Boston	Fidelity Balanced.
Investment Objective	Provide a balanced investment composed of a well-diversified portfolio of stocks and bonds that produce both capital growth and current income.	Income and capital growth consistent with reasonable risk.
Strategy	Invests in a combination of bonds and U.S. value stocks, with a greater focus on value stocks; at least 25% of the Fund's total assets in fixed-income securities, including debt securities, preferred stocks and that portion of the value of convertible securities attributable to the fixed-income characteristics of those securities.	Invests approximately 60% of assets in common stocks of domestic and foreign issuers and at least 25% of assets in fixed income senior securities.
Principal Risks	• Stock Market Volatility Risk • Interest Rate Risk • Credit Risk • Junk Bond Risk • Allocation Risk • Futures and Options Risk.	• Stock Market Volatility Risk. • Interest Rate Risk. • Foreign Exposure. • Prepayment Risk. • Issuer-Specific Changes.
Morningstar Category ...	Moderate Allocation	Moderate Allocation.
	Replacement 13	
Name	Putnam Growth and Income	Franklin Growth and Income Securities.
Investment Objective	Seeks capital growth and current income	Capital appreciation with current income as a secondary goal.
Strategy	Invests mainly in common stocks of U.S. companies, with a focus on value stocks that offer potential for capital growth, current income, or both.	Invests predominantly in a broadly diversified portfolio of equity securities that the advisor considers to be financially strong but undervalued by the market.
Principal Risks	• Market Risk • Company Risk	• Market Risk. • Undervalued Securities Risk. • Interest Rate Risk. • Sector Risk. • Foreign Securities Risk. • Emerging Market Risk.
Morningstar Category ...	Large Cap Value	Large Cap Value.
	Replacement 14	
Name	Putnam International Equity	Fidelity Overseas.
Investment Objective	Capital appreciation	Provide long-term growth of capital.
Strategy	Invests in common stocks of companies outside the United States that it believes have favorable investment potential; at least 80% of assets in equity investments.	Invests at least 80% of its assets in non-U.S. common stocks; allocates investments across countries and regions considering the size of the market in each country and region relative to the size of the international market as a whole, using fundamental analysis of each issuer, its industry position, and market and economic conditions.
Principal Risks	• Foreign Exposure • Market Risk • Company Risk	• Market Risk. • Foreign Exposure. • Issuer-Specific Changes.
Morningstar Category ...	Foreign Large Cap Blend	Foreign Large Cap Blend.
	Replacement 15	
Name	Putnam Small Cap Value	Touchstone Third Avenue Value (affiliated with the Integrity Companies).
Investment Objective	Capital appreciation	Long-term capital appreciation.
Strategy	Invests in common stocks of U.S. companies, with a focus on stocks it believes are currently undervalued by the market; at least 80% of its net assets in small companies of a size similar to those in the Russell 2000 Value Index.	Non-diversified Fund that seeks to achieve its objective mainly by investing in common stocks of well-financed companies (companies without significant debt in comparison to their cash resources) at a discount to what it believes is their liquid value.
Principal Risks	• Market Risk • Company Risk • Small Cap Companies Risk	• Market Risk. • Company Risk. • Small Cap Companies Risk. • Foreign Exposure. • Valuation Risk. • Sector Risk. • Diversification Risk.

	Replaced Portfolio	Replacement Portfolio (Unless otherwise indicated, the Replacement Portfolios are not affiliated with the Integrity Companies.)
Morningstar Category ...	Small Cap Value	Small Cap Blend.
	Replacement 16	
Name	Putnam Voyager	Fidelity Growth.
Investment Objective	Capital appreciation	Capital appreciation.
Strategy	Invests mainly in common stocks of U.S. companies, with a focus on growth stocks.	Invests in domestic and foreign common stock it believes have above average growth potential, using fundamental analysis.
Principal Risks	• Market Risk	• Stock Market Volatility.
	• Company Risk	• Foreign Exposure.
		• Issuer-specific Changes.
		• Growth Investing.
Morningstar Category ...	Large Cap Growth	Large Cap Growth.

11. Applicants assert that the proposed Substitutions will streamline the Contracts, creating efficiencies and reducing costs. The current portfolio structure requires the Integrity Companies to interface with eight fund companies. Reducing the number of its fund partners from eight to five will reduce the burden on the Integrity Companies' administrative, accounting, auditing, compliance, and marketing areas and systems. In addition, Applicants maintaining the legal and administrative relationships with eight fund companies has become increasingly burdensome in light of recently enhanced compliance requirements. Focusing compliance and administrative efforts on a smaller number of fund partners is intended to reduce risk and improve controls and oversight.

12. Applicants state that the proposed Substitutions are expected to provide significant benefits to the Contract owners, including improved selection of superior portfolios and simplification of fund offerings through the elimination of overlapping and duplicative portfolios in certain asset classes, particularly large cap growth. At the same time, Contract owners will continue to be able to select among 41 funds with a full range of investment objectives, investment strategies and risks.

13. Applicants represent that every Replacement Portfolio has an equal or lower expense ratio than the corresponding Replaced Portfolio, taking into account current fund expenses and fee waivers. Service fees charged by the Replacement Portfolios pursuant to a 12b–1 plan are equal to or less than those charged by the Replaced Portfolio, and the management fees are substantially similar between the Replaced and Replacement Portfolios. Detailed expense information is set forth in the chart below. By maintaining expenses at an equal or lower level, the Integrity Companies are offering their Contract owners and prospective investors a selection of better-managed funds at the same or reduced cost.

EXPENSES

	Name	Management fee (percent)	12b-1 fee (percent)	Total expense (percent)	Waivers and reimbursements (percent)	Net expense (percent)
Replaced Portfolio	DWS Equity 500 Index, Class A	0.19	0.00	0.34	0.06	0.28
Replacement Portfolio	Fidelity VIP Index 500, Initial Class	0.10	0.00	0.10	.....	0.10
Replaced Portfolio	DWS Equity 500 Index, Class B	0.19	0.25	0.72	0.19	0.53
Replacement Portfolio	Fidelity VIP Index 500, Service Class 2	0.10	0.25	0.35	.....	0.35
Replaced Portfolio	JPMorgan Bond	0.30	0.00	0.75	.....	0.75
Replacement Portfolio	Fidelity VIP Invstmt Grade Bond, Initial Cl	0.36	0.00	0.49	.....	0.49
Replaced Portfolio	JPMorgan International Equity	0.60	0.00	1.20	.....	1.20
Replacement Portfolio	Fidelity VIP Overseas, Initial Class	0.72	0.00	0.89	.....	0.89
Replaced Portfolio	MFS Total Return, Service Class	0.75	0.25	1.09	.....	1.09
Replacement Portfolio	Franklin Growth and Income Securities, Cl 2	0.48	0.25	0.76	.....	0.76
Replaced Portfolio	MFS Capital Opportunity, Service Class	0.75	0.25	1.23	0.08	1.15
Replacement Portfolio	Franklin Growth and Income Securities, Cl 2	0.48	0.25	0.76	.....	0.76
Replaced Portfolio	MFS Emerging Growth, Service Class	0.75	0.25	1.13	.....	1.13
Replacement Portfolio	Touchstone Eagle Cap Appreciation	0.75	0.00	1.22	0.17	1.05
Replaced Portfolio	MFS Investors Growth Stock, Serv Class	0.75	0.25	1.15	.....	1.15
Replacement Portfolio	Touchstone Eagle Cap Appreciation	0.75	0.00	1.22	0.17	1.05
Replaced Portfolio	MFS Mid Cap Growth, Service Class	0.75	0.25	1.17	.....	1.17
Replacement Portfolio	Touchstone Mid Cap Growth	[22] 0.80	0.00	1.33	0.17	1.15
Replaced Portfolio	MFS New Discovery, Service Class	0.90	0.25	1.31	.....	1.31
Replacement Portfolio	Fidelity Disciplined Small Cap, Serv Cl 2	0.72	0.25	1.51	0.26	1.25
Replaced Portfolio	Putnam Discovery Growth, Class IB	0.70	0.25	1.42	0.29	1.13
Replacement Portfolio	Fidelity VIP Mid Cap, Service Class 2	0.57	0.25	0.94	0.05	0.89
Replaced Portfolio	Putnam Geo Putnam Boston, Class IB	0.62	0.25	0.97	.....	0.97
Replacement Portfolio	Fidelity VIP Balanced, Service Class 2	0.42	0.25	0.83	0.03	0.80
Replaced Portfolio	Putnam Growth & Income, Class IB	0.49	0.25	0.79	.....	0.79
Replacement Portfolio	Franklin Growth and Income Securities, Cl 2	0.48	0.25	0.76	.....	0.76
Replaced Portfolio	Putnam International Equity, Class IB	0.75	0.25	1.18	.....	1.18

EXPENSES—Continued

	Name	Management fee (percent)	12b-1 fee (percent)	Total expense (percent)	Waivers and reimbursements (percent)	Net expense (percent)
Replacement Portfolio	Fidelity VIP Overseas, Service Class 2	0.72	0.25	1.14	0.07	1.07
Replaced Portfolio	Putnam Small Cap Value, Class IB	0.76	0.25	1.09	.....	1.09
Replacement Portfolio	Touchstone Third Avenue Value	0.80	0.00	1.16	0.11	1.05
Replaced Portfolio	Putnam Voyager, Class IB	0.57	0.25	0.88	.....	0.88
Replacement Portfolio	Fidelity Growth, Service Class 2	0.57	0.25	0.92	0.04	0.88

14. Applicants submit that each of the Replacement Portfolios has demonstrated better performance than the Replaced Portfolios during the overwhelming majority of the periods measured. Detailed performance information is set forth in the Application.

Applicants Legal Analysis and Conditions

1. The Substitution will take place at the portfolios' relative net asset values determined on the date of the Substitution in accordance with Section 22 of the Act and Rule 22c–1 thereunder with no change in the amount of any Contract owner's cash value or death benefit or in the dollar value of his or her investment in any of the subaccounts. Accordingly, there will be no financial impact on any Contract owner. The Substitution will be effected by having each of the subaccounts that invests in the Replaced Portfolios redeem its shares at the net asset value calculated on the date of the Substitution and purchase shares of the respective Replacement Portfolios at the net asset value calculated on the same date.

2. The Substitution will be described in a supplement to the prospectuses for the Contracts (''Sticker'') filed with the Commission and mailed to Contract owners. The Sticker will give Contract owners notice of the Substitution and will describe the reasons for engaging in the Substitution. The Sticker will also inform contract owners with assets allocated to a subaccount investing in the Replaced Portfolios that no additional amount may be allocated to those subaccounts on or after the date of the Substitution. In addition, the Stickers will inform affected Contract owners that at anytime after receipt of the notification of the Substitution and for 30 days after the Substitution, they will have the opportunity to reallocate assets from the subaccounts investing in the Replacement Portfolios to subaccounts investing in other portfolios available under the respective Contracts, without the imposition of any transfer charge or limitation and without diminishing the number of free transfers that may be made in a given contract year.

3. The prospectuses for the Contracts, as supplemented by the Sticker, will reflect the Substitution. Each Contract owner will be provided with a prospectus for the Replacement Portfolios applicable to them. Within five days after the Substitution, the Integrity Companies will each send affected Contract owners written confirmation that the Substitution has occurred.

4. The Integrity Companies will pay all expenses and transaction costs of the Substitution, including all legal, accounting and brokerage expenses relating to the Substitution. No costs will be borne by Contract owners. Affected Contract owners will not incur any fees or charges as a result of the Substitution, nor will their rights or the obligations of the Integrity Companies under the Contracts be altered in any way. The Substitution will not cause the fees and charges under the Contracts currently being paid by Contract owners to be greater after the Substitution than before the Substitution. The Substitution will have no adverse tax consequences to Contract owners and will in no way alter the tax benefits to contract owners.

5. Each Contract and its prospectus expressly discloses the reservation of the Applicants' right, subject to applicable law, to substitute shares of another portfolio for shares of the portfolio in which a subaccount is invested.

6. In all cases the investment objectives and policies of the Replacement Portfolios are sufficiently similar to those of the corresponding Replaced Portfolios that contract owners will have reasonable continuity in investment expectations.

7. The Substitution will not result in the type of costly forced redemption that Section 26(c) was intended to guard against because the Contract owner will continue to have the same type of investment choices, with better potential returns and the same or lower expenses and will not otherwise have any incentive to redeem their shares or terminate their Contracts.

8. The purposes, terms and conditions of the proposed Substitution are consistent with the protection of investors, and the principles and purposes of Section 26(c), and do not entail any of the abuses that Section 26(c) is designed to prevent.

9. Current net annual expenses in the Replacement Portfolios are lower or equal to those of the Replaced Portfolios.

10. Each of the Replacement Portfolios is an appropriate portfolio to which to move Contract owners with values allocated to the Replaced Portfolios because the portfolios have substantially similar investment objectives, strategies and risks.

11. The costs of the Substitution, including any brokerage costs, will be borne by the Integrity Companies and will not be borne by Contract owners. No charges will be assessed to effect the Substitution.

12. The Substitution will be at the net asset values of the respective shares without the imposition of any transfer or similar charge and with no change in the amount of any Contract owner's accumulation value.

13. The Substitution will not cause the fees and charges under the Contracts currently being paid by contract owners to be greater after the Substitution than before the Substitution and will result in Contract owners' contract values being moved to Portfolios with the same or lower current total net annual expenses.

14. In connection with assets held under Contracts affected by the Substitutions, the Integrity Companies will not receive, for three years from the date of the Substitutions, any direct or indirect benefits from the Replacement Portfolios, their advisors or underwriters (or their affiliates) at a rate higher than that which they had received from the Replaced Portfolios, their advisors or underwriters (or their affiliates), including without limitation 12b–1, shareholder service, administration or other service fees,

revenue sharing or other arrangements in connection with such assets. Applicants represent that the Substitutions and the selection of the Replacement Portfolios were not motivated by any financial consideration paid or to be paid by the Replacement Portfolios, their advisors or underwriters, or their respective affiliates.

15. For the two year period following the date of the Substitutions, the Applicants agree that if, on the last day of each fiscal quarter during the 2 year period, the total operating expenses of an unaffiliated Replacement Fund (taking into account any expense waiver or reimbursement) exceed on an annualized basis the net expense level of the corresponding Replaced Fund for the 2005 fiscal year, it will, for each Contract outstanding on the date of the Substitutions, make a corresponding reimbursement of expenses to the Contract Owners as of the last day of such fiscal quarter period, such that the amount of the Replacement Fund's net expenses, together with those of the corresponding Separate Account, on an annualized basis, will be no greater than the sum of the net expenses of the corresponding Replaced Fund and the expenses of the Separate Account for the 2005 fiscal year.

16. For a two year period following the date of the Substitution, the Applicants agree that the total operating expenses of each affiliated Replacement Portfolio (taking into account any expense waiver or reimbursement) will not exceed on an annualized basis the net expense level of the corresponding Replaced Fund for the 2005 fiscal year.

17. Applicants further agree that Separate Account charges on the Contracts affected by this Substitution will not be increased at any time during the 2 year period following the date of the Substitution, while the caps discussed in paragraphs 15 and 16 are in effect on the Replacement Portfolios.

18. Notice of the proposed substitution was mailed to all Contract owners on October 30, 2006. In addition, all Contract owners will be given another notice of the Substitution after it is approved by the Commission. This notice will be sent at least 30 days prior to the Substitution. All Contract owners will have an opportunity at any time after receipt of this notification of the Substitution and for 30 days after the Substitution to reallocate accumulation value among other available subaccounts without the imposition of any transfer charge or limitation and without being counted as one of the Contract owner's free transfers in a contract year.

19. Within five days after the Substitution, the Integrity Companies will send to affected Contract owners written confirmation that the Substitution has occurred.

20. The Substitution will in no way alter the insurance benefits to Contract owners or the contractual obligations of the Integrity Companies.

21. The Substitution will have no adverse tax consequences to contract owners and will in no way alter the tax benefits to Contract owners.

Conclusion

For the reasons and upon the facts set forth above, Applicants submit that the requested order meets the standards set forth in Section 26(c). Applicants request an order of the Commission, pursuant to Section 26(c) of the Act, approving the Substitutions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1408 Filed 1–29–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55157; File No. SR–NSCC–2006–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval to Proposed Rule Change Relating to Buy-Ins of Municipal Securities

January 23, 2007.

I. Introduction

On October 16, 2006, the National Securities Clearing Corporation (''NSCC'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify NSCC's rules concerning buy-ins of municipal securities. The proposed rule change was published for comment in the **Federal Register** on December 14, 2006.[3] No comment letters were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The purpose of this filing is to amend NSCC's rules to streamline the processing of continuous net settlement (''CNS'') buy-ins of municipal securities. At the request of members and after consultation with the Buy-In Subcommittee of the Securities Industry Association, NSCC is modifying Rule 11 (CNS System), Procedure VII (CNS Accounting Operation), and Procedure X (Execution of CNS Buy-Ins) with respect to CNS buy-ins of municipal securities as set forth below.

Executions of buy-ins of municipal securities are governed by the rules of the Municipal Securities Rulemaking Board (''MSRB'') and have a ten-day cycle from notification of intent to buy-in to buy-in execution. In contrast, buy-ins for equity and corporate bond securities have a two-day cycle.

Under NSCC's rules (except with respect to securities subject to voluntary corporate reorganizations), an NSCC member that has a long CNS position at the end of any day (''originator'') may submit to NSCC a Notice of Intention to Buy-In (''Buy-In Notice'') specifying a quantity of securities not exceeding such long CNS position that it intends to buy-in (''Buy-In Position''). The day the Buy-In Notice is submitted is referred to as N and the succeeding days are referred to as N+1 and N+2. The Buy-In Position is given high priority for CNS allocations until expiration of the buy-in.

While increased priority is provided to facilitate the allocation of the Buy-In Position in CNS, municipal securities are usually thinly traded and the increased allocation priority has not been generally effective in accelerating the delivery process. Accordingly, when a municipal security Buy-In Position is not satisfied by a CNS allocation, the long member must have its Buy-In Position exited from CNS in order to be able to proceed under MSRB rules, which entails issuing a new buy-in notice and then waiting an additional ten days before executing the buy-in. As a result, a member typically will request that NSCC exit the municipal security Buy-In Position from CNS, and NSCC will exit the municipal security from CNS, which results in receive and deliver obligations for the affected parties two days later.

To assist members in their timely processing of buy-ins of municipal securities, NSCC is modifying its rules and procedures to automatically exit from CNS unsatisfied municipal security Buy-In Positions. Under the new procedures, CNS will automatically exit such positions prior to the night cycle on N+1. This will create a broker-to-broker close-out receive and deliver obligation between the member with the long CNS position and the member(s)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 54900 (Dec. 8, 2006), 71 FR 75286.

with the oldest short CNS position(s). Thus, the Buy-In Position will be automatically exited from CNS one day earlier than is currently the case and the buy-in process under MSRB rules can likewise commence one day earlier.

III. Discussion

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 registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),[4] which among other things, requires the rules of a clearing agency to promote the prompt and accurate clearance and settlement of securities transactions. By automating and accelerating the exiting of unsatisfied municipal securities Buy-In Positions, the new rule should expedite and make more efficient the processing of municipal securities buy-ins. As a result, the new rule should promote the prompt and accurate clearance and settlement of such securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [5] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–NSCC–2006–12) be, and hereby is, approved.[7]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1381 Filed 1–29–07; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10793]

California Disaster # CA–00044 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California , dated 01/24/2007.

Incident: Freeze.

Incident Period: 01/11/2007 and continuing.

Effective Date: 01/24/2007.

EIDL Loan Application Deadline Date: 10/24/2007.

ADDRESSES: Submit completed loan applications to:

U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties

Alameda, Fresno, Glenn, Imperial, Kern, Kings, Lake, Los Angeles, Madera, Mendocino, Merced, Monterey, Riverside, San Benito, San Bernardino, San Luis Obispo, San Mateo, Santa Barbara, Tulare, Ventura.

Contiguous Counties

California: Butte, Colusa, Contra Costa, Humboldt, Inyo, Mariposa, Mono, Napa, Orange, San Diego, San Francisco, San Joaquin, Santa Clara, Santa Cruz, Sonoma, Stanislaus, Tehama, Trinity, Tuolumne, Yolo. Arizona: La Paz, Mohave, Yuma. Nevada: Clark.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is: 107930.

The States which received an EIDL Declaration # are: California, Arizona, Nevada.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: January 24, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–1442 Filed 1–29–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration (SBA), National Small Business Development Center Advisory Board will hold a public meeting via conference call on Tuesday, February 20, 2007 at 1 p.m. (EST).

The purpose of the meeting is to discuss the upcoming SBA board meeting; the Association of Small Business Development Centers (ASBDC) Board meeting; and the detailed agenda of SBA presentations.

Anyone wishing to make an oral presentation to the Board must contact Erika Fischer, Senior Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205–7045 or fax (202) 481–0681.

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–1383 Filed 1–29–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–27038]

Agency Information Collection Activities: Request for Comments for New 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) for approval of a new information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 21, 2006. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by March 1, 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

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(2).

[7] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

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–2007–27038.

FOR FURTHER INFORMATION CONTACT: Michael Koontz, 202–366–2076, or Robert Kafalenos, 202–366–2079, Office of Natural and Human Environment, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Annual Reporting for the Congestion Mitigation and Air Quality Improvement (CMAQ) Program.

Background: Section 1808 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005 (SAFETEA–LU) calls for an identification and analysis of a representative sample of CMAQ projects and the development and population of a database that describes the impacts of the program both on traffic congestion levels and air quality. To establish and maintain this database, the FHWA is requesting States to submit annual reports on their CMAQ investments that cover projected air quality benefits, financial information, a brief description of projects, and several other factors outlined in the Interim Program Guidance for the CMAQ program. States are requested to provide the end of year summary reports via the automated system provided through FHWA by the first day of February of each year, covering the prior Federal fiscal year.

Respondents: 51; each State DOT and Washington, DC.

Estimated Average Burden Per Response: The estimated average reporting burden is 6 hours per annual report.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 306 hours.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov,* 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: January 23, 2007.

James R. Kabel,

Chief, Management Programs and, Analysis Division.

[FR Doc. E7–1386 Filed 1–29–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–24843]

Notice of Request for Clearance of a New Information Collection: Commercial Driver's License Program Improvements and Commercial Driver's License Information System Modernization

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for comments.

SUMMARY: This action informs the public that FMCSA intends to request that the Office of Management and Budget (OMB) approve a new information collection required by the Commercial Driver's License Program Improvements (CDLPI) and the Commercial Driver's License Information System Modernization grant programs. That information consists of grant application preparation and quarterly reports. The CDLPI grant program also requires States' to conduct a self-assessment of their Commercial Driver's License (CDL) programs. This notice is required by the Paperwork Reduction Act of 1995.

DATES: Comments must be received by April 2, 2007.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dms.dot.gov/submit.* Be sure to include the docket number appearing in the heading of this document on your comment. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you would like to be notified when your comment is received, you must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting your comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd Goldsmith, Federal Motor Carrier Safety Administration, Office of Safety Programs, Commercial Driver's License Division (MC–ESL), 202–366–2964, 400 Seventh Street, SW., Washington, DC, 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Commercial Driver's License Program Improvements and Commercial Driver's License Information System Modernization.

OMB Control Number: 2126-xxxx.

Type of Request: New information collection.

Background: The CDL program was created by the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) [Public Law 99–570, 100 Stat. 3207–175, October 27, 1986] and its amending legislation. The goal of the CDL program is to improve highway safety by ensuring that drivers of large trucks and buses are qualified to operate those vehicles and to remove unsafe and unqualified drivers from the highways. CMVSA retained the States' right to issue a driver's license but established minimum national standards which States must meet when licensing commercial motor vehicle (CMV) drivers.

In CMVSA, Congress found that one of the leading impacts to CMV safety was the possession of multiple licenses by commercial drivers. Multiple licenses allowed drivers to spread their traffic violations over a number of licenses and to maintain a ''good driver'' rating regardless of the number of violations they may have acquired in one or more States. In response to the States' concerns, CMVSA directed DOT to establish Federal minimum standards to correct the multiple license issue, testing and licensing to check a person's ability to operate the types of vehicle he/she plans to operate, and to ensure that a person with a bad driving record is prohibited from operating a CMV.

These standards were designed to:

- Prohibit commercial drivers from possessing more than one CDL,
- Require that commercial drivers pass meaningful written and driving tests,
- Include special qualifications for hazardous materials drivers, and
- Establish disqualifications and penalties for drivers convicted of the traffic violations specified in 49 CFR 383.51.

States that failed to comply with the requirements imposed by DOT would be subject to withholding of a percentage of their Federal-aid highway funds. To enable the States to fully implement the provisions of CMVSA, Congress

authorized DOT to enter into an agreement for the operation of a national non-Federal information system to serve as a clearinghouse and depository of information pertaining to the licensing and identification of operators of CMVs and the disqualification of such operators from operating CMVs. CDLIS is operated by the American Association of Motor Vehicles Administrators, an organization that represents the States' driver licensing and motor vehicle agencies.

State driver licensing databases (including that of the District of Columbia) and the CDLIS Central Site (Central Site) hold the data to support the CDL program. The Central Site only serves as a pointer to the current State of Record—the State where the driver's data is kept, including convictions, crashes, and withdrawals from all previous States. The Central Site is only updated when there is a name, date of birth, social security number, State, or driver license number change. All other data changes happen within and between States. The Central Site information ensures that the driver has only one CDL and that all current and history information on that driver resides in the database of the current State of Record.

The Agency has been providing grant funds to States to support CDL program activities since the inception of the program through the Motor Carrier Safety Assistance Program (MCSAP). The burden for the information collection associated with this program is currently captured under information collection number 2126–0010.

Section 4124 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Public Law 109–59, 119 Stat. 1736, August 10, 2005] established the CDLPI grants to implement the requirements of the CDL program resulting from CMVSA. Section 4123 of SAFETEA–LU (119 Stat. 1734) established the CDLIS Modernization grants to develop a comprehensive national plan to modernize the existing CDL information system. SAFETEA–LU specifies specific data collection for the CDLPI grant program that is unique to that grant. This new information collection request will provide for the collection of the SAFETEA–LU mandated information for the CDLPI program and the information for the new CDLIS Modernization grant program.

CMVSA authorized DOT, working in partnership with the States, to assist the States in implementation of the CDL program by expending $60 million in order to meet the goals established by Congress. These funds were to be used to:

- Develop the knowledge and skills tests,
- Create a CDLIS telecommunications network connecting all State Departments of Motor Vehicles (State DMVs),
- Create national computer software to support each State in sharing information between the State DMVs,
- Implement the testing and licensing procedures of each State, and
- Implement in each State an information system that would support the program.

Congress continued to provide funding in subsequent years to improve the program or to implement new program initiatives and systems enhancements mandated by subsequent legislation.

This notice proposes that, in order to qualify for a grant, a State must submit an application with budget information and a self-assessment of its CDL program. In addition, this notice proposes that after the grant is awarded, a State must submit quarterly reports explaining its work activities and its accomplishments. FMCSA will monitor and evaluate a State's progress under its approved grant project. If a State fails to operate within the guidelines of the approved grant or does not remedy any identified deficiencies or incompatibilities in a timely manner, FMCSA may terminate the grant project. This proposed information collection would provide FMCSA with the information that serves as the basis for these responsibilities and decisions.

It is proposed that a State may submit its grant application electronically using *grants.gov* (*http://www.grants.gov/Apply?campaignid=tabnavtracking081105*). A State may submit its quarterly reports using e-mail.

Proposed Form MCSA–5842, Grant Application Continuation Sheet (CDL–3), would be submitted with the CDLPI and CDLIS Modernization grant proposals. It supplements the information on SF–424, Application for Federal Assistance, with the information necessary to evaluate the grant proposal for conformity with congressionally-mandated eligibility criteria in SAFETEA–LU. This new form includes the congressionally-mandated Maintenance of Expenditures and is based on Part Two: Writing The Grant Proposal from Developing and Writing Grant Proposals on The Catalog of Federal Domestic Assistance (CFDA) Web site [*http://www.cfda.gov*] modified to provide the information necessary to monitor project execution.

Proposed Form MCSA–5843, Budget Detail Worksheet (CDL–4), is submitted with the CDLPI and CDLIS Modernization grant proposals. This budget worksheet collects detailed budget information not provided on SF–424A, Budget Information for Non-Construction Programs. As a result, the SF–424A will not be required. This new form was based on the expired (OJP Form 7150/1) (fillable) Budget Detail Worksheet.

Proposed Form MCSA–5844, Self-Assessment of State CDL Program (CDL–5), is submitted with the CDLPI grant proposals. This structured self-assessment instrument will allow FMCSA to link grant proposals to improvement needs identified by the State and for cross comparisons among States. SAFETEA–LU requires States to submit an assessment of their CDL programs as part of the application for CDLPI grants.

These forms are intended to be completed on *grants.gov* during the application process. The header information on each form would automatically be completed with information from the SF–424.

CDLPI Grants

Respondents: State CDL lead agencies (the 50 States and the District of Columbia).

Number of Respondents (for the CDLPI grants): 51 (per year and per quarter).

Frequency (for the CDLPI grants): Annual application with quarterly reports.

Estimated Time Per Response (for the CDLPI grants): 56 hours (30 hours to prepare the annual grant application, 10 hours to complete the self assessment of the State CDL Program, and 4 hours to prepare each quarterly report ($4 \times 4 = 16$ hours)).

Estimated Total Annual Burden (for the CDLPI grants): 2,856 hours (51 respondents $\times$ 56 hours per response).

CDLIS Modernization Grants

Number of Respondents (for the CDLIS Modernization grants): 51 (per year and per quarter).

Frequency (for the CDLIS Modernization grants): Annual application with quarterly reports.

Estimated Time Per Response (for the CDLIS Modernization grants): 46 hours (30 hours to prepare the annual grant application and 4 hours to prepare each quarterly report ($4 \times 4 = 16$ hours)).

Estimated Total Annual Burden (for the CDLIS Modernization grants): 2,346 hours (51 respondents $\times$ 46 hours per response).

Combined Total Annual Burden: 5,202 hours (2,856 hours CDLPI Estimated Total Annual Burden + 2,346 hours CDLIS Modernization Estimated Total Annual Burden).

Public Comments Invited

Your comments are invited on whether the collection of information is necessary for FMCSA to meet its goal of reducing truck crashes, including:

- Whether the information is useful to this goal;
- The accuracy of the estimated burden of the information collection;
- Ways to enhance the quality, utility, and clarity of the information collected; and
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Electronic Access and Filing

You may submit or retrieve comments online through the Docket Management System (DMS) at *http://dms.dot.gov/submit.* Acceptable formats include MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 or 8). DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the Help section of the Web site. You may also download an electronic copy of this document from the DOT DMS on the Internet at *http://dms.dot.gov/search*. Please include the docket number appearing in the heading of this document.

Issued on: January 23, 2007.

John H. Hill,

Administrator.

[FR Doc. E7–1440 Filed 1–29–07; 8:45 am]

BILLING CODE 4910–EX–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 (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies 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 Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning an extension of OMB approval of the information collection titled ''Consumer Protections for Depository Institution Sales of Insurance.''

DATES: Comments must be submitted on or before April 2, 2007.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0220, 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, 1557–0220, 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 may request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Mary Gottlieb 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:

Title: Consumer Protections for Depository Institution Sales of Insurance—12 CFR 14.

OMB Control No.: 1557–0220.

Type of Review: Extension, without revision, of a currently approved collection.

Description: This information collection requires national banks and other covered persons involved in insurance sales to make two separate disclosures to consumers. Under 12 CFR 14.40, a respondent must prepare and provide certain disclosures to consumers: (1) Before the completion of the initial sale of an insurance product or annuity to a consumer; and (2) at the time of application for the extension of credit (if insurance products or annuities are sold, solicited, advertised, or offered in connection with an extension of credit).

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 1,563.

Estimated Number of Responses: 1,563.

Estimated Annual Burden Hours: 7,815 hours.

Frequency of Response: On occasion.

Comments: Comments submitted in response to this notice will be summarized and 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 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 24, 2007.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. E7–1423 Filed 1–29–07; 8:45 am]

BILLING CODE 4810–33–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 (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies 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 Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning an extension of OMB approval of the information collection titled, ''Interagency Guidance on Asset Securitization Activities.''

DATES: Comments must be submitted on or before April 2, 2007.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0217, 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, 1557–0217, 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 may request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Mary Gottlieb 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:

Title: Interagency Guidance on Asset Securitization Activities.

OMB Control No.: 1557–0217.

Type of Review: Extension, without revision, of a currently approved collection.

Description: This information collection applies to institutions engaged in asset securitization and consists of a written asset securitization policy, the documentation of fair value of retained interests, and a management information system to monitor securitization activities. Institution management uses the collection as the basis for the safe and sound operation of their asset securitization activities. The OCC uses the information to evaluate the quality of an institution's risk management practices.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 42.

Estimated Number of Responses: 42.

Estimated Annual Burden: 306 hours.

Frequency of Response: On occasion.

Comments: Comments submitted in response to this notice will be summarized and 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 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 24, 2007.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. E7–1425 Filed 1–29–07; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

United States Mint

Privacy Act of 1974, as Amended; Altered System of Records

AGENCY: United States Mint, Treasury.

ACTION: Notice of alteration to a Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as Amended, the United States Mint is altering its system of records, TREASURY/U.S. MINT .009—Mail-order and Catalogue Sales System (MACS), Customer Mailing List, Order Processing Record for Coin Sets, Medals and Numismatic Items, and Records of Undelivered Orders, Product Descriptions, Availability and Inventory—Treasury/United States Mint.

DATES: Comments must be received not later than March 1, 2007. The proposed altered system will become effective March 12, 2007, unless the United States Mint receives comments which would result in a contrary determination.

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

Fax: (202) 756–6153.

Mail: United States Mint, Attn: Disclosure Officer, 8th Floor, 801 9th Street, NW., Washington, DC 20220.

Comments received will be made available for inspection, upon appointment, by contacting the United States Mint's Disclosure Officer at (202) 354–6788.

FOR FURTHER INFORMATION CONTACT: Kathleen Saunders-Mitchell, Disclosure Officer, United States Mint, 8th Floor, 801 9th Street, NW., Washington, DC 20220. Telephone number: (202) 354–6788.

SUPPLEMENTARY INFORMATION: The system notice for the system entitled ''Mail-order and Catalogue Sales System (MACS), Customer Mailing List, Order Processing Record for Coin Sets, Medal and Numismatic Items, and Records of Undelivered Orders, Product Descriptions, Availability and Inventory-Treasury/United States Mint'' was last published in its entirety in the **Federal Register**, Volume 70, page 34183 on June 13, 2005.

Modifications are planned for this system to include the Presidential $1 Coin Program Data Collection which will be used to collect and store certain data from individuals and entities that request information and promotional materials (such as posters, stickers, bookmarks, brochures, and pamphlets) offered by the United States Mint concerning the Presidential $1 Coin Program. The United States Mint is offering these materials and information to assist in fulfillment of obligations under the Presidential $1 Coin Act of 2005 (Pub. L. 109–145). Information proposed to be collected and stored includes the name of the requesting individual and the requesting individual's address, phone number, and e-mail address; the information, materials and quantity requested; whether the requester is asking for materials to be automatically shipped each time materials are offered; and the intended use of the requested materials and information.

United States Mint employees will administer the project, along with Mint contractors and subcontractors who will assist the Mint in managing the information collection and fulfilling requests.

The information will be collected by direct upload via an online form appearing on the United States Mint's Web site that leads to the contractor's electronic information systems.

Requesters that call, mail or make requests by other means will likely be guided to the Web site to complete and online request. The United States Mint does not plan to collect data for the system other than through this Web site.

Once collected, the information will be maintained on the contractor's electronic systems in a secured environment. The public is not obligated to provide this information, but when requests are made, the information must be provided in order for the Mint to verify, respond and provide requested materials. Provided information will be used solely by authorized United States Mint personnel and contractors for business purpose of: properly fulfilling orders for program information and materials; tracking order fulfillment status; and performing statistical analyses and generating reports to monitor the effectiveness of the program and the demand for program materials and information.

The proposed alterations to this system would amend the categories of records in the system, in addition to the categories of records currently in the system, to include the phone numbers and email addresses of individuals covered in new initiative. The proposed altered system will also capture the information being requested by the requester; the quantity of the requested information; whether the requester is asking for materials to be automatically shipped each time different materials are offered; and the requester's intended use of the requested materials and information.

The legal authority to maintain the system needs to be altered to include 31 U.S.C. 5136. Enacted in Public Law 104–52, Title V, Sec. 552, November 19, 1995, 109 Stat. 494, this authority established a United States Mint Public Enterprise Fund, into which receipts from Mint operations and programs shall be deposited.

The existing purpose(s) of the system are being amended to conform to the current Privacy Impact Assessment (PIA) for the new initiative and permit the United States Mint to: maintain a mailing list of customers and interested parties to provide continuous communication and/or promotional materials, as requested, about existing and upcoming numismatic product offerings, circulating coins, and activities; record and maintain records of customer, interested party and order information and requests for promotional materials, and capture orders through each stage of the order life cycle; research and resolve orders that were not successfully delivered to customers and interested parties, and maintain a list of its products and monitor and maintain product and promotional material inventory levels to meet customer and interested party demand while remaining within legislatively-mandated mintage levels as applicable.

At present the eight (8) routine uses maintained in this system provide the proper level of disclosures under the system. While continuing to authorize these disclosures, the proposed added routine uses would extend the authority to he United States Mint to make disclosures to contractors performing work under a contract or agreement for the Federal government, when necessary to accomplish an agency function related to this system of records, in compliance with the Privacy Act of 1974, as amended; and release 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) the Mint has 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 the Mint or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Mint's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

Lastly, records in the current system of records notice are retrieved by name, customer number or order number only. The current system of records notice must be altered to indicate that records will also be retrieved by address, phone number, order date, whether or not the account is 'flagged' (such as due to an unusual quantity or an order requiring verification for processing and completion), shipment tracking number, and any internal identification number that may be assigned to the request. This alteration conforms to the current PIA and would allow for the proper administration of the system.

As required by 5 U.S.C. 552a(r) and Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals.'' dated November 30, 2000, a report of an altered system of records has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget.

For the above reasons, the United States Mint proposes to alter its system of records notice by amending the categories of records in the system to conform to the altered system and the associated PIA, amending the legal authority(s) to include 31 U.S.C. 5136, amending the existing purpose(s) of the system to conform to the altered system and the associated PIA, create two (2) new routine uses in addition to the eight (8) currently contained in the system, and amend the retrievability section of the current system to conform to the altered system and the associated PIA, as set forth and published in its entirety below:

Treasury/U.S. Mint .009

SYSTEM NAME:

Mail-order and Catalogue Sales System (MACS), Customer Mailing List, Order Processing Record for Coin Sets, Medals and Numismatic Items, and records of undelivered orders, product descriptions, availability and Inventory-Treasury/United States Mint.

CATEGORIES OF RECORDS IN THE SYSTEM:

Description of the change: The current text is revised to read as follows: ''Name, addresses, phone numbers, e-mail addresses, order history of customers purchasing numismatic items, of individuals who wish to receive notification of numismatic offerings by the Mint, and of individuals requesting information and promotional materials (and, for those requesting Presidential $1 Coin Program promotional materials, their intended use of requested materials and information).''

PURPOSE(S):

Description of the change: The current text is revised to read as follows:

''The purpose of this system is to permit the United States Mint to: maintain a mailing list of customers and interested parties to provide continuous communication and/or promotional materials, as requested, about existing and upcoming numismatic product offerings, circulating coins and activities; record and maintain records of customer, interested party and order information and requests for promotional materials, and capture orders through each stage of the order life cycle; research and resolve orders that were not successfully delivered to customers and interested parties; and maintain a list of its products and monitor and maintain product and promotional material inventory levels to

meet customer and interested party demand while remaining within legislatively mandated mintage levels as applicable.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Description of the change: The current test is revised to read as follows: ''31 U.S.C. 5111, 5112, 5132, 5136, and 31 C.F.R. part 92.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of the change: Add the two new routine uses #9, and #10 to read as follows:

(9) ''Contractors performing work under a contract or agreement for the Federal government, when necessary to accomplish an agency function related to this system of records, in compliance with the Privacy Act of 1974, as amended.''

(10) ''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) the Mint has 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 the Mint or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Mint's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.''

RETRIEVABILITY:

Description of the change: The current text is revised to read as follows:

''Name, address, phone number, customer number or order number, order date, whether or not the account is 'flagged' (such as due to an unusual quantity or an order requiring verification for processing and completion), shipment tracking number, and any internal identification number that may be assigned to the request.''

* * * * *

Dated: January 24, 2007.

Wesley T. Foster,

Acting Assistant Secretary for Management.

[FR Doc. 07–396 Filed 1–29–07; 8:45 am]

BILLING CODE 4810–37–M

Corrections

Federal Register

Vol. 72, No. 19

Tuesday, January 30, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[Docket No. OW–2004–0001; FRL–8261–7]

RIN 2040–AD93

Unregulated Contaminant Monitoring Regulation (UCMR) for Public Water Systems Revisions

Correction

In correction document Z6–22123 appearing on page 3916 in the issue of Friday, January 26, 2007 make the following correction:

The billing code should appear as set forth below.

[FR Doc. Z6–22123 Filed 1–29–07; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55004; File No. SR–NYSEArca–2006–33]

Self-Regulatory Organizations; NYSE Arca, Inc; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade the iShares® S&P Europe 350 Index Fund Pursuant to Unlisted Trading Privileges

Correction

In notice document E6–22445 beginning on page 173 in the issue of Wednesday, January 3, 2007, make the following correction:

On page 175, in the first column, in the last line of the first paragraph, ''January 23, 2007'' should read ''January 24, 2007''.

[FR Doc. Z6–22445 Filed 1–29–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
January 30, 2007

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Alabama Beach Mouse; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU46

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Alabama Beach Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are revising critical habitat for the Alabama beach mouse (*Peromyscus polionotus ammobates*) under the Endangered Species Act of 1973, as amended (Act). The revised designation encompasses approximately 1,211 acres (ac) (490 hectares (ha)) of coastal dune and scrub habitat in Baldwin County, Alabama.

DATES: This rule becomes effective on March 1, 2007.

ADDRESSES: To review comments and materials received, as well as supporting documentation used in the preparation of this final rule, make an appointment during normal business hours with the Field Supervisor, Daphne Field Office, 1208–B Main Street, Daphne, Alabama 36526. The final rule, economic analysis, and maps are also available on the Internet at *http://www.fws.gov/daphne.*

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Daphne Field Office, U.S. Fish and Wildlife Service, at telephone 251–441–5181 or facsimile 251–441–6222. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act (16 U.S.C. 1531 et seq.)

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under the Act's section 4(b)(2), there are significant limitations on the regulatory effect of designation under the Act's section 7(a)(2). In brief, (1) Designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, only 476 species, or 36 percent of the 1,311 listed species in the United States under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,311 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative, non-regulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas originally proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir 2004) (hereinafter *Gifford Pinchot*). In that case, the Ninth Circuit invalidated the Service's regulation defining ''destruction or adverse modification of critical habitat.'' In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of

requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this rule. For information on the Alabama beach mouse (ABM), please refer to the proposed rule published in the **Federal Register** on February 1, 2006 (71 FR 5516) or the final listing determination (June 6, 1985, 50 FR 23872).

Previous Federal Actions

Information about previous Federal actions for the ABM can be found in our proposal for critical habitat for the ABM published in the **Federal Register** on February 1, 2006 (71 FR 5516). On August 8, 2006, we announced the availability of our draft economic analysis (DEA), and we reopened the public comment period on the proposed rule and provided the time, date, and location of our public hearing, as well as updated acreage for the critical habitat units (71 FR 44976). The reopened public comment period ended on September 7, 2006.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed critical habitat revision in the proposed rule published on February 1, 2006 (71 FR 5516) and in our August 8, 2006, **Federal Register** document (71 FR 44976). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties, and invited them to comment on the proposed rule. We also issued press releases and published legal notices in the Press-Register and Islander newspapers. Based on 12 requests received during the public comment period, we held a public hearing and information meeting on August 24, 2006, at the Adult Activity Center in Gulf Shores, Alabama.

During the comment period that opened on February 1, 2006, and closed on April 3, 2006, we received 13 comments from organizations or individuals directly addressing the proposed revised critical habitat designation. During the comment period that opened on August 8, 2006, and closed on September 7, 2006, we received 45 comments from organizations and individuals directly addressing the proposed revised critical habitat designation and the DEA. Between February 1, 2006, and September 7, 2006, we also received 4 comments from peer reviewers. Collectively, 36 commenters supported the proposed revised designation, and 16 opposed the revised designation. Six letters were either neutral or expressed both support of and opposition to certain portions of the proposal. Comments received were grouped into eight general issues specifically relating to the proposed revised critical habitat designation and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), and current Departmental guidance, we solicited expert opinions from six knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and/or conservation biology principles. We received responses from four of the peer reviewers. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Three of the four peer reviewers specifically stated that redesignation of critical habitat to include interior scrub habitat is warranted. Information provided by peer reviewers included suggestions for sampling techniques and population viability analyses that would better inform future ABM conservation efforts, as well as comments on how to best determine recovery following hurricanes. Suggestions were also made and language was provided to clarify biological information or make the proposed rule easier to follow and review.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding ABM critical habitat, and addressed them in the following summary. Several of the peer reviewers provided editorial comments that are addressed in the body of this rule. Minor editorial comments on the Background section of the proposed rule (not found in final rules) have been incorporated into the administrative record.

Specific Peer Reviewer Comments

(1) *Comment:* Two peer reviewers suggested that the ABM may persist in areas outside of its present known range, including open, sandy portions of Gulf State Park north of the scrub dunes and east of Lake Shelby; additional scrub habitat within central and northern portions of Little Point Clear; and sand dunes along the Bon Secour National Wildlife Refuge's (Refuge) Sand Bayou Unit.

Our Response: Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. We agree that the ABM may exist in areas outside of its current known range. However, we do not have trapping data indicating ABM presence in these areas at this time. Both Little Point Clear and the referenced portions of Gulf State Park have been trapped on occasion, or subjected to qualitative tracking and habitat surveys (Sneckenberger 2001, p. 13; Service 2003, p. 2; Falcy 2006, p. 1). ABM were documented in the southern portion of Little Point Clear earlier this summer (Falcy 2006, p. 1) but not in more interior areas. We are aware of one qualitative survey in the Sand Bayou Unit where no evidence of beach mice was encountered (Sneckenberger 2001, p. 14). Much of the referenced areas are thickly vegetated, contain compacted sand, are isolated from existing known ABM habitat, do not possess the requisite primary constituent elements (PCEs) identified in the proposed rule, and are therefore not found to be essential to the conservation of the species at this time. We recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For this reason, critical habitat designations do not imply that habitat outside the designation is unimportant.

(2) *Comment:* One peer reviewer stated that it was inadequate to limit ABM critical habitat to those areas known to be occupied at the time of listing since much information has been learned about ABM distribution since then.

Our Response: Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time

it is listed, upon a determination that such areas are essential for the conservation of the species. For the purposes of this designation, we considered all frontal dunes within the proposed units to be occupied at the time of listing. Since the ABM was listed, we have learned that scrub habitat is also occupied by the subspecies and is especially important to beach mouse conservation during and after hurricane events (Swilling *et al.* 1998, pp. 294–296; Sneckenberger 2001, p. 18). Scrub habitats were included in the designation if they are presently occupied, support a core population of beach mice, and are now found to be essential to the conservation of the subspecies (contain PCEs 3 or 4 or both and are not highly fragmented, degraded, or isolated). Areas where mice may exist, but are undocumented, or areas where mice have been captured but that do not possess one or more of the PCEs or that we have determined not to be essential to the conservation of the species, were not included in the designation.

(3) *Comment:* One peer reviewer questioned whether there were references indicating the PCEs are an appropriate and adequate means to evaluate essential requirements for species.

Our Response: PCEs are those physical and biological features that are essential to the conservation of the species, and within areas occupied by the species at the time of listing, that may require special management considerations and protection. Such requirements include: (1) Space for individual and population growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. Our knowledge of these requirements for the ABM is not absolute, but research and practical experience do provide us with information on physical and biological needs of the subspecies.

Frontal dunes have been recognized as being essential to the conservation of the species since the earliest beach mouse research (Bangs 1898, pp. 195–200; Howell 1921, p. 239; Howell 1909, p. 61; Blair 1951, p. 21; Pournelle and Barrington 1953, pp. 133–134; Bowen 1968, p. 4), and were the main habitat type represented in the original critical habitat designation (June 6, 1985, 50 FR 23872). Trapping data continue to illustrate the importance of frontal dunes to ABM (Rave & Holler 1992, p. 248; Service 2003, pp. 1–3; Service 2004, p. 16), and therefore they are included in our PCEs (PCEs 1 and 2). Recent research, however, has illustrated that beach mice use interior scrub habitat on a permanent basis, and that this habitat serves an invaluable role in the persistence of beach mouse populations during and after storm events (Swilling *et al.* 1998, pp. 294–296; Sneckenberger 2001, p. 18). The importance of high-elevation scrub habitat to ABM is reinforced by our observations of suitable ABM habitat distribution and trapping records following hurricanes Ivan (2004) and Katrina (2005) (Service 2004, pp. 9–10; Service 2005a, pp. 10–13). Therefore, we incorporated high-elevation scrub habitat into the PCEs (PCEs 1 and 3). General research supports the effectiveness of biological corridors (Beier and Noss 1998, p. 1241), and recent population viability analysis work (Traylor-Holzer *et al.* 2005; Traylor-Holzer 2005, pp. 51–57; 2005b, pp. 29–30; Reed & Traylor-Holzer 2006, pp. 21–22), general observations (for example, extirpation of various ABM populations in Gulf State Park (Holliman 1983, pp. 125–126; Service 2005, pp. 6–9), and the City of Orange Beach (Endangered Species Consulting Services 2001, pp. 1–3) suggest the importance of functional pathways for ABM. Based on this information, habitat connectivity was prominently featured in the PCEs (PCEs 1 and 4). Anthropogenic disturbances in the form of artificial lighting (Bird *et al.* 2004, p. 1435) and the support of nonnative predator populations (such as feral cats) (Linzey 1978, p. 20; Holliman 1983, p. 128) are known to adversely affect beach mice. We incorporated these issues into PCEs 1, 2, and 5. Please refer to the ''Primary Constituent Elements'' section for full description of PCEs.

In summary, we based the PCEs on the best available information of the physical and biological needs of the subspecies. Using the PCEs, we have identified lands containing all beach mouse habitat types, lands that provide only frontal dunes, lands that provide only scrub dune habitat, lands that serve to preserve functional connections between these habitat types, and lands, within the coastal dune ecosystem, that maintain a natural light regime. We believe that these PCEs are based upon the best available science, capture those physical and biological features essential to the conservation of the species, and represent a substantial improvement over PCEs from the original designation. We believe these PCEs are an appropriate and adequate means to evaluate essential ABM habitat requirements.

(4) *Comment:* One peer reviewer suggests that we should better describe the effects of disturbance along the utility line corridor within the S.R. 180 (Fort Morgan Road) right-of-way (Unit 2 description, 71 FR 5516, February 1, 2006, p. 5526) to avoid the misinterpretation that all disturbance is beneficial to ABM.

Our Response: We agree and have addressed this in the discussion of Unit 2 below (see Unit Descriptions section).

(5) *Comment:* One peer reviewer suggests that feral cats should be listed as threats requiring special management consideration or attention in all units.

Our Response: Feral cats were originally listed as threats in Units 2 and 5. Although we agree that the potential for feral cat problems exists throughout the known range of the ABM, the special management required under critical habitat addresses threats to habitat. Therefore, control of feral cats is not specifically mentioned in this designation as a threat requiring special management consideration or attention. Currently, control of cats is required in all incidental take permits involving ABM, and feral cats will continue to be managed as part of our efforts towards conservation of the ABM.

(6) *Comment:* One peer reviewer suggests that the proposal may underemphasize the importance of non-contiguous habitat because dispersal likely occurs through inhabitable as well as uninhabitable habitat.

Our Response: The Act requires us to designate critical habitat on the basis of the best scientific data available. ABM have been trapped in a variety of habitat types including primary and secondary dunes, scrub habitat, immediately adjacent to ephemeral wetlands, and along sparsely vegetated sand flats associated with roadway rights-of-way (Service 2003, p. 2; Farris 2003). With our designation, we have included all of these habitat types, and attempted to maintain connectivity between them. Neither information in our files nor published literature supports other habitat types as being essential to the conservation of the ABM. ABM may use uninhabitable habitat such as lawns, maritime forest, and permanent wetlands for dispersal, but we do not have evidence of this at this time. These habitat types therefore do not meet the requirements needed to be included in the critical habitat designation. We recognize that designation of critical habitat may not include all of the habitat areas that may eventually be

determined to be necessary for the recovery of the species. Critical habitat designations therefore do not signal that habitat outside the designation is unimportant or may not be required for recovery.

(7) *Comment:* One peer reviewer stated (in reference to a comment in the proposed rule, 71 FR 5516; February 1, 2006; p. 5521) that Oli et al. (2001) did not provide any data supporting the value of multiple populations.

Our Response: Oli et al. (2001) performed a population viability analysis for four distinct populations of beach mice, two of which were ABM populations (Fort Morgan and Perdue Units of the Refuge). Their results indicated that even the Perdue Unit population (the most robust) was susceptible to extirpation when impacts from catastrophic events, such as hurricanes, are considered (p. 114). Later in the document, they addressed the importance of multiple populations for beach mouse conservation and warned against additional fragmentation of habitat (pp. 116–117). While this work was a population viability analysis that must be viewed with the appropriate caveats (for example, Reed et al. 1998), we believe that it emphasizes the importance of multiple core populations and habitat continuity.

(8) *Comment:* One peer reviewer, referring to the proposed rule (71 FR 5516; February 1; p. 5517), stated that Rave and Holler (1992) did not address time of activity, burrow location, or feeding habits of ABM. This reviewer suggested Bowen (1968) or Garten (1976) as better references.

Our Response: We concur with this comment. Bowen (1968, pp. 2–4), Sneckenberger (2001, pp. 51–52), Lynn (2000, pp. 30–33), and Moyers (1996, pp. 2, 25–26, 29) all serve as better references and collectively describe time of activity, burrow location, and feeding habits of beach mice. We have corrected our references. On the other hand, Garten (1976), addresses aggressive behavior in inland subspecies of *Peromyscus polionotus* and is, therefore, not applicable.

(9) *Comment:* Three peer reviewers and several commenters expressed concerns over the exclusion of areas under ABM habitat conservation plans (HCPs) from the proposal. Many suggested that HCPs are often inadequate, are subject to frequent violations, and/or are less protective than critical habitat.

Our Response: Private lands may be excluded under section 4(b)(2) of the Act if the benefits of exclusion outweigh the benefits of inclusion. In our view, legally operative HCPs covering the species, or draft HCPs that cover the species and have undergone public review and comment (pending HCPs), meet this criterion. The HCPs provide assurances that the conservation measures they outline will be implemented and effective, and the designation of critical habitat provides no additional benefits in these areas (species and their habitat are protected by the conditions of the incidental take permit (ITP) and section 9 of the Act).

There are 51 areas currently under HCP ITPs collectively containing 261 ac (105 ha) of habitat we have identified as essential to ABM conservation (see Table 2). During HCP development, we worked with all property owners to ensure that ABM impacts were avoided, minimized, or mitigated to the maximum extent practicable. Property owners with HCPs have indicated that they intend to abide by their plan and those with Service-issued ITPs based on the HCP are required to comply with the ITP. All permits and plans require controlling of cats and refuse, planting with native vegetation, minimizing developed footprints, and protecting habitat outside of approved footprints. In addition, many of the ITPs require seasonal ABM monitoring, the development of ABM interpretive materials, and the establishment of endowments for habitat restoration. The conditions of the ITPs are legally enforceable, and, therefore, ABM and their habitat are protected by section 9 of the Act. Critical habitat has no additive value in this situation. In fact, critical habitat, often incorrectly perceived to preclude development, can adversely affect existing conservation relationships. We, therefore, have found that the benefit of excluding areas covered by HCPs on 51 properties outweighs the benefit of including these properties in the final designation. Please see the ''Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act'' section for a more thorough discussion of HCP sites and critical habitat.

(10) *Comment:* One commenter, referring to information presented in the background section of the proposed rule (71 FR 5516, 5518, and elsewhere), stated that there are no known benchmarks for monitoring ABM recovery because the habitat is always in a state of flux due to hurricane impacts. The commenter suggested using pre-Ivan ABM populations to gauge ABM recovery.

Our Response: ABM habitat is continually changing as a result of coastal processes and impacts from tropical cyclones. The Service conducted extensive live-trapping throughout the suspected range of the subspecies in 2003 (the year prior to Hurricane Ivan) and found ABM in areas where they had never been recorded (Service 2003, pp. 1–3; Farris 2003, pp. 1–5). These trapping data led us to produce the ABM habitat maps (discussed in detail in Comment 13) and will be useful in our ongoing review of the recovery needs of the subspecies.

(11) *Comment:* One commenter, referring to the information presented in the background section of the proposed rule (71 FR 5516; February 1, 2006; p. 5522), stated that they were not aware of data supporting the formal definition of ABM population cycles beyond the seasonal variation that occurs on an annual basis.

Our Response: We concur with this statement, and it was our intent to provide evidence for the existence of seasonal population cycles in the proposed rule. Rave and Holler (1992, pp. 351–352) describe the seasonal variation in ABM populations at the Perdue and Fort Morgan Units of the Bon Secour National Wildlife Refuge, and Sneckenberger (2001, pp. 48–51) describes the seasonal availability of ABM food sources in the primary and secondary dunes. ABM populations likely fluctuate over a longer temporal period in response to tropical storms and hurricanes, but this has never been described in the literature to our knowledge.

General Comments

Comments Related to Regulatory Burden and Private Property Concerns

(12) *Comment:* Several commenters feel that the proposed critical habitat designation is a violation of their property rights. One commenter mentioned that critical habitat represents ''condemnation without compensation'' and believes that if land is designated, it cannot be developed.

Our Response: Critical habitat does not mean that private lands would be taken by the Federal government or that reasonable uses would be restricted. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. A critical habitat designation has no effect on situations where a Federal agency is not involved—for example, a landowner undertaking a project on private land that involves no Federal funding or permit. The Act only requires a consultation if there is a Federal nexus—that is, any activity a Federal agency funds, authorizes, or carries out that may jeopardize the survival of a threatened or endangered species. The

designation is a reminder to Federal agencies that they must make special efforts to protect the important characteristics of these areas. It does not allow government or public access to private lands. We evaluated this rule in accordance with Executive Order 12630, and we believe that this critical habitat designation for the ABM will not have significant takings implications. We do not anticipate that property values, rights, or ownership will be significantly affected by the critical habitat designation. We determined that the designation would result in little additional regulatory burden above that currently in place, as the subspecies is already federally listed and the areas designated are already occupied by the subspecies. Examples of projects that have received permits within critical habitat include two single-family homes in the Cabana Beach subdivision and the proposed Gulf State Park hotel and convention center. We have also conducted consultations on beach nourishment projects and boardwalk construction within designated critical habitat. In all of these instances, we were able to work with applicants and Federal agencies to ensure that projects are completed while still conserving critical habitat and the ABM.

(13) *Comment:* Several commenters expressed confusion between the ABM habitat maps (also known as blue maps) and critical habitat.

Our Response: In November 2003, after habitat assessments and an extensive review of trapping data and aerial photography, the Service completed ABM habitat maps. These maps, which currently depict 2,544 ac (1,030 ha) of potential ABM habitat, were used to show the public and local, State, and Federal agencies those areas that may be occupied by ABM, and therefore, to indicate where consultation may be required for Federal actions or incidental take permits may be recommended for private interests. These maps were made available to the general public and are on display at the City of Gulf Shores Public Works Department, the headquarters of the Bon Secour National Wildlife Refuge, and the Daphne Field Office. They show areas with ABM habitat (where incidental take may occur) and were generated by the Service at our own discretion.

The maps associated with this designation are part of a separate action. When the ABM was listed, we designated approximately 1,034 ac (418 ha) of critical habitat, spread into three zones: (1) Areas south of State Road (SR) 180 in the Fort Morgan State Historic Site and some adjacent private land, (2) areas 500 feet (ft) (150 meters (m)) inland from mean high tide from Kiva Dunes east to Laguna Key, including portions of the Bon Secour NWR, and (3) areas south of S.R. 182 in Gulf State Park. We are now revising critical habitat as a result of a December 2004 declaration filed with the U.S. District Court for the Southern District of Alabama (see ''Previous Federal Actions'' above). The revised critical habitat designation identifies the subset of ABM habitat as depicted in the 2003 habitat maps that has those features that, according to the best available science, we have found to be essential to the conservation of the species.

(14) *Comment:* Several commenters asked what additional requirements designated critical habitat placed on individuals seeking ITPs under the Act.

Our Response: ABM are protected from take (by section 9 of the Act) and by consultation with Federal agencies on Federal actions (under section 7 of the Act), regardless of whether critical habitat is designated. When critical habitat is designated, Federal agencies, through the section 7 consultation process, must also consult with the Service on actions that are likely to result in the destruction or adverse modification of critical habitat. For each section 7 consultation, we already review the direct and indirect effects of the proposed projects on the beach mice and currently designated habitat, and will continue to do so for revised critical habitat. A critical habitat designation does not create a separate process, and timelines do not change.

Our assessment of impacts to habitat is nothing new. In fact, we track the take of ABM through the loss of habitat and have always done this, even in areas outside of the original critical habitat designation, through the use of our ABM habitat maps (see Comment 13).

(15) *Comment:* One commenter asked if designation of critical habitat would preclude an individual from reconstructing or repairing a house following hurricanes.

Our Response: Just as with previous storms, homeowners can rebuild their structures within their previous footprints without the need for consultation, permits, or mitigation. If a homeowner wishes to expand the footprint of the structure during the rebuild and this will impact previously undeveloped ABM habitat, we recommend that the homeowner apply for an ITP (regardless of whether the ABM habitat is designated critical). Please contact the Daphne Field Office (see **ADDRESSES** or **FOR FURTHER INFORMATION CONTACT**) for more information on ITPs and HCPs.

(16) *Comment:* One commenter asked what would happen if a lot owner had received a ''clearance'' letter from the Service stating that no ITP was required but then has his or her property designated as critical habitat.

Our Response: Landowners requesting technical assistance from the Service may receive such a letter if review of their project by Service personnel (either through on-site or in-house investigation) determines that the parcel falls outside the boundaries of potential ABM habitat (see Comment 13 for more discussion on ABM habitat mapping). When areas are investigated and found to not contain ABM habitat, they are removed from our ABM habitat maps. Because the proposed critical habitat was based on these ABM habitat maps, it is not likely (though not impossible) that lots with clearance letters appeared in the proposed designation. If a lot with a clearance letter does appear, it may have been an error, and we recommend that the homeowner contact the Daphne Field Office (see **ADDRESSES**).

(17) *Comment:* One commenter questioned why the Service is designating critical habitat when we admit that we have found it to be of little value.

Our Response: While attention to and protection of habitat are paramount to successful conservation actions, the role that designation of critical habitat plays in protecting the habitat of listed species is often misunderstood. A designation of critical habitat does not create a preserve or refuge. It does not mandate funding for habitat protection or restoration. It simply requires that Federal agencies consult with the Service on actions that could adversely modify or destroy designated critical habitat. Federal agencies are already required to consult with the Service on proposed actions that may adversely affect or jeopardize threatened and endangered species, regardless of whether or not there is critical habitat. Furthermore, we monitor the health of ABM populations through the loss of habitat, regardless of whether or not that habitat is designated as critical. Critical habitat does provide some non-regulatory benefits to the species by informing the public of areas that are important for species recovery and where conservation actions would be most effective. However, because of the enormous time, cost, complexity, and potential for controversy associated with critical habitat, we have found that there is much more value to directing limited conservation monies to listing new species under the Act, and developing cooperative agreements to

protect them. We have been inundated with lawsuits for our failure to designate critical habitat and face a growing number of lawsuits challenging our designations. This revision of critical habitat was brought about by a petition to revise critical habitat and subsequent legal action. This cycle appears endless and keeps us from focusing scarce conservation resources where they are most needed. Nonetheless, under section 4(a) of the Act, we are required to designate critical habitat concurrently with listing a species as endangered or threatened to the maximum extent prudent and determinable.

(18) *Comment:* One commenter said that the Service was wrong in saying that a clear ''Federal nexus'' (71 FR 5516, 5530) exists on HCP/ITP sites. The commenter maintains that the only Federal involvement that remains is the Service's ability to enforce ITP conditions.

Our Response: We used the term nexus (a synonym for connection or link) to demonstrate that once ITPs are issued, the Service is still involved in monitoring permittee compliance with permit terms and conditions on sites and retains the ability to enforce ITP conditions. We have rewritten this text and omitted the term nexus, which is frequently used in section 7 consultations, to avoid any further confusion.

(19) *Comment:* One commenter stated that the habitat for this species is under such pressure that, unless regulations protect habitat, it is likely that the subspecies will decline.

Our Response: We acknowledge that loss and fragmentation of habitat is one of the main threats to ABM (71 FR 5516; February 1, 2006; p. 5518). Please refer to our response to Comment 17 for more information on the regulatory value of critical habitat.

Specific Comments Related to Suggested Alternatives to Designating Critical Habitat

(20) *Comment:* Several commenters believe that the Federal government presently owns sufficient habitat for ABM survival and recovery.

Our Response: We have determined that 2,281 ac (923 ha) of land are essential to ABM conservation. Roughly 50 percent of this is public land owned by the Federal government. The majority of this (47 percent) is owned by the Service and located on the Perdue Unit of Bon Secour National Wildlife Refuge, but lesser amounts include approximately 30 ac (12 ha) of Refuge land within Fort Morgan State Historic Site and Bureau of Land Management (BLM) properties spread throughout the middle of the Fort Morgan Peninsula. ABM habitat in the Perdue Unit does not meet the definition of critical habitat under section 3(5)(A) of the Act because it is protected under the Refuge's Comprehensive Conservation Plan (see ''Application of Exclusions Under Section 4(b)(2) of the Act'' section for more details). The remainder of the Federal lands identified as essential to the conservation of the species are included as critical habitat.

Of the various federally owned parcels on the Fort Morgan Peninsula, the Perdue Unit is the only Federal land containing all of the PCEs. It likewise sustains an ABM population. However, the Perdue Unit is just one of several ABM populations, and many studies indicate the importance of multiple populations to species recovery. Conservation of a species over a range of habitat types where it is known to occur reduces the chance of losing disjunct populations, which represent important conservation value for their adaptation to local environmental conditions and their genetic uniqueness (Fahrig and Merriam 1994, p. 50). Preservation of natural populations throughout the range of each subspecies is therefore crucial, as the loss of a population of beach mice can result in a permanent loss of alleles (Wooten & Holler 1999, p. 17). This loss of genetic variability cannot be regained through translocations or other efforts.

We believe that private lands are essential to the conservation of multiple populations and therefore essential to conservation of the subspecies. Two population viability analyses conducted on the ABM support this theory. Oli et al. (2001, pp. 113–114) suggest that when hurricanes are considered, even the stable ABM population at the Perdue Unit is at ''substantial risk.'' A Population Viability Analysis (PVA) conducted by the Conservation Breeding Specialist Group (Vortex model) likewise shows the importance of both total overall habitat, and habitat continuity. Without dispersal among public lands through private lands, the PVA results project the ABM to have a 41.2 percent ± 1.1 percent likelihood of extinction (Traylor-Holzer 2006, p. 20). If all privately owned habitat between the public lands is lost, the estimate of probability of extinction increases (Traylor-Holzer 2006, p. 20). There are many limitations with population viability analyses, and we must view estimates of extinction probability with caution (Reed et al. 2006; Morris and Doak 2002, pp. 12–13). However, we believe that these estimates emphasize the importance of core populations and habitat continuity. This maintenance of both core populations and habitat continuity would not be possible without the conservation of habitat on private lands connecting the various federally owned properties.

(21) *Comment:* Several commenters suggested that the ITPs issued to Beach Club West and Gulf Highlands developments (but currently held in abeyance) should have been excluded either because they do not meet the definition of critical habitat in 3(5)(A) or they are eligible for exclusion under 4(b)(2).

Our Response: These developments have been excluded from the final designation of critical habitat under section 4(b)(2) of the Act based on their conservation efforts (including the habitat conservation plan). Please see the ''Application of Exclusions Under Section 4(b)(2) of the Act'' section for more information.

(22) *Comment:* One commenter questioned why the areas south (seaward) of ADEM's Coastal Construction Control line (CCCL) were not excluded because of the baseline protections.

Our Response: While it is true areas seaward of the CCCL receive protection from the State, they do not qualify for exclusion under section 4(b)(2) of the Act. There is no species-specific management plan addressing ABM issues (see Comment 2 or ''Application of Exclusions Under Section 4(b)(2) of the Act'' section for more information on these criteria). Furthermore, many threats to beach mouse conservation, including artificial lighting and extensive recreational pressure, still persist there. Therefore, these areas have been included as critical habitat.

(23) *Comment:* Two commenters suggested that the Service should designate only the conservation areas of sites with a Service-approved HCP.

Our Response: If an area meets our criteria for designating ABM critical habitat (see Comment 2), then it is eligible for inclusion in critical habitat. If the area is covered by a Service-approved HCP, then it may be removed from the designation under section 4(b)(2) of the Act if we determine that the benefits of excluding HCPs outweigh the benefits of inclusion (see Comment 2 and ''Application of Exclusions Under Section 4(b)(2) of the Act'' section). Developed areas (for example, building footprints and parking areas) associated with the HCP do not possess natural ABM habitat and are, therefore, not even considered for designation. As such, it is specifically the conservation areas associated with HCPs that are excluded under section 4(b)(2).

(24) *Comment:* Several commenters noted that the French Caribbean development was not mentioned as critical habitat and maintain that it is eligible for exclusion under 4(b)(2) of the Act.

Our Response: The Service completed a formal consultation under section 7 of the Act on January 20, 2000, with the U.S. Army Corps of Engineers (USACOE) for the French Caribbean resort. We issued an incidental take exemption for all ABM within a 3.7 acre project impact area. The wetland fill permit issued for this project expired in 2005. However, the developers of Beach Club West and Gulf Highlands have agreed not to pursue this project, and the French Caribbean site will now be part of the conservation area in their HCP. It is being excluded under section 4(b)(2) of the Act (see ''Application of Exclusions Under Section 4(b)(2) of the Act'' section for more details).

(25) *Comment:* One commenter suggested that conservation efforts should be voluntary and involve partnerships instead of designating lands as critical habitat.

Our Response: The Service encourages voluntary conservation efforts and partnerships that would provide management or enhancement of habitat for threatened and endangered species. However, designation of critical habitat does not influence the extent of conservation efforts recommended for endangered species habitat on public lands. One benefit of the critical habitat designation process is the increased awareness to the public of the importance that public lands have for the species. This often leads to constructive interagency discussions, creative solutions to public use and habitat management issues, and strengthened partnerships.

(26) *Comment:* One commenter suggested that the proposed rangewide HCP with the City of Gulf Shores should be excluded from critical habitat under section 4(b)(2) to promote regulatory certainty and cooperative conservation.

Our Response: The State of Alabama was awarded monies under our Habitat Conservation Planning grants program to develop, in conjunction with the Service, a rangewide HCP for single-family home and duplex developments. The funds were provided to the City of Gulf Shores. This HCP is still in draft form and has not yet undergone public review. The draft HCP could potentially cover all future single-family and duplex projects on the Fort Morgan Peninsula (approximately 700 lots), and would substantially streamline the HCP–ITP process for this class of development. Existing landowners, and those wishing to add to their houses, would also be eligible for inclusion. Upon signing a certificate of inclusion into the rangewide program, landowners would be required to pay a one-time conservation fee that would apply towards ABM conservation projects such as cogongrass (*Imperata cylindrica*) removal or the construction of boardwalks. The rangewide HCP would, therefore, provide more mitigation funding and options than traditional, individual ITPs.

While we acknowledge the City of Gulf Shores' efforts in developing this draft plan, we are unable to exclude it from critical habitat at this time for two reasons: (1) The plan has not yet been completed or undergone public review and (2) enrollment in the plan is voluntary, and there is, therefore, no way to know which landowners will choose to enroll (this is further complicated by areas having the potential to be rezoned to higher density development). The designation of critical habitat should not jeopardize the development of the rangewide HCP. The Service, in conducting its biological review of the rangewide HCP, will simply have to determine if the proposed project will adversely modify or destroy designated critical habitat. We already have to determine whether or not the project will adversely affect or jeopardize the ABM, an action informed by analyzing impacts to ABM habitat, regardless of whether or not critical habitat is designated. We look forward to continuing our conservation relationship (and HCP–ITP streamlining efforts) with the City of Gulf Shores and working with it to ensure that the rangewide HCP does not adversely modify critical habitat.

(27) *Comment:* One commenter suggested that the Service develop a procedure for exempting (excluding) future HCPs from designated critical habitat.

Our Response: Critical habitat is a rulemaking process, and any future changes to critical habitat would involve additional rulemaking. Because this is expensive and consumes large amounts of already limited staff time, it is not practical to exclude every future approved HCP case by case. We can only exclude those properties that meet our standards for either exemption or exclusion under 3(5)(A) or 4(b)(2) of the Act before the publication date of this final rule.

(28) *Comment:* One commenter stated that the failure to exclude areas from critical habitat will result in a more onerous (and far less effective) Act by damaging relationships between the Service and the public and imposing unnecessary regulation.

Our Response: We agree that critical habitat is often misunderstood and results in controversy (see our response to Comment 17). However, we will continue to work with the general public and affected agencies to recover the ABM and assist landowners with the environmental review of their projects to the best of our ability. We are excluding 51 areas covered by HCPs–ITPs from this designation (see response to comment 9 and the ''Application of Exclusions Under Section 4(b)(2) of the Act'' section).

Comments Related to Criteria and Methods Used To Designate Critical Habitat

(29) *Comment:* One commenter stated that the designation appears arbitrary and questions how areas were selected for designation.

Our Response: We began our designation by determining those areas known to be occupied by the species at the time of listing and those found to be occupied since listing. This was determined by consulting live-trapping data, published literature, the original listing rule, and our ABM habitat map (see response to Comment 13). Within these areas, we then determined the subset of acreage that possessed one or more of the PCEs. This was determined through site visits, the review of 2001 and 2005 aerial photography, LIDAR topographic data, and hurricane storm surge models. We then removed any areas that were highly isolated, fragmented, or degraded. After this, we were left with 2,281 ac (923 ha) of ABM habitat considered to be essential to the conservation of the subspecies. After removing areas that do not meet the definition of critical habitat under section 3(5)(A) of the Act because special management is not needed, or that are eligible for exclusion under section 4(b)(2), we arrive at the current designation of 1,211 ac (490 ha) of critical habitat. Please see the ''Criteria Used To Identify Critical Habitat'' section for more information. Please note that not all ABM habitat meets these criteria. Many areas that are small and isolated (for example, along S.R. 180 north of the Perdue Unit), degraded by anthropogenic disturbances such as gravel contamination, are highly fragmented or have light pollution (for example, areas in the Little Point Clear Unit between the S.R. 180 corridor and the CCCL line) may contain mice, but may be population sinks and therefore, do not have the features that are essential to the conservation of the species. We are identifying the subset of

ABM habitat that is truly essential to the continued survival and conservation of the subspecies.

(30) *Comment:* One commenter stated that the proposed critical habitat seems to be based on the Vortex population viability analysis conducted for the subspecies, which has problems, including an unrealistically high estimated probability of persistence.

Our Response: Our criteria for deciding what areas would be included in the designation did not involve the Vortex model directly, but rather an analysis of trapping records in conjunction with mapping tools (please see previous comment). However, the results from Vortex, coupled with other PVAs (Oli et al. 2001) and published literature, led us to incorporate habitat continuity into the designation.

(31) *Comment:* Two commenters questioned how the exclusion of habitat on the Refuge will not result in the extinction of the subspecies.

Our Response: In the proposed rule, we stated that approximately 1,063 (420 ha) of ABM habitat on the Perdue Unit of the Refuge was essential to ABM conservation, but did not meet the definition of critical habitat under section 3(5)(A) of the Act (71 FR 5516, 5529). We have reduced this area to 807 ac (327 ha) based on new tracking (Leblanc D., Service, Personal Communication 2006) and trapping (Falcy 2006) data, detailed review of 2005 aerial photography, and subsequent site visits. Much of the northwestern Perdue Unit is densely vegetated and highly fragmented by wetlands and cannot be considered essential to ABM conservation at this time. The 807 acres (327 ha) that we identified as essential to the conservation of the species simply do not meet the definition of critical habitat under 3(5)(A) of the Act. These areas are part of a National Wildlife Refuge that manages specifically for ABM conservation, and therefore do not require special management considerations or protection. They are available for ABM conservation in perpetuity, and their exemption from critical habitat has no bearing on the continued survival and recovery of the species.

(32) *Comment:* Several commenters maintained that more habitat needs to be included, or that conservation is not just described in the Act as protecting the status quo but as eventually removing the subspecies from the list (recovery).

Our Response: Through this critical habitat revision, we have identified all of the areas that we believe, according to the best available science at this time, have the features that are essential to the conservation of the species or, for areas not occupied at the time of listing, that are essential to the conservation of the species. These areas total 2,281 acres. Of this acreage, we are designating those areas that meet the definition of critical habitat (see Comment 2) and that are not protected by secure habitat conservation plans. Some areas that are occupied by ABM are not included in the designation. These areas do not meet the criteria for inclusion and, therefore, do not have the features that are essential to the conservation of the species. The designation, when combined with ABM habitat on the Perdue Unit of the Refuge and the areas excluded because of conservation plans, represents the best remaining coastal dune and scrub habitat in coastal Alabama, and those areas that contain the physical and biological features essential to the conservation of the subspecies.

(33) *Comment:* Several commenters requested that we remove our statement that ''a benefit of excluding HCPs is to promote additional conservation agreements and actions that we would not be able to achieve without our partners.''

Our Response: We believe this statement to be true. There is no need to designate areas that are included in an HCP that provides conservation benefit to the species. The designation of critical habitat serves no additive value and can damage existing relationships between the permittee and our agency.

(34) *Comment:* One commenter questioned why only a small subset of the acreage identified as ABM habitat is being designated as critical habitat.

Our Response: Not all areas where ABM have been captured meet our criteria for inclusion into the designation. Please refer to Comments 13 and 29 for more information.

(35) *Comment:* One commenter maintains that critical habitat was designated south of the CCCL and along the S.R. 180 corridor because it was convenient. Several commenters questioned the value of the habitat south of the CCCL.

Our Response: Habitat was designated between S.R. 180 and the CCCL within Unit 2 because it provides natural connectivity between two core ABM populations: Fort Morgan and the Gulf Highlands-Perdue Unit. These stretches of frontal dunes, scrub habitat, and open sand flats contain less gravel debris, human structures, and artificial light than the neighborhoods between the two east-west pathways. Unit 2 was designated primarily on the basis of PCE 4, while some areas also contain PCEs 2 and 3. Areas south of the CCCL, while overwashed and flattened by multiple storms in 2004 and 2005, are recovering natural topography and vegetation and provide both ABM habitat and east-west habitat continuity (PCEs 2 and 4). See ''Primary Constituent Elements'' discussion.

(36) *Comment:* One commenter stated that the proposal does not explain PCEs in sufficient detail to allow their protection during the consultation process.

Our Response: The original PCEs for the ABM were defined as ''dunes and interdunal areas, and associated grasses and shrubs that provide food and cover (June 6, 1985, 50 FR 23884).'' We believe that the new PCEs contain greater detail, are more comprehensive, and represent a significant improvement over the PCEs from the original designation. They also incorporate disturbances from storms, allowing PCEs to be readily identified even following damage from tropical cyclones and freshwater flooding. We therefore believe the PCEs to be easily identified (under all conditions) during the consultation process.

(37) *Comment:* Several commenters suggested removing PCE 5 on the basis that a natural light regime could be found in any location that is not developed.

Our Response: Excessive artificial light has been shown to be detrimental to beach mice, and, therefore, a natural light regime is a physical feature essential to ABM conservation. An area was considered for designation where it possesses one or more of the PCEs and at least one of the following characteristics: (1) Supports a core population of beach mice; (2) was occupied by ABM at the time of listing; (3) or is currently occupied by ABM and has been determined to be essential to the conservation of the species. Therefore, no areas were identified as essential to ABM conservation based solely on a natural light regime.

Comments Related to Mapping

(38) *Comment:* One commenter asked how much of the Surfside Shores subdivision is within the critical habitat boundaries.

Our Response: We are designating approximately 75 ac (30 ha) of ABM habitat within Surfside Shores. Designated critical habitat generally stretches from the mean high water line landward to the wetland swale located between Driftwood and Palmetto Drives, and from Kiva Dunes in the east to Morgantown in the west. Housing footprints, driveways, and small areas or lots that do not contain one or more

PCEs are not included in the designation. UTM coordinates and general maps of the designation are found below. Consult our Web site at *http://www.fws.gov/daphne,* or visit the Refuge headquarters, 12295 State Highway 180, Gulf Shores, or our Daphne Field Office (see **ADDRESSES**) for detailed aerial photography outlining the designation.

(39) *Comment:* One commenter stated that the proposed rule should have contained maps and details of the original designation, so that readers could better assess changes between the original (1985) and revised designations.

Our Response: The original designation of critical habitat, encompassing approximately 1,034 acres of primary and secondary dunes and 10.6 miles (17 km) of coastline, was published in the **Federal Register** on June 6, 1985 (50 FR 23872). Maps of the original designation are in the public domain and, therefore, were not reprinted. These maps were available for public inspection at the field office during both comment periods.

(40) *Comment:* One commenter stated that the area north of Adair Lane in the Cabana Beach subdivision did not contain PCEs.

Our Response: We visited Adair Lane and agree with this assessment. Habitat north of Adair Lane consists of a wetland swale with intermixed maritime forest dominated by young pine trees. We have revised the designation in this area to include only those areas south of Adair Lane. We also removed an area along the S.R. 180 corridor between Veterans Road and Martinique that is actually maritime forest, and does not contain the requisite PCEs. These changes resulted in approximately 10 ac (4 ha) being removed from the designation. Please see the ''Summary of Changes from Proposed Rule'' section and maps for more information.

(41) *Comment:* One commenter pointed out that a small portion of land along S.R. 180 identified as not meeting the definition of critical habitat because it is part of Refuge property is actually private. Two commenters maintain there are plans to develop this property, and, therefore, it must be included in critical habitat.

Our Response: We have reduced the area of the Refuge identified as having the features essential to the conservation of the species from 1,063 (430) ha to 807 acres based on new information (see Comment 31 and ''Summary of Changes from Proposed Rule'' section). Approximately 20 ac (8 ha) of ABM habitat exists in the referenced area, of which approximately 13 ac (5 ha) are in private ownership. This habitat patch is approximately 0.4 miles (0.6 kilometers) east and 0.4 miles (0.6 kilometers) north of other areas identified as essential to the conservation of the subspecies, and therefore isolated. We have eliminated it from critical habitat. Trapping along the S.R. 180 right-of-way here in 2003 yielded no beach mouse captures (Farris 2003). However, this area is still included in our ABM habitat maps (see Comment 13) and any mice occurring there are protected under section 7 or section 9 of the Act. Impacts to ABM habitat there will still have to be reviewed by the Service.

(42) *Comment:* One commenter questioned our assertion that the proposed critical habitat was spread evenly throughout the historic range of the subspecies.

Our Response: In the proposed rule (February 1, 2006; 71 FR 5516), we suggested that critical habitat was spread evenly throughout the historic range of the subspecies. This was in error. The critical habitat is distributed throughout the western range of the subspecies, with a small portion (Unit 5) being found in the center of the historic range. Much of the eastern and central portions of the range no longer possess ABM or ABM habitat due to development.

Comments Related to Site-Specific Areas

(43) *Comment:* Critical habitat designation along the S.R. 180 (Fort Morgan Road) corridor would preclude utility companies from rapidly accessing lines in the event of a water or sewer line break.

Our Response: Critical habitat designation would not interfere with these activities. When critical habitat is designated, Federal agencies are required to confer with the Service on any action (including actions that agencies carry out themselves, fund, or authorize) that is likely to result in destruction or adverse modification of critical habitat. The routine maintenance or emergency repair of water and sewer lines adjacent to Fort Morgan Road is not a Federal action. Furthermore, utility line maintenance may actually benefit ABM conservation by thinning out dense vegetation (see Unit 2 description below).

(44) *Comment:* Several commenters questioned why Gulf State Park should be included in the proposal when there are currently no ABM and the habitat is susceptible to flooding during hurricane events.

Our Response: Critical habitat in Gulf State Park represents the easternmost extent of the present-day ABM range. Gulf State Park was occupied at the time of listing, and possesses all PCEs except PCE 5. While ABM have twice been extirpated from the site (see Unit 5 description below) it nonetheless possesses the physical and biological features essential to the conservation of the subspecies. Hurricanes are one of the main threats to the ABM (June 6, 1985; 50 FR 23879–80; Service 2004, 2005). Because the ABM is a narrowly endemic subspecies restricted to less than 34 miles of coastline, one major hurricane could easily affect the entire range of the species. Impacts within individual hurricanes, however, can vary greatly in intensity, and wide fluctuations in storm surge and wave run-up are possible depending on bathymetry, beach configuration, and variations in wind speed and waves within the storm. Protecting multiple populations, representative of the natural range of the subspecies, therefore, would likely increase the chance that at least one population within the range of a subspecies will survive episodic storm events and persist while vegetation and dune structure recover. The history of the closely related Perdido Key beach mouse clearly illustrates the need for multiple populations (a now potentially extirpated population was the source of the two remaining populations of the subspecies (Holler et al. 1989, pp. 398–399)). Furthermore, Gulf State Park, which, although isolated, is capable of holding a self-sustaining population of mice due to its size, could prove important in the event of unforeseen threats to connected populations on the Fort Morgan Peninsula, such as disease.

(45) *Comment:* Several commenters questioned why areas of the S.R. 180 right-of-way south of the road were designated, but areas to the north were not.

Our Response: The State of Alabama owns the S.R. 180 right-of-way. State ownership extends 160 ft (49 m) both north and south of the roadway centerline. Scrub habitat to the south is generally more open and, therefore, more suitable for ABM. Accordingly, it was included in this revised designation. In fact, several more open areas to the north were also included, especially in the western portions of Unit 2 and Unit 3. We have updated our Unit 2 and 3 descriptions to include commentary on these small sections north of the roadway.

(46) *Comment:* One commenter stated that feral cats are a major threat to ABM and provided an example of a cat population within Gulf State Park on Perdido Key at the entrance to Ono Island.

Our Response: This comment refers to a problem with a feral cat colony on Perdido Key, which is outside the range of the ABM and involves the endangered Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*). The comment was addressed in the recent final rule designating critical habitat for three Gulf Coast beach mice, which included the Perdido Key beach mouse (October 12, 2006; 71 FR 60237). We concur that feral cats are a major threat to beach mice. Cat colonies may have led to the extirpation of Alabama and Perdido Key beach mice (Linzey 1978, p. 20; Holliman 1983, p. 128). For this reason, incidental take permits issued for ABM contain conditions specifically addressing control of cats.

Specific Comments Related to the Draft Economic Analysis (DEA)

(47) *Comment:* Several commenters believe that the Service should not take economic impacts into consideration when designating critical habitat.

Our Response: Section 4(b)(2) of the Act states that critical habitat shall be designated and revised on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion and the Congressional record is clear that in making a determination under the section the Secretary has discretion as to which factors to consider and how much weight will be given to any factor.

(48) *Comment:* One commenter stated that the Service's failure to release the economic analysis simultaneously with the proposed rule frustrates the public's attempt to meaningfully comment on the critical habitat being proposed.

Our Response: We acknowledge this concern; however, the Service strives to keep the comment period on a draft economic analysis open as long as possible to allow the public time to review and comment on the draft economic analysis. The public was given a chance to comment on the DEA concerning our proposed revised critical habitat designation for ABM during our second public comment period from August 8, 2006, to September 7, 2006.

(49) *Comment:* Several commenters stated that the Service has already made exclusions based on economics prior to the availability of a DEA (and in violation of the Administrative Procedure Act).

Our Response: The exclusions proposed under section 4(b)(2) of the Act in the proposed rule were based on secure HCPs, not on economic data. We did not have a DEA ready for public review until August 8, 2006, and the comment period on the DEA did not end until September 7, 2006.

(50) *Comment:* One commenter states it is puzzling that the Service is imposing economic hardship in light of other Federal government tax incentives (Gulf Opportunity Zone Act of 2005).

Our Response: This designation is non-discretionary and was in motion well before the Gulf Zone Act of 2005. We have considered the economic impacts of the designation.

(51) *Comment:* One commenter requests the areas covered by the proposed rangewide HCP be excluded from critical habitat due to economic reasons.

Our Response: Please refer to Comment 26. Because enrollment in the proposed rangewide HCP would be voluntary, we do not know which areas would actually be covered by it.

(52) *Comment:* One commenter asserts the DEA does not support certification under the Regulatory Flexibility Act, and an Initial Regulatory Flexibility Analysis should be prepared and reviewed by the public.

Our Response: We have considered whether this designation would result in a significant economic effect on a substantial number of small entities. We have determined that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include: Corps permits, permits we may issue under section 10(a)(1)(B) of the Act (ITPs), FHA funding for road improvements, and activities funded by FEMA. A regulatory flexibility analysis is not required. Please refer to the Required Determinations section for further information.

(53) *Comment:* One commenter states the mission of the Service is to protect wildlife, not give considerations to economic impact.

Our Response: Although economics may not be considered when listing a species, Congress has expressly required this consideration when designating critical habitat.

(54) *Comment:* One commenter expressed concern that the estimated costs for Beach Club West and Gulf Highlands were overstated and that this may result in the two developments incorrectly being excluded from critical habitat for economic reasons.

Our Response: Section 3 of the final economic analysis (EA) estimates impacts to the Beach Club West and Gulf Highlands development projects. The developments were analyzed in the context of potential costs which they may incur as a result of ABM conservation efforts, but they were not excluded for economic reasons.

(55) *Comment:* Multiple commenters assert that the DEA underestimates the economic impact of critical habitat on specific projects and the local economy, as described in a study by Klages (2006). The Klages study is a report commissioned by private and public entities with an interest in development activities on the Fort Morgan Peninsula. The study estimates the impacts on the local economies of Baldwin County and Gulf Shores, Alabama, that could be generated by proposed development of properties on the Fort Morgan Peninsula potentially affected by the proposed critical habitat designation for the ABM.

Our Response: Section 3 of the EA provides a discussion of the Klages study. As stated in Section 3 of the EA, the Klages study provides useful context for understanding development activity along the peninsula. Both the Klages study and the EA rely upon the same information concerning the extent of developable properties and the type of development that may occur. The Klages study and the EA differ, however, in certain base assumptions and methods for quantifying impacts. Most significantly, the EA assumes that development will proceed, but that ABM conservation efforts will cause incremental delays in development activities and land set-asides, or lower the number of residential units, as well as produce other direct costs. The Klages study posits that no development will occur on vacant parcels within critical habitat designation, and then employs a form of input-output modeling to measure revenue and other effects of foregone development. In the Klages study, it is unclear what specific properties are determined to be precluded from development. Therefore, the specific study area may be different than the critical habitat designation. These differences affect the impact estimates as follows: First, the impacts identified in the Klages study are higher than those presented in the EA. The Service agrees that, while potential impacts on development are significant,

it is unlikely that all development activity would be prohibited within the bounds of critical habitat. Despite these differences in absolute impacts, however, the study and the EA are consistent with respect to ''relative'' impacts across different parcels and different types of development. That is, development locations identified as experiencing high impacts in the Klages study also experience high impacts in this economic analysis. The same result holds for locations identified as having relatively low impacts.

(56) *Comment:* Various commenters stated the economic analysis should not be based on the Klages study because it was paid for by developers and is, therefore, biased.

Our Response: The DEA is not based on the Klages study. Section 3 of the DEA provides a discussion of the Klages study; however, the DEA does not use the information in the Klages study to estimate impacts of conservation efforts for the ABM within critical habitat.

(57) *Comment:* One commenter states the economic analysis overestimates the economic impacts of critical habitat. Specifically, the commenter states no highway project will occur within the Highway 180 right-of-way, only a small number of projects will occur seaward of the construction control line (CCL), and there have been no residential housing units lost due to conservation efforts for the ABM.

Our Response: The DEA may overestimate the economic impact of critical habitat because it looks at all the costs of conserving beach mice. Some of the costs might occur even if critical habitat was not designated. However, as stated in Section 4 of the DEA, Alabama Department of Transportation plans to expand Highway 180 within the right-of-way. As discussed in the DEA, it is likely that State Route 180 can be widened within the existing right-of-way on the north side of the road with limited or no impact on ABM critical habitat, except along one quarter-mile to a half-mile of road. Second, as discussed in Appendix C, the DEA assumes no development will occur seaward of the CCL. Lastly, Section 3 of the DEA estimates ABM conservation efforts resulted in a reduction in approximately 66 residential housing units.

(58) *Comment:* One commenter writes the DEA underestimates the economic impacts of ABM critical habitat on development because it does not consider the stigma impacts on the marketability of property designated as critical habitat; does not consider the impacts of a potential reduction in the number of dwelling units which can be built; does not consider the reduction of market value of loss of proximity to beachfront; does not consider the alteration of amenities which can be packaged with the units; does not give consideration to the costs associated with delays; and does not consider costs associated with permit application.

Our Response: We agree that an economic analysis should incorporate costs associated with each of the categories referenced by the commenter. As described in Section 3 of the DEA, the conservation activities associated with the ABM may result in losses to developers and individual landowners by imposing the following costs: (1) Increased administrative costs to secure incidental take permits (ITPs), including associated project delay costs; (2) on-site project modification costs to protect the ABM; and (3) land value losses associated with development restrictions, i.e., required land setbacks or set-asides.

Ideally, a hedonic model of regional property values would be employed to estimate welfare losses associated with potential development constraints in critical habitat. This economic tool, that is, a hedonic model, measures the influence of amenities, disamenities, and regulations on land and housing prices and, in theory, could provide a direct measure of the effects associated with critical habitat arising from demand and supply factors (including the costs described above). To utilize a hedonic model data on property sales prices, structural and locational characteristics for the housing markets in the vicinity of ABM habitat would be required. However, these data are not available. Therefore, to estimate welfare losses associated with potential development constraints in designated areas, the economic analysis primarily relies on the direct compliance cost approach to quantify potential impacts of ABM conservation on development in critical habitat. To estimate losses associated with increased administrative costs and project modifications, we contacted area developers and other stakeholders to obtain cost information that can be applied to existing and potential development activities in units for critical habitat designation and areas proposed for exclusion. Given available information, the compliance cost approach is a reasonable method to determine the relative magnitude of conservation effort costs across parcels within critical habitat.

(59) *Comment:* One commenter asserts that the Service did not consider the economic losses associated with critical habitat in the context of hurricane recovery, specifically recovery following hurricane Katrina.

Our Response: The purpose of the economic analysis is to identify and analyze the potential economic impacts associated with the critical habitat designation for the federally listed ABM. Section 5 of the DEA outlines estimated past impacts from storms. It is not practicable to estimate future impacts of hurricanes for several reasons. First, although some models are available to predict storm events, these data are not sufficient to predict the likely human response to the damage and conservation efforts for the ABM. Accordingly, this analysis does not quantify costs of conservation efforts resulting from future storm damage. Second, not accounting for potential tropical storms and hurricanes is expected to have a downward impact on estimating total cost of conservation efforts for the ABM. Most responses to storm events will have little to do with the ABM critical habitat designation. For example, dune restoration and protection efforts (for example, beach nourishment) are a result of the storm event and not the ABM; however, some additional efforts may be required by the critical habitat designation, such as conducting a consultation. In addition, it is important to note that some conservation efforts for the ABM may result in dune protection to the extent that dune protection lessens storm damage.

(60) *Comment:* Several commenters request an economic analysis of proposed critical habitat for Planning District 25 only.

Our Response: As discussed in Section 1 of the DEA, the geographic scope of the economic analysis includes all areas proposed for critical habitat designation and areas proposed for exclusion. Therefore, the economic analysis considers impacts that may occur within Planning District 25 (Fort Morgan Peninsula) as well as outside this area (for example, Gulf State Park).

(61) *Comment:* Several commenters state the DEA underestimates the number of small entities in the development industry that may be affected and the burden the critical habitat may impose on these small entities.

Our Response: Because the Final Economic Analysis (FEA) is prospective in nature, we are unable to identify the specific developers undertaking projects in critical habitat in the next 20 years. The FEA assumes that project modification costs associated with ABM conservation efforts (for example, onsite set-asides, minimizing artificial lighting, and dune maintenance) will be

capitalized into the price of land and will be borne by the existing landowner, regardless of whether that landowner actually undertakes the development project themselves. Using the number of privately owned developable parcels (or lots) that intersect the revised critical habitat, approximately 137 landowners could be impacted by ABM conservation efforts. Many of these landowners may be individuals or families that are not registered businesses (for example, they may be holding the land as an investment). No North American Industry Classification System (NAICS) code exists for landowners, and the Small Business Administration does not provide a definition of small landowner. A lower bound estimate of the potential impact to small entities would be to assume that all existing landowners are not registered businesses, and, therefore, no impact on small entities is expected. To develop an upper bound estimate of the potential impacts on small entities, the FEA makes the conservative assumption that all of the private owners of developable lands in critical habitat impacted by future ABM conservation efforts will be developers. This assumption is likely to overstate the actual impacts to small development firms. The FEA estimates that less than two small developers may experience a reduction in revenues of 2.8 percent each year as a result of ABM conservation efforts in critical habitat. In addition, we acknowledge that some subcontractors to developers may meet the definition of a small business definition under the Regulatory Flexibility Act (5 U.S.C. 601–612) and may be affected by the impacts to development activities from critical habitat designation. These subcontractors are indirectly affected by ABM conservation efforts that directly affect the project proponent (the developer).

(62) *Comment:* One commenter wrote the DEA underestimates the amount of property that could potentially be developed as multi-family units.

Our Response: Appendix C of the DEA provides the methodology used to determine the type of development likely to occur within critical habitat. The DEA uses geographic information systems (GIS) software to estimate the maximum number of potential residential units that could be built in critical habitat under current Baldwin County, Alabama, zoning regulations, and future City of Gulf Shores, Alabama, zoning. Potential redevelopment areas are estimated using the 2003 study by Volkert & Associates, *Permitted or Potential Future Gulf-Front Multi-Family Development Locations, Fort Morgan Peninsula, Gulf Shores, Alabama.* The Volkert & Associates study identified lands that can physically and legally support multi-family development, irrespective of current zoning. No additional properties are expected to be capable of supporting multi-family development.

(63) *Comment:* Several commenters state the DEA does not consider all of the alternatives for Beach Club West and Gulf Highlands outlined in the Draft Environmental Impact Statement (DEIS) for these projects.

Our Response: The DEA estimates impacts based on activities that are reasonably foreseeable, which include, but are not limited to, activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. Section 3 of the DEA estimates costs of ABM conservation efforts for the Beach Club West and Gulf Highlands projects associated with the most reasonably foreseeable project, the Preferred Alternative provided in the DEIS.

(64) *Comment:* Several commenters assert the DEA only focuses on two developments, Beach Club West and Gulf Highlands.

Our Response: The DEA estimates potential impacts on many activities, including a wide range of development activities, road construction and maintenance activities, tropical storms and hurricanes, species management activities, and recreation activities. Most anticipated costs are associated with residential and commercial development (approximately 99 percent). Of these, 70 to 93 percent are associated with the Beach Club West and Gulf Highlands projects.

(65) *Comment:* One commenter stated the DEA appears to be based on the 2003 Volkert & Associates analysis. However, a 2005 study is available and should be used.

Our Response: As discussed in Appendix C of the DEA, Volkert & Associates developed a GIS layer identifying vacant single-family lots within ABM habitat for the City of Gulf Shores Range-Wide HCP in 2005. This information was used in the DEA to estimate the number of single family homes likely to be developed under the City of Gulf Shores Range-Wide HCP within critical habitat. In 2003, Volkert & Associates developed a separate GIS layer to identify areas on the Fort Morgan Peninsula that may legally and physically support multi-family development (irrespective of current zoning). This layer identifies parcels that are legally (for example, covenants, easements) or physically (for example, wetlands) incapable of development. The 2003 data were used to estimate the potential for redevelopment as multi-family within critical habitat. An updated (2005) version of this data layer is not available.

Comments From States

Section 4(i) of the Act states that the Secretary shall submit to the State agency a written justification for his failure to adopt a regulation consistent with the agency's comments or petition. Comments were received from the State of Alabama's Department of Transportation (ALDOT) and Department of Conservation and Natural Resources (ADCNR).

(66) *Comment:* ALDOT requests the exclusion of the S.R. 180 (Fort Morgan Road) right-of-way from the critical habitat because of future plans to widen the corridor to address increasing traffic volumes and safety concerns.

Our Response: The S.R. 180 right-of-way is owned by the State of Alabama and extends 160 ft (49 m) south of the roadway centerline. Trapping data (Farris 2003) demonstrated mice occupancy along most of the right-of-way from the Fort Morgan Historic Site to just west of The Beach Club. These areas, which consist of high elevation scrub habitat, low elevation scrub habitat, and open sandy habitat serving to connect larger, more contiguous areas designated as critical habitat, are important for east-west movement of mice along the peninsula. This area is not covered under a ABM-specific management plan and, as such, does not meet our criteria for exclusion under section 4(b)(2) of the Act due to conservation plans. We have had discussions with ALDOT regarding revised critical habitat and the widening project and will continue to work with ALDOT to ensure that projects proceed with minimal impact to designated critical habitat.

(67) *Comment:* ADCNR asked how the designation of critical habitat would affect the sale and permitting of driveway easements on State-owned land along S.R. 180.

Our Response: We recommend that landowners planning to construct driveways through ABM habitat apply for an ITP from the Service regardless of whether or not there is critical habitat (please see Comment 13 for a discussion of the difference between ABM habitat and critical habitat). Critical habitat only applies to Federal actions; therefore, driveway construction would not trigger consultation with the Service; however, since take of mice may occur, we recommend an ITP.

(68) *Comment:* ADCNR expressed concern that the areas proposed for exclusion from critical habitat do not match up with its proposed plans for the proposed Gulf State Park hotel and convention center.

Our Response: In 2004, we approved an HCP and issued an ITP for the upcoming demolition and reconstruction of a new hotel and convention center complex south of S.R. 182 on Gulf State Park. ADCNR applied for and received a modification to this permit in 2005 to allow for adjustments to proposed parking lots and building footprints. ADCNR has now applied for an additional permit modification to include moving and rebuilding the pier that was destroyed by Hurricane Ivan, and slight changes to its proposed design for the parking and hotel and convention center facilities. The Service has attended several meetings with ADCNR staff regarding project construction and the minimization of impact to both existing and revised critical habitat. In its current proposal, ADCNR has outlined plans for a combined facility that features state-of-the-art, wildlife-friendly lighting and reduces overall ABM habitat impacts by 2 ac (0.8 ha). We have modified this final rule to reflect this second permit modification. Please refer to the ''Application of Exclusions Under Section 4(b)(2) of the Act'' section and Map 6 for more information.

Summary of Changes From Proposed Rule

In preparing this final critical habitat designation for the ABM, we reviewed and considered comments from the public on the proposed designation of critical habitat published on February 1, 2006 (71 FR 5516). We likewise reviewed and considered comments from our announcement of revisions to the proposal, the availability of the DEA, and public hearing published on August 8, 2006 (71 FR 44976). As a result of the comments and a reevaluation of the revised proposed critical habitat boundaries, we made changes to our proposed designation, as follows:

(1) We revised the critical habitat units based on peer review, public comments, and biological information received during the public comment periods. We adjusted the boundaries of Unit 3 to remove 10 acres along the S.R. 180 right-of-way immediately west of Martinique, and in the Cabana Beach subdivision north of Adair Lane because these areas do not meet our criteria for inclusion.

(2) We realigned or reduced the area considered to be essential to the conservation of species on the Perdue Unit of the Bon Secour National Wildlife Refuge from 1,063 ac (430 ha) to 807 ac (327 ha), based on site visits, a detailed review of 2005 aerial photography, and recent tracking and trapping data (see Comment 31). However, these areas within the Perdue Unit still do not meet the definition of critical habitat under section 3(5)(A) of the Act because they are protected under the Refuge's CCP (they do not require special management considerations or protection) (see ''Application of Section 3(5)(A) of the Act'' for more information).

(3) Under section 4(b)(2) of the Act, we did not designate the areas totaling 108 ac (44 ha) covered by the HCP for the Beach Club West and Gulf Highlands because the HCP provides for ABM conservation (see ''Application of Exclusions Under Section 4(b)(2) of the Act'' section for more detail).

(4) We have modified the boundaries of the designation for Unit 5: Gulf State Park to reflect its recent ITP modification. This modification resulted in the addition of 2 ac (0.8 ha) to Unit 5 (see Comment 68 and the ''Application of Exclusions Under Section 4(b)(2) of the Act '' section for more information).

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2) of the Act.) Furthermore, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. However, an area currently occupied by the species but was not known to be occupied at the time of listing will likely be essential to the conservation of the species and, therefore, typically be included in the critical habitat designation.

The Service's Policy on Information Standards Under the Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They

require Service biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation are unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts call for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we consider those physical and biological features (PCEs) that are essential to the conservation of the species, and within areas occupied by the species at the time of listing, that may require special management considerations and protection. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific PCEs required for the ABM are derived from the biological needs of this beach mouse as described in the proposed critical habitat designation published in the **Federal Register** on February 1, 2006 (71 FR 5516).

Primary Constituent Elements for the Alabama Beach Mouse

Pursuant to our regulations, we are required to identify the known physical and biological features (PCEs) essential to ABM conservation. All areas designated as ABM critical habitat are occupied or essential to the conservation of the species, within the species' historic geographic range, and contain sufficient PCEs to support at least one life history function.

This designation is designed for the conservation of PCEs necessary to support the life history functions that were the basis for the proposal. Because not all life history functions require all the PCEs, not all critical habitat will contain all the PCEs.

Units known to be occupied at the time of listing are designated based on sufficient PCEs being present to support one or more of the species' life history functions. Some units contain all PCEs and support multiple life processes, while some units contain only a portion of the PCEs necessary to support the species' particular use of that habitat. Where a subset of the PCEs is present at the time of designation, this rule protects those PCEs and thus the conservation function of the habitat.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that PCEs for the ABM are:

(1) A contiguous mosaic of primary, secondary, and scrub vegetation and dune structure, with a balanced level of competition and predation and few or no competitive or predaceous nonnative species present, that collectively provide foraging opportunities, cover, and burrow sites.

(2) Primary and secondary dunes, generally dominated by sea oats (*Uniola paniculata*), that, despite occasional temporary impacts and reconfiguration from tropical storms and hurricanes, provide abundant food resources, burrow sites, and protection from predators.

(3) Scrub dunes, generally dominated by scrub oaks (*Quercus* spp.), that provide food resources and burrow sites, and provide elevated refugia during and after intense flooding due to rainfall and/or hurricane-induced storm surge.

(4) Unobstructed habitat connections that facilitate genetic exchange, dispersal, natural exploratory movements, and recolonization of locally extirpated areas.

(5) A natural light regime within the coastal dune ecosystem, compatible with the nocturnal activity of beach mice, necessary for normal behavior, growth, and viability of all life stages.

Each of the areas designated in this rule known to be occupied at the time of listing has been determined to contain sufficient PCEs to provide for one or more of the life history functions of the ABM. In some cases, the PCEs exist as a result of ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.

Criteria Used To Identify Critical Habitat

We are designating critical habitat on lands that were occupied at the time of listing and contain sufficient PCEs to support life history functions essential to the conservation of the ABM. In a few instances, we are also proposing to designate areas that were identified as occupied after listing, but that we have determined to be essential to the conservation of the ABM.

Units known to be occupied at the time of listing were designated based on sufficient PCEs being present to support Alabama beach mouse life processes and at least one of the following characteristics: (1) Supports a core population of ABM; (2) was occupied by ABM at the time of listing; (3) is currently occupied by ABM according to Service ABM live-trapping protocol (Service 2005, p. 2) and has been determined to be essential to the conservation of the species. Some units contain all PCEs and support multiple life processes. Some units contain only a portion of the PCEs necessary to

support the ABM's particular use of that habitat. Where only a subset of the PCEs are present, it has been noted that only PCEs present at designation will be protected. Areas that are degraded, highly fragmented, isolated, or otherwise considered of questionable value to ABM conservation are not included. The Service has developed a trapping protocol for establishing absence of beach mice (see **ADDRESSES** to request a copy). In summary to document absence, this protocol requires 2 years of quarterly live-trapping with no beach mice captured. Presence of ABM, however, can be documented by the capture of one beach mouse, or the observation of beach mouse tracks or beach mouse burrows by a beach mouse expert or similarly qualified biologist.

Following the strategy outlined above, we began by mapping coastal dune communities within the historic range of the species. These areas were refined by using aerial map coverages, chiefly Baldwin County aerial photography from 2001 and 2005, and LIDAR imagery (Baldwin County 2004), to eliminate features such as housing developments and other areas that are unlikely to contribute to the conservation of ABM. We then focused on areas supporting ABM, as well as areas that contain the PCEs for the subspecies.

Because ABM habitat is dynamic and changes in response to coastal erosion, we believe that limiting the designation to areas occupied at the time of listing would not yield sufficient habitat for the persistence of ABM. The fragmentation of the species' historic habitat, coupled with the dynamic nature of coastal dune habitat due to tropical storms, makes multiple populations essential for species conservation. Consequently, we are designating units that were not occupied at the time of listing. These areas are essential for the conservation of the ABM. In addition, however, they are also currently occupied by the species, have one or more of the PCEs, and are within the historic range of the species.

The combined extent of these mapped areas defines the habitat that contains features that are essential to the conservation of the subspecies. Although these designated areas represent only a small proportion of the subspecies' historic range, they include a significant proportion of the remaining intact coastal communities and reflect the habitat types historically occupied by ABM. Areas not containing the PCEs, such as permanent wetlands and maritime forests, are not included in the designation. Field reconnaissance was done in a few areas for verification. We eliminated highly degraded tracts, and small, isolated, or highly fragmented tracts that provide no long-term conservation value. The remaining areas, totaling 2,281 ac (923 ha), were identified as containing the PCEs and essential to the conservation of the subspecies.

We reviewed existing ABM management and conservation plans to determine if any areas identified above did not meet the definition of critical habitat according to section 3(5)(A) of the Act, or could be excluded from the revised designation in accordance with section 4(b)(2) of the Act. Portions of the Perdue Unit of the Refuge are adequately protected under the Refuge's Comprehensive Conservation Plan and do not require special management or protection. While these areas, which total 808 ac (327 ha), contain the habitat features that are essential to the conservation of the subspecies, they do not meet the definition of critical habitat.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts on the species of the requested incidental take. We often exclude non-Federal public lands and private lands that are covered by an existing operative HCP under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. As discussed in further detail below (see ''Application of Sections 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act''), we are excluding 51 properties that are currently protected through Habitat Conservation Plans providing ABM protection and habitat management. These excluded properties total 263 ac (106 ha). One of these areas, the development site for Beach Club West and Gulf Highlands, was also excluded based on an HCP.

The remaining 1,211 ac (490 ha) of ABM habitat being designated as critical habitat is divided into the five units described below. These five critical habitat units, all located within the coastal dune environment of Baldwin County, Alabama, are currently occupied by ABM. Although these units represent only a small proportion of the subspecies' historic range, they include a significant proportion of Alabama's best remaining coastal dune habitat, and reflect the wide variety of habitat types utilized by the ABM. The areas include all of the contiguous high elevation habitats (as determined by review of LIDAR data, storm surge model estimates, and post-Hurricane Ivan measurements) crucial to the subspecies' survival during and after major hurricane events. Because short-term occupation of habitat varies in response to tropical storm activity, ABM presence will vary spatially and temporally throughout the designated areas, and may be unevenly distributed at any given time.

When determining critical habitat boundaries, we made every effort to avoid the designation of developed areas such as buildings or houses, paved areas, gravel driveways, ponds, swimming pools, lawns, and other structures that lack PCEs for the ABM. When it has not been possible to map out all of these structures and the land upon which they are sited because of scale issues, they have been excluded by rule text. Therefore, Federal actions limited to these areas would not trigger section 7 consultations, unless they affect the subspecies or PCEs in adjacent critical habitat. It is important to note that the maps provided in this rule (see ''Regulation Promulgation'' section) are for illustrative purposes. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions in the ''Regulation Promulgation'' section of this rule.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing contain the features essential to the conservation that may require special management considerations or protections. As discussed in more detail in the proposed critical habitat designation (February 1, 2006; 71 FR 5516) and in the unit descriptions below, we find that the features we are designating may require special management considerations or protections due to threats to the subspecies or its habitat. Such management considerations and protections include: management of nonnative predators and competitors, management of nonnative plants, and protection of ABM and their habitat from threats by road construction, urban and commercial development, heavy machinery, and recreational activities.

Critical Habitat Designation

We are designating five units as critical habitat for the ABM (from west

to east): (1) Fort Morgan, (2) Little Point Clear, (3) Gulf Highlands, (4) Pine Beach, and (5) Gulf State Park. They are described below as our best assessment, at this time, of the areas determined to be occupied by the ABM at the time of listing that contain one or more of the PCEs that may require special management, and those additional areas that were not occupied at the time of listing, but are essential for the conservation of the ABM because they contain one or more of the PCEs, support core ABM populations and habitat continuity, and are currently occupied. Table 1 shows the units that were occupied at the time of listing and those that are currently occupied but were not so at the time of listing. Table 2 identifies the areas that meet the definition of critical habitat but were excluded from final critical habitat based on their ABM-specific management plans or economic data.

TABLE 1.—THE UNITS THAT WERE OCCUPIED BY ABM AT THE TIME OF LISTING OR ARE CURRENTLY OCCUPIED

Unit	Occupied at time of listing	Occupied currently	Acres (hectares)
(1) Fort Morgan	X	X	446 (180)
(2) Little Point Clear	.....	X	268 (108)
(3) Gulf Highlands	X	X	275 (111)
(4) Pine Beach	X	X	30 (12)
(5) Gulf State Park	X	X	192 (78)

TABLE 2.—AREAS DETERMINED TO MEET THE DEFINITION OF CRITICAL HABITAT FOR THE ALABAMA BEACH MOUSE BUT WERE EXCLUDED FROM FINAL CRITICAL HABITAT DESIGNATION

[Totals may not sum due to rounding]

Geographic area	Definitional areas (acres/ hectares)	Area excluded from final designation (acres/hectares)	Reason
The Dunes	10/4	10/4	HCP
Bay to Breakers	2/1	2/1	HCP
Kiva Dunes	50/20	50/20	HCP
Plantation Palms	2/1	2/1	HCP
The Beach Club	15/6	15/6	HCP
Beach Club West/Gulf Highlands	108/44	108/44	HCP
Martinique on the Gulf	10/4	10/4	HCP
Gulf State Park	235/95	43/17	HCP
43 Single Family Homes	21/8	21/8	HCP
Total (Baldwin County)	453/183	263/67	

Table 3 provides the approximate area encompassed within each critical habitat unit determined to meet the definition of critical habitat for the Alabama beach mouse.

TABLE 3.—CRITICAL HABITAT UNITS DESIGNATED FOR THE ALABAMA BEACH MOUSE

[Totals may not sum due to rounding]

Critical Habitat Units	Federal acres/ hectares	State acres/ hectares	Local and private acres/ hectares	Total acres/ hectares
(1) Fort Morgan	44/18	337/136	66/27	446/180
(2) Little Point Clear	16/6	82/33	170/69	268/108
(3) Gulf Highlands	11/4	44/17	218/88	275/111
(4) Pine Beach	11/4	0	19/8	30/12
(5) Gulf State Park	0	192/78	0	192/78
Total	.....	.....	.....	1,211/490

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the ABM, below.

Unit 1: Fort Morgan

Unit 1 (Map 2) consists of 446 ac (180 ha) and encompasses ABM habitat in the Fort Morgan State Historic Site and private lands to the east. It is located at the extreme western edge of the ABM range and consists principally of habitat that was known to be occupied at the time of listing (50 FR 23990; Holliman 1983, p. 126) south of S.R. 180 (Fort Morgan Parkway), with the exception of a single line of high scrub dunes directly north of the roadway and within the historic site boundaries. Much of Unit 1 is existing critical habitat that was designated at the time of listing (June 6, 1985; 50 FR 23885). However, the actual Fort and associated structures and developed areas that

were included in the original designation are not included in this critical habitat unit. The unit extends from mean high water line (MHWL) northward to the break between scrub dune habitat and either the maritime forest or human developed landscape (for example, grassy areas associated with Fort Morgan State Historic Site). The unit is bounded to the west by Mobile Bay, and to the east by Unit 2 (western property line of the ''Bay to Breakers'' residential development; see below). The Dunes development and several single family homes covered by Service-approved HCPs are excluded from this unit (see ''Application of Exclusions Under Section 4(b)(2) of the Act'' section).

ABM occurrence in the unit over time is well documented (Holliman 1983, p. 126; 50 FR 23990; Rave and Holler 1992, pp. 349–350; Sneckenberger 2001, pp. 12–13 and 32–36), and mice have been captured here following Hurricanes Ivan and Katrina (Endangered Species Consulting Services 2004a, p. 2; Service 2005, p. 15). This unit contains the features essential to the conservation of the subspecies. Some areas of the unit contain a contiguous mix of primary and secondary dunes, interdunal swales, wetlands, and scrub dunes (PCE 1), whereas other areas contain high quality primary and secondary dune habitat (PCE 2). While no one portion of the designated unit contains all PCEs, all five PCEs are present within the unit.

Natural areas of the Fort Morgan Historic Site are owned by the State of Alabama (Alabama State Historical Commission), but are currently managed by the Refuge according to a cooperative agreement (Service 2005) (see ''Application of Section 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act'' section for further detail on management). Threats in this unit that may require special management considerations include human-generated refuse, and degraded habitat (from activities associated with recreational use).

Unit 2: Little Point Clear

Unit 2 consists of 268 ac (108 ha) and includes east-to-west bands of ABM habitat and connections between habitat south of the Alabama Department of Environmental Management's Coastal Construction Control Line (CCCL) (ADEM 1995, pp. 2–8 through 2–10) and along the roadway right-of-way for Fort Morgan Parkway. This Unit is bounded to the west by Unit 1 and extends eastward to the western edge of the Surfside Shores subdivision (western boundary of Unit 3). The CCCL varies in width but generally extends about 300 ft (91 m) landward of MHWL. The Fort Morgan Parkway right-of-way, which is managed by the State of Alabama (ADCNR) extends 160 ft (49 m) both south and north of the roadway centerline. The designation includes the southern sections of right-of-way and small portions of the northern right-of-way. In several places along the east west extent of this unit, additional parcels, either to the south of the Fort Morgan Parkway, or to the north of the CCCL, that contain the PCEs (see Primary Constituent Elements section) are included in the revised designation (see Map 3). Several areas covered by HCPs for single family and duplex development have been excluded. This unit was not part of the original (1985) critical habitat designation. This unit is a mix of Federal, State, local, and private ownership.

This unit, while often being inundated during storm surge events (Service 2004a; pp. 12–13; ENSR 2004, pp. 3–5 through 4–1; ACOE 2001, Service 2005a, pp. 14–15), represents the last remaining natural habitat connections between ABM populations in and around Unit 1 and Unit 3, and provides an essential link between those populations (PCE 4). Portions of this unit south of the CCCL contain PCE 2 and some sections of the right-of-way contain PCE 3. While this area was identified as being within the range of the ABM (50 FR 23872, Holliman 1983, pp. 125–126; Dawson 1983, pp. 8–11), we have no records that ABM were present at the time of listing. However, pre-hurricane Ivan trapping has verified the presence of mice south of the CCCL (Meyers 1983, pp. 5, 12–21; 50 FR 23872; Endangered Species Consulting Services 2004b, p. 2) and along the right-of-way (Sneckenberger 2001, p. 13; Farris 2003). Because the unit is presently occupied and contains two of the PCEs, and because long-term beach mouse viability depends on the existence of more populations than were documented at the time of listing, it is essential to the conservation of the subspecies. Habitat south of the CCCL consists of primary and secondary dunes, while habitat along the right-of-way consists primarily of scrub that is often temporarily disturbed by utility line maintenance. Utility line work results in a sparsely vegetated, open scrub habitat that still provides forage and cover opportunities for mice in the area.

Unit 3: Gulf Highlands

Unit 3 consists of 275 ac (111 ha) in the central portion of the Fort Morgan Peninsula. It includes portions of the Morgantown, Surfside Shores, and Cabana Beach subdivisions, as well as portions of the Beach Club West-Gulf Highlands development, BLM properties, and some properties along the Fort Morgan Parkway right-of-way. It is bounded to the west by Unit 2. The main portion of the unit generally stretches from MHWL landward to a natural border of wetlands to the north. This portion is bisected by ABM habitat associated with the Kiva Dunes, Plantation Palms, Beach Club, and Martinique developments and is excluded because of its HCPs (see ''Application of Exclusions Under Section 4(b)(2) of the Act'' section). The unit also contains an eastward continuation of ABM habitat adjacent to the Fort Morgan Parkway. This northern portion of Unit 3 is bounded to the west by Unit 2 and to the east by wetlands and maritime forest along the S.R. 180 and points east. Like the right-of-way corridor in Unit 2, it generally extends from the centerline of Fort Morgan Parkway 160 ft (49 m) south though a few areas of habitat north of the road are also captured. Unit 3 serves as an expansion, to encompass scrub habitat, of critical habitat Zone 2 that was designated at the time of listing (50 FR 23872; June 6, 1985). This unit contains the features essential to the conservation of the subspecies; all five PCEs are present in varying amounts throughout this unit.

This unit, combined with the neighboring Perdue Unit of the Refuge and several properties with conservation plans that are being excluded (see ''Application of Exclusions Under Section 4(b)(2) of the Act'' section), contains the largest assemblage of high elevation habitat within the range of the ABM (ACOE 2001, Plate 2–11; ENSR 2004, pp. 3–5 through 4–1; Service 2004a, pp. 9–12; Service 2004b, p. 6; Service 2005a, pp. 2–4). The largest tracts of contiguous habitat possessing a full gradient of ABM habitat (primary dunes landward to scrub dunes) are also found here. ABM occupancy is well documented both at the time of listing (Meyers 1983, pp. 5, 12–21; Holliman 1983, pp. 125–126) and recently (Endangered Species Consulting Services, LLC and ENSR Corporation 2001, p. 22; Farris 2003). ABM were found here following Hurricane Ivan (Endangered Species Consulting Services 2004, p. 2; 2004d, p. 2). Threats that may require special management include habitat degradation and fragmentation, extensive recreational pressure, post-storm cleanups, artificial lighting, predation, and human-generated refuse.

Unit 4: Pine Beach

This unit consists of 30 ac (12 ha) including a BLM property and 27 private inholdings within the Perdue Unit of the Refuge that are not managed under the Refuge's Comprehensive Conservation Plan. The primary and secondary dunes within this unit were part of ''Zone 2'' of the original critical habitat designation, which extended from the mean high tide line of the Gulf of Mexico landward 500 ft (152 m). ABM are well documented from the area both recently (Rave and Holler 1992, pp. 349–350; Swilling et al. 1998, pp. 289–294; Sneckenberger 2001, pp. 66–69; Service 2003, p. 1) and from the time of listing (Holliman 1983, p. 126; Meyers 1983, pp. 5, 12–21). This unit, along with adjacent Refuge lands and exclusions for single family homes covered by Service-approved HCPs (see ''Application of Exclusions Under Section 4(b)(2) of the Act'' section), contains the features essential to the conservation of the ABM because of its high elevation habitat and continuity between habitat types. It contains PCEs 2, 3, and 5, and when combined with the surrounding Refuge lands, it also includes PCEs 1 and 4. Threats that may require special management considerations on this unit may include artificial lighting from residences, human-generated refuse that may attract predators, habitat fragmentation from the design and construction of properties (and access routes) to inholdings, and primary and secondary dunefields impacted from recent storm events.

Unit 5: Gulf State Park

Unit 5 consists of 192 ac (78 ha) of ABM habitat in Gulf State Park, immediately east of the City of Gulf Shores and west of the City of Orange Beach. This unit retains most critical habitat designated in the 1985 listing rule (Zone 3—all primary and secondary dunes south of State Route 182) (June 6, 1985; 50 FR 23872) and adds approximately 30 ac (12 ha) of scrub habitat located directly north of S.R. 182. It extends from MHWL northward to a natural boundary consisting of brackish wetlands and maritime forest. ABM habitat covered under the 2004 HCP and subsequent HCP–ITP modifications is excluded from the designation (see ''Application of Exclusions Under Section 4(b)(2) of the Act'' section).

This unit contains a mix of scrub and primary and secondary dune habitat, and represents the last remaining sizable block of habitat on the eastern portion of the historic range of the subspecies.

ABM were documented from the Park in the late 1960s (Linzey 1970, p. 81), but were presumed extirpated by the early 1980s (Holliman 1983, pp. 123–126; Holler and Rave 1991, p. 22–25), because of habitat isolation combined with the effects of tropical storms, predation (primarily from feral cats), and competition with house mice. This area was referred to as occupied in our final listing rule (June 6, 1985; 50 FR 23872). ABM were reintroduced to the park in 1998, and subsequent trapping confirmed their presence there (Sneckenberger S., Service, personal communication, 2005; Service 2003, p. 2). This unit was heavily impacted by Hurricane Ivan in 2004 (Service 2004a, pp. 5–6) and Hurricane Katrina in 2005 (Service 2005a, pp. 6–9), and recent trapping has not located mice (Volkert 2005, pp. 2–5). This unit contains PCEs 2 and 3 and, therefore, possesses the habitat features essential to the conservation of the subspecies. Because this unit contains several PCEs, because it is presently occupied, and because ABM recovery depends on more populations than were documented at the time of listing, it is essential to the conservation of the subspecies.

This unit is State-owned and managed by the State Parks Division of the ADCNR. It has pressures from heavy recreational use and ABM habitat here has been severely impacted by recent hurricanes. Threats to ABM habitat include loss of dune topography and vegetation from habitat destruction, human-generated refuse that could attract predators, and artificial lighting. Habitat fragmentation also threatens ABM within this unit.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, recent decisions by the 5th and 9th Circuit Court of Appeals have invalidated this definition. Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of designated critical habitat. This is a procedural requirement only. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action because of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report; while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt

the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) a concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat. We anticipate that at least one consultation will have to be reinitiated as a result of this designation.

Federal activities that may affect ABM or their designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the Corps under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the Alabama Beach Mouse and Its Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for ABM jeopardy analyses that relies heavily on the importance of core area populations and connectivity to mouse survival and recovery. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of Alabama beach mice in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analyses for Federal actions affecting ABM critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species. Generally, the conservation role of ABM critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for Alabama beach mice is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for Alabama beach mice include, but are not limited to:

(1) Actions that would significantly alter dune structure or the degree of soil compaction. Such activities could include, but are not limited to, permanent conversion of ABM habitat for residential or commercial purposes, excessive foot traffic, and heavy use of construction, utility, or off-road vehicles in beach mouse habitat. These activities, even if temporary, could alter burrow construction, reduce the availability of potential burrow sites, and degrade or destroy beach mouse habitat.

(2) Actions that would significantly alter the natural vegetation of the coastal dune community. Such activities could include, but are not limited to, allowing nonnative species to establish in the area, landscaping with grass or other nonindigenous plants, and landscaping that yields excessive leaf litter, mulch, or other foreign materials. These activities could alter beach mouse foraging activities and degrade or destroy beach mouse habitat.

(3) Actions that would significantly alter natural lighting. Such activities could include, but are not limited to,

allowing artificial lighting that does not comply with wildlife-friendly lighting specifications. These activities could alter beach mouse foraging activities, increase predation upon beach mice, and reduce the use of otherwise suitable beach mouse habitat.

(4) Activities that eliminate or degrade movement within and among designated critical habitat units. Actions such as bulkhead, canal, ditch, and wall construction; the permanent conversion of beach mouse habitat to residential or commercial development; changing of water elevations or flooding; the removal of vegetation; and excessive artificial lighting could effectively block east-west or north-south corridors among various habitat types, and, therefore, isolate habitat.

The five critical habitat units are currently occupied by the subspecies, based on trapping data, our 2003 habitat map, and Service trapping protocol (Service 2005b, p. 2). All of the units included in this designation contain the features that are essential to the conservation of the ABM or are found to be essential for the conservation of the subspecies. Federal agencies already consult with us on activities in areas currently occupied by the ABM. If ABM may be affected by proposed actions, Federal agencies consult with us to ensure that their actions do not jeopardize the continued existence of ABM. This happens regardless of whether or not critical habitat is designated.

Application of Section 3(5)(A) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (i) essential to the conservation of the species, and (ii) which may require special management considerations or protection. Therefore, areas within the geographic area occupied by the species that do not contain the features essential to the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographic area occupied by the species that require no special management or protection also are not, by definition, critical habitat.

Perdue and Fort Morgan Units of the Bon Secour National Wildlife Refuge

The Refuge finalized its Comprehensive Conservation Plan (CCP) in November 2005. This document details proposed conservation actions for the Refuge over a 15-year period, and outlines three objectives (implement monitoring protocol and manage beach and scrub habitat for the ABM) and two projects (standardize surveys and manage and evaluate scrub habitat for the ABM) that specifically address the subspecies. Many other objectives (for example, predator management plan) and projects (for example, develop biological database) would also benefit ABM. The Service has a statutory mandate to manage the refuge for the conservation of listed species, and the CCP provides a detailed implementation plan. We believe that the CCP provides a substantial conservation benefit to the subspecies, and there are reasonable assurances that it will be implemented properly and in an effective fashion within portions of the Perdue Unit of the Refuge that contain the PCEs for the ABM. Furthermore, the Refuge, especially on the Perdue Unit, has demonstrated its resolve for ABM conservation by continually engaging in dune restoration activities (including following Hurricanes Ivan and Katrina) and semi-annual ABM trapping, and through outreach and education. Accordingly, we believe that the Perdue Unit of the Refuge does not meet the definition of critical habitat under section 3(5)(A) of the Act because a secure management plan is already in place to provide for the conservation of the ABM, and no special management or protection will be required.

The Service also either owns or manages 510 ac (206 ha) of coastal dune habitat, most of which is occupied by ABM, within the boundaries of the Fort Morgan State Historic Site. These lands, collectively, are referred to as the Fort Morgan Unit of the Refuge, but are within the Historic Site. Of the 510 ac, approximately 480 ac (194 ha) are owned by the State but are managed by the Service through a cooperative management agreement with the Alabama Historical Commission. While the CCP outlines proposed management activities within the Fort Morgan Unit, we do not know whether the cooperative management agreement will be modified or terminated in the future and, therefore, if the conservation plan outlined within the CCP will be implemented. Areas containing the PCEs within these State-owned lands (and the approximately 30 ac (12 ha) of Federal land imbedded within them), therefore, may require special management or protection, and are being designated as critical habitat.

Application of Exclusions Under Section 4(b)(2) of the Act

There are multiple ways to provide management for species habitat. Statutory and regulatory frameworks that exist at a local level can provide such protection and management, as can lack of pressure for change, such as areas too remote for anthropogenic disturbance. State, local, or private management plans, as well as management under Federal agencies' jurisdictions, can provide protection and management to avoid the need for designation of critical habitat. When we consider a plan to determine its adequacy in protecting habitat, we consider whether the plan, as a whole, will provide the same level of protection that designation of critical habitat would provide. The plan need not lead to exactly the same result as a designation in every individual application, as long as the protection it provides is equivalent, overall. In making this determination, we examine whether the plan provides management, protection, or enhancement of the PCEs that is at least equivalent to that provided by a critical habitat designation, and whether there is a reasonable expectation that the management, protection, or enhancement actions will continue into the foreseeable future. Each review is particular to the species and the plan, and some plans may be adequate for some species and inadequate for others.

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion, and the Congressional record is clear that, in making a determination under the section, the Secretary has discretion as to which factors and how much weight will be given to any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the

following sections, we address a number of general issues that are relevant to the exclusions we considered.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (EPA 2003, p. 3–3) and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (USGAO 1995, p. 4). Stein et al. (1995) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998; Crouse et al. 2002; James 2002). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-Federal lands and is necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction in contributing to endangered species recovery. The Service promotes these private-sector efforts through the Four Cs philosophy—conservation through communication, consultation, and cooperation. This philosophy is evident in Service programs such as HCPs, Safe Harbor Agreements, Candidate Conservation Agreements, Candidate Conservation Agreements with Assurances, and conservation challenge cost-share. Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property, and there is mounting evidence that some regulatory actions by the Federal government, while well-intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove et al. 1996; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook et al. 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found as illustrated by some of the public comments received on this proposal. Consequently, harboring endangered species is viewed by many landowners as a liability, resulting in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main et al. 1999; Brook et al. 2003).

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7 of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main et al. 1999; Bean 2002; Brook et al. 2003). The magnitude of this negative outcome is greatly amplified in situations where active management measures (for example, reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002).

The Service believes that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

The Department of the Interior's Four C's philosophy of conservation through communication, consultation, and cooperation is the foundation for developing the tools of conservation. These tools include conservation grants, funding for Partners for Fish and Wildlife Program, the Coastal Program, and cooperative-conservation challenge cost-share grants. Our Private Stewardship Grant program and Landowner Incentive Program provide assistance to private landowners in their voluntary efforts to protect threatened, imperiled, and endangered species, including the development and implementation of HCPs.

Conservation agreements with non-Federal landowners (for example, Habitat Conservation Plans (HCPs), contractual conservation agreements, easements, and stakeholder-negotiated State regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through coercive methods (61 FR 63854; December 2, 1996).

Habitat Conservation Plans (HCPs)

Section 10(a)(1)(B) of the Act authorizes us to issue to non-Federal entities a permit for the incidental take of endangered and threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species (take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The Act specifies that an application for an incidental take permit must be accompanied by a habitat conservation plan, and specifies the content of such a plan. The purpose of conservation plans is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated, and that the action does not appreciably reduce the survival and recovery of the species. There are currently 51 HCP sites containing habitat we have identified as essential to the ABM conservation (see ''Criteria Used To Identify Critical Habitat'' section). These include HCPs for 7 multifamily developments, 1 hotel and convention center complex, and 43 single family homes.

The completed HCPs and the associated ITPs issued by the Service contain management measures and protections for identified areas that protect, restore, and enhance the value of these lands as habitat for ABM. These measures include explicit standards to minimize any impacts to the ABM and its habitat. In general, HCPs are designed to ensure that the value of the conservation lands are maintained, expanded, and improved for covered species.

For HCPs that have been already approved, we have provided assurances to permit holders that once the protection and management required under the plans are in place and for as long as the permit holders are fulfilling their obligations under the plans, no additional mitigation in the form of land or financial compensation will be required of the permit holders and, in some cases, specified third parties.

A discussion of all HCP sites that we have identified as essential for the conservation of the subspecies follows.

Multifamily Developments With HCPs and Issued ITPs

HCPs for six multifamily developments along the Fort Morgan Peninsula were approved between 1994 and 1996. These developments include, from west to east, The Dunes, Bay to Breakers, Kiva Dunes, Plantation Palms, The Beach Club, and Martinique, all of which were issued 30-year ITPs by the Service. The HCPs covering the properties are almost identical and consist of setting aside primary and secondary dune habitat in perpetuity, and the construction of dune walkovers within protected areas to minimize pedestrian impact to habitat. These HCPs also require the use of native plants in landscaping, control of domestic and feral cats, interpretive signage, minimal outdoor lighting, trapping surveys, and annual reports. HCPs for The Beach Club and Martinique developments also include the creation of endowment funds for use in future ABM conservation activities (such as research or habitat restoration). All of these properties have been developed as permitted or are nearing completion, and the areas within the properties that we have identified as containing the features that are essential to the conservation of the ABM consist of the acreage set aside as ABM conservation zones (see Table 2 above). Most of these conservation zones were designated as critical habitat at the time ABM was listed on June 6, 1985 (50 FR 23885).

On the basis of the conservation benefits afforded the ABM from the referenced HCPs and the provisions of section 4(b)(2) of the Act, we exclude from critical habitat the areas on these properties that contain the features that are essential to the conservation of the subspecies. We have further determined that the exclusion from critical habitat of these areas would not result in the extinction of the ABM. The rationale for this determination is below (see ''Benefits of Exclusion of 51 Areas Protected by Service-Approved HCPs'').

Proposed Beach Club West and Gulf Highlands Developments

These projects consist of several proposed condominium towers and associated amenities. We were first approached by the proponents of Gulf Highlands in 1995 (and proponents of Beach Club West in 2000) about the development of a 187-ac (75-ha) site within Unit 3 of the designated critical habitat. While these two projects are separate, they are adjacent to one another, and we recommended they submit a joint ABM habitat conservation plan to streamline review and offer greater minimization and mitigation. The applicants submitted a habitat conservation plan for these projects in 2001, and following subsequent environmental review, the Service issued ITPs to both parties in 2002. The Sierra Club and Friends of the Earth, Inc. filed an action in the United States District Court for the Southern District of Alabama challenging our environmental review of the projects under the National Environmental Policy Act and the Administrative Procedure Act.

As a result of this litigation, the Service agreed to a voluntary remand of the environmental review and proceeded to develop an Environmental Impact Statement (EIS) to more thoroughly evaluate the impact of the proposed developments on the natural and human environments. The ITPs issued in 2002 were held in abeyance pending the outcome of this environmental review and of review of the projects under the Act. We completed our DEIS (which contained five alternatives) in early 2006 and announced its availability (and associated 90-day public comment period) in the **Federal Register** on April 28, 2006 (71 FR 25221). We held a public hearing on the DEIS in Gulf Shores on June 26, 2006. The notice announcing the availability of a final EIS and determination to sign a record of decision (ROD) on Beach Club West—Gulf Highlands was published in the **Federal Register** on November 29, 2006 (71 FR 69141). Both the ROD and modified permit instruments were signed on January 10, 2007.

The proposed developments involve the construction of six 20-story towers and a seventh smaller tower—clubhouse facility. This construction will permanently convert 40.5 ac (16.3 ha) of the total project site. With this design, the permittees have demonstrated they are minimizing the project footprint to the greatest extent possible through the clustering of the development in the eastern corner of the property, the use of parking garages, and the removal of some recreational facilities (such as tennis courts) from the original design. Construction of the projects will involve an additional 21.9 ac (8.9 ha) of temporary impacts to ABM habitat; however, according to the HCP, these areas will be restored to beach mouse habitat. Per the HCP, all other areas on the project site (with the exception of road right-of-way owned by Baldwin County) will be protected by restrictive covenants, permit and HCP conditions, or conservation easements. The permittees will permanently develop approximately 22 percent of the project site.

The HCP for these projects outlines numerous conservation measures designed specifically for ABM. These measures include, but are not limited to, wildlife-friendly outdoor lighting, control of cats and house mice, an ABM outreach program, dune walkovers, collection of trapping data, and habitat restoration. Numerous measures designed to minimize temporary construction impacts (such as signage, placement of staging areas, removal of waste) are also outlined. In addition, in association with the Gulf Highlands HCP, the permittees have agreed to set aside 96.8 ac (39 ha) of lands that would be placed into conservation status through a conservation easement or other legal protective document. A perpetual conservation easement was created on October 30, 2000, for the Gulf Highlands Condominiums portion (42.6 ac) of the conservation area in anticipation of ITP issuance and is held by the Baldwin County Commission. The Beach Club West portion (54.2 ac) of the conservation area is protected through a Declaration of Abandonment, filed with Baldwin County on April 15, 2002. The private inholdings located within the project area that will not be part of this project, are not subject to the same restrictions, and are therefore included in the designation.

Although approximately 6 ac (2 ha) of the area owned by the permittees and identified in this analysis as essential to the conservation of the subspecies is part of road rights-of-way retained by Baldwin County, these acres will be managed in accordance with the HCP for Gulf Highlands. As part of their inclusion in areas being managed with an HCP, the 6 acres surrounding these rights-of-way will have management including numerous conservation measures designed specifically for ABM. These measures include, but are not limited to, wildlife-friendly outdoor lighting, control of cats and house mice, an ABM outreach program, dune walkovers, collection of live-trapping data, and habitat restoration. Numerous measures designed to minimize temporary construction impacts (such as signage, placement of staging areas, removal of waste) are also outlined. Because these rights-of-way have not been vacated and transferred to the permittees, they could be developed in the future at the discretion of the County. However, should the County decide to pursue development of these areas, it would either have to pursue an incidental take permit or enter into section 7 consultation (depending upon the presence of a Federal nexus in the

project). Because these rights-of-way do not require additional management considerations or protection, they do not meet the definition of critical habitat under section 3(5)(A) of the Act.

On the basis of the conservation benefits afforded the ABM from the referenced HCP and the provisions of section 4(b)(2) of the Act, we exclude from critical habitat all areas within the Gulf Highlands-Beach Club West project sites containing the features essential to the conservation of the subspecies. This does not include any private inholdings as outlined above. We have further determined that the exclusion of these areas from critical habitat would not result in the extinction of the ABM. The rationale for this determination is below (see ''Benefits of Exclusion of 51 Areas Protected by Service-Approved HCPs'').

Gulf State Park Hotel and Convention Center Complex

In 2004, we approved an HCP for the demolition of existing Gulf State Park (GSP) and construction of a new hotel and convention center on the site. In response to hurricane impacts and the need to minimize future impacts, the ITP issued for this project was modified in 2005 to adjust the footprint of the GSP beach pavilion and parking lot. The new GSP complex will replace the current facilities (which were destroyed during Hurricane Ivan) and its construction will result in a net gain of 3 ac (1 ha) of ABM habitat due to improved siting and design of the structures and restoration work outlined in the HCP. The HCP covers both the construction and operation of the facilities; outlines an aggressive strategy for the control of roaming cats, house mice, and refuse; and includes wildlife-friendly lighting, native landscaping, and visitor outreach on the fragile coastal environment (including outreach concerning the ABM). The area covered by the HCP and ITP includes the 43 ac (17 ha) surrounding the complex. In February 2006, ADCNR informed us of new plans to consolidate the new fishing pier (the previous pier was destroyed during Hurricane Ivan) with the convention center complex. This consolidation involves demolition and restoration of the old pier (and associated parking area) and construction of a new pier 250 ft to the east. By moving the pier and associated parking eastward into the previously authorized development footprint, the revised plan reduces impacts to ABM habitat by 2 ac (1 ha). The new pier will also feature state-of-the-art, wildlife-friendly lighting (mainly shielded, low wattage-low pressure sodium lighting) and, therefore, result in much less light pollution than the old pier, thereby reducing impacts to sea turtles.

On the basis of the conservation benefits afforded the ABM from this HCP and the provisions of section 4(b)(2) of the Act, we exclude from critical habitat the 43 ac (17 ha) covered area, portions of which we have identified to contain the features that are essential to the conservation of the subspecies. We have further determined that the exclusion of this area from critical habitat would not result in the extinction of the ABM. The rationale for this determination is below (see ''Benefits of Exclusion of 51 Areas Protected by Service-Approved HCPs'').

Single Family Homes

Prior to August 2004, we approved HCPs for the construction of two single-family homes in the Cabana Beach subdivision. Portions of both these properties have been determined to contain the features that are essential to the conservation of the ABM. In August 2004, we approved HCPs and issued ITPs for the construction of 11 additional single family homes in occupied ABM habitat. Four of these properties have been determined to contain features essential to the conservation of the ABM (see ''Criteria Used To Identify Critical Habitat''). In September 2005, we approved HCPs for the construction of 55 more residences within occupied ABM habitat. Thirty-seven of these properties (11 of which are located within ''The Dunes'' development) have been determined to be essential to the ABM. The HCPs and ITPs covering all of these properties, while under and after construction, require a small developed footprint (typically no larger than 0.1 ac (0.004 ha)) for all structures and driveways, the construction of a dune walkover for Gulf-front lots, and the conservation of the remaining ABM habitat on the property for the duration of the ITP. The HCPs also call for wildlife-friendly lighting, landscaping with native plants, control of domestic pets (cats), and refuse control. The associated ITPs are valid for 50 years, and ITP permit conditions are transferable if property ownership changes.

On the basis of the conservation benefits afforded the ABM from the referenced HCPs and the provisions of section 4(b)(2) of the Act, we are excluding from critical habitat ABM habitat within these 43 properties that contain features essential to ABM conservation and are covered by HCPs and issued ITPs. We have further determined that the exclusion of these areas from critical habitat would not result in the extinction of the ABM. The rationale for this determination is below (see ''Benefits of Exclusion of 51 Areas Protected by Service-Approved HCPs'').

Following is our analysis of the benefits of including lands within approved HCPs versus excluding such lands from this critical habitat designation.

(1) Benefits of Inclusion of 51 Areas Protected Through Service-Approved HCPs

The principal regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they will not destroy or adversely modify critical habitat. In the *Gifford Pinchot* decision, the U.S. Court of Appeals for the Ninth Circuit ruled that adverse modification evaluations require consideration of impacts on the recovery of species (379 F.3d 1059, 1070–1072). Conducting section 7 consultations would provide benefits on HCP lands with a Federal nexus by helping ensure the integrity of these lands is maintained. For example, if a federally funded road project was proposed to cross HCP lands that were designated as critical habitat, a consultation would need to be conducted to ensure the designated critical habitat was not destroyed or adversely modified. However, the presence of ABM would trigger consultation under section 7 of the Act under the jeopardy standard regardless of whether critical habitat is designated.

Designation of critical habitat also serves to educate landowners, State and local governments, and the public, regarding the potential conservation value of the area. This helps focus, prioritize, and revitalize conservation efforts, such as dune restoration projects, or more extensive monitoring of beach mouse populations.

(2) Benefits of Exclusion of 51 Areas Protected by Service-Approved HCPs

We identified a number of possible benefits of excluding the area covered by the 51 HCPs from critical habitat designation. First, exclusion would reduce largely redundant administrative costs of section 7 consultation. There is no added value in designating these 51 HCP sites as critical habitat because they are subject to the legally enforceable conditions of ITPs. HCP sites are still protected by the section 7 ''jeopardy standard'' in the event a Federal action may adversely affect mice there. For instance, if a federally funded roadway project were planned to bisect an HCP site, the Federal action agency would still be required to

consult with us regarding whether or not the roadway would adversely affect ABM. Second, exclusion would help to foster an atmosphere of cooperation in the conservation of endangered species. HCPs and other conservation partnership efforts typically provide far greater conservation benefits to species than the limited benefits arising from critical habitat designation. The latter benefits are restricted to actions with a Federal nexus and can require only that the action not adversely modify the habitat. It cannot compel, and in practice may discourage, the sort of active management actions that generally are needed to recover listed species. Two of our HCP sites have provided endowments for beach mouse conservation, and these sites and other multifamily developments provide us with seasonal trapping data vital to beach mouse conservation efforts. Through the HCP program, we also retain the permission to live-trap and monitor habitat on private land, something that a critical habitat designation does not confer. Conservation areas within HCP sites we have identified as essential to the conservation of the species are protected from predators, subject to rules restricting uncontained human refuse and excessive artificial light, and conservation subject to a host of other beneficial requirements that are not conveyed by critical habitat designation. Through developing positive conservation relationships with property owners along the Alabama coastline, we are able to partner with private landowners in habitat restoration, conduct beach mouse translocations, and monitor populations, thereby facilitating recolonization of previously inhabited areas, encouraging and providing suitable habitat for the long-term persistence of beach mice, obtaining more information on the subspecies, and improving and discovering new techniques and opportunities that will assist in ABM recovery. While these activities are admittedly required by HCPs and associated ITPs, our relationships with permittees and other private stakeholders, which are extremely important for ABM conservation (see ''Conservation Partnerships'' section above), could be damaged by unnecessary regulation. Exclusion would provide an incentive for participation in the development of new HCPs and non-HCP-related ABM conservation activities. The exclusion of HCP lands from critical habitat designations is an important incentive for participation in the HCP program; on the other hand, failure to exclude HCP lands could undermine the conservation benefits provided by the HCP program, and, more generally, the partnerships required to conserve most listed species.

It is possible, although unlikely, that Federal action will be proposed that would be likely to destroy or adversely modify the essential habitat within the area governed by these HCPs. If such a project was proposed, due to the specific way in which jeopardy and adverse modification are analyzed for ABM (we monitor take through habitat loss), it would likely also jeopardize the continued existence of the species. In addition, we expect that the benefit of informing the public of the importance of this area to ABM conservation would be slight due to the fact that there was a previous designation of critical habitat for ABM in many of these areas (that underwent public notice and comment), the HCPs themselves underwent public review and comment, and this designation has undergone public review and comment. It is now public knowledge that conservation areas within many areas with Service-sponsored HCP sites contain the physical and biological features essential to the conservation of the species. Therefore, we assigned relatively little weight to the benefits of designating this area as critical habitat.

In contrast, although the benefits of encouraging participation in HCPs, (particularly large-scale HCPs) and helping to foster cooperative conservation are indirect, enthusiastic HCP participation and an atmosphere of cooperation are crucial to the long-term effectiveness of the endangered species program.

(3) Benefits of Exclusion of 51 Areas Protected by Service-Approved HCPs Outweigh the Benefits of Inclusion

We have assigned great weight to the benefits of excluding certain lands from this critical habitat designation, since we believe conservation is best fostered in a voluntary environment. To the extent that there are regulatory benefits of including these lands as critical habitat, the associated costs could be avoided by excluding the areas from designation. We expect the regulatory benefits to be slight, because these areas are currently occupied, and consultation will occur regardless of critical habitat designation.

We have determined that the benefits of inclusion of the areas covered by these 51 HCPs are small, while the benefits of exclusion are substantial. Through these measures identified above, we believe that for these 51 sites, the benefits of exclusion outweigh the benefits of inclusion.

(4) Exclusion Will Not Result in Extinction

Because we anticipate that little, if any, conservation benefit to the ABM will be foregone as a result of excluding these areas (ABM in these areas are protected by sections 7 and 9 of the Act regardless of whether critical habitat is designated), the exclusion will not result in the extinction of the ABM. Accordingly, we exercise discretion under section 4(b)(2) to exclude the areas covered by these HCPs from the designation of critical habitat for the ABM.

General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may

contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Mandatory reasonable and prudent alternatives to the proposed Federal action would only be issued when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot,* the Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. The Court ruled that the Service could no longer equate the two standards and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing habitat conservation plans (HCPs) or other habitat management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any HCP or management plan that considers enhancement or recovery as the management standard will always provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat in that it provides the framework for the consultation process.

Educational Benefits of Critical Habitat

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the ABM. In general the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more indirect benefit: that designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

However, we believe that there would be little additional informational benefit gained from the designation of critical habitat for the exclusions we are making in this rule because these areas were included in the proposed rule as having habitat containing the features essential to the conservation of the species. Consequently, we believe that the informational benefits are already provided, even though these areas are not designated as critical habitat. Additionally, the purpose normally served by the designation, that of informing State agencies and local governments about areas that would benefit from protection and enhancement of habitat for the ABM, is already well established among State and local governments, and Federal agencies in those areas that we are excluding from critical habitat in this rule on the basis of other existing habitat management protections.

The information provided in this section applies to all the discussions herein that discuss the benefits of inclusion and exclusion of critical habitat.

Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for economic reasons if he determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat, unless the exclusion will result in the extinction of the species concerned. Congress has granted this discretionary authority to the Secretary with respect to critical habitat. Although economic and other impacts may not be considered when listing a species, Congress has expressly required their consideration when designating critical habitat.

In making the exclusions, we have, in general, considered that all of the costs and other impacts predicted in the economic analysis may not be avoided by excluding the area, because most or all of the areas in question are currently occupied by the listed species or considered essential to the conservation of the species, and there will be requirements for consultation under section 7 of the Act, or for permits under section 10 (henceforth ''consultation''), for any take of these species, and other protections for the species exist elsewhere in the Act and under State and local laws and regulations. In conducting economic analyses, we are guided by the 10th Circuit Court of Appeal's ruling in the New Mexico Cattle Growers Association case (248 F.3d at 1285), which directed us to consider all impacts, ''regardless of whether those impacts are attributable co-extensively to other causes.'' As explained in the analysis, due to possible overlapping regulatory schemes and other reasons, some elements of the analysis may also overstate some costs.

Conversely, the Ninth Circuit has recently ruled *(Gifford Pinchot,* 378 F.3d at 1071) that the Service's regulations defining ''adverse modification'' of critical habitat are invalid because they define adverse modification as affecting both survival and recovery of a species. The Court directed us to consider that determinations of adverse modification should be focused on impacts to recovery. While we have not yet proposed a new definition for public review and comment, compliance with the Court's direction may result in additional costs associated with the designation of critical habitat (depending upon the outcome of the rulemaking). In light of the uncertainty concerning the regulatory definition of adverse modification, our current methodological approach to conducting economic analyses of our critical habitat designations is to consider all conservation-related costs. This approach would include costs related to sections 4, 7, 9, and 10 of the Act, and should encompass costs that would be considered and evaluated in light of the *Gifford Pinchot* ruling.

In addition, we have received several credible comments on the economic analysis contending that it underestimates, perhaps significantly, the costs associated with this critical habitat designation. Both of these factors are a balancing consideration against the possibility that some of the costs shown in the economic analysis might be attributable to other factors, or are overly high, and so would not necessarily be avoided by excluding the area for which the costs are predicted from this critical habitat designation.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on August 8, 2006 (71 FR 44976). We accepted comments on the draft analysis until September 7, 2006.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of ABM critical habitat. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The draft economic analysis found that costs associated with conservation activities for the ABM are forecast to range from $18.3 million to $51.9 million in undiscounted dollars over the next 20 years. Adjusted for possible inflation, the costs would range from $16.1 million to $46.9 million over 20 years, or $1.1 million to $3.1 million annually using a three percent discount; or $14.2 million to $41.8 million over 20 years, or $1.3 million to $3.9 million annually, using a seven percent discount. Although disproportionate impacts may exist, the areas that may suffer these impacts are already being excluded due to other reasons (see ''Application of Exclusions Under Section 4(b)(2) of the Act'' for more detail). Therefore, the Service did not exclude any areas based on economics.

A copy of the final economic analysis with supporting documents is included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Branch of Endangered Species (see **ADDRESSES**) or by downloading from the Internet at *http://www.fws.gov/daphne.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. As explained above, we prepared an economic analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2), if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities

potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect ABM. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

In our economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of ABM and proposed designation of its critical habitat. This analysis estimated prospective economic impacts due to the implementation of ABM conservation efforts in five categories: residential and commercial real estate development activities, road construction and maintenance, tropical storms and hurricanes, species management and habitat protection activities, and recreation. We determined from our analysis that in four of these five categories, impacts of the ABM conservation efforts are not anticipated to impact small business. The small business entities that may be affected are private developers. Costs associated with residential and commercial development comprise 99 percent of the total quantified future impacts. Total costs are expected to be $18.1 to $51.3 million (undiscounted) over the next 20 years. Conservation effort costs include land preservation (set-asides), monitoring, and predator control that may be required of new development activity on private land. Approximately 99 percent of developers in the region are considered small; thus, 1.6 small developers could be impacted each year. For those projects likely to be undertaken by a small entity, beach mouse conservation costs are estimated to be approximately $471,000 per typical developer. Assuming the annual revenues of an average small developer are $16.8 million (see the economic analysis for explanation of assumptions), the average annualized cost per project is roughly 2.8 percent of the typical annual sales. Therefore, we do not believe that the designation of critical habitat for the ABM will result in a disproportionate effect to small business entities. Please refer to our economic analysis of the critical habitat designation for a more detailed discussion of potential economic impacts.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately four small businesses, on average, that may be required to consult with us each year regarding their project's impact on ABM and their habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation. Within the designated critical habitat units, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act;

(2) The Service's incidental take permitting program;

(3) Road construction and maintenance funded by the Federal Highway Administration (FHA); and

(4) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency (FEMA).

It is likely that a developer or other project proponent could modify a project or take measures to protect ABM. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and proposed critical habitat designation. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether our designation of critical habitat for ABM would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include: Corps permits, permits we may issue under section 10(a)(1)(B) of the Act (ITPs), FHA funding for road improvements, and activities funded by

FEMA. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule to designate critical habitat for ABM is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, a Small Government Agency Plan is not required.

Federalism

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with the Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in Florida and Alabama. The designation of critical habitat in areas currently occupied by ABM may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Endangered Species Act. This final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the ABM.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this

determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation and no Tribal lands that are unoccupied areas that are essential for the conservation of the ABM. Therefore, designation of critical habitat for the ABM has not been designated on Tribal lands.

Takings

In accordance with Executive Order 12630, (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating 1,211 ac (490 ha) of lands in Baldwin County, Alabama as critical habitat for the Alabama beach mouse in a takings implication assessment. The takings implications assessment concludes that this final designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Daphne Field Office (see **ADDRESSES**).

Author(s)

The primary author of this package is the Daphne Field Office of the U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.95(a), revise the entry for ''Alabama Beach Mouse (*Peromyscus polionotus ammobates*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Alabama Beach Mouse (*Peromyscus polionotus ammobates*)

(1) Critical habitat units are depicted for Baldwin County, Alabama, on the maps below.

(2) The primary constituent elements of critical habitat for the Alabama Beach Mouse are the habitat components that provide:

(i) A contiguous mosaic of primary, secondary, and scrub vegetation and dune structure, with a balanced level of competition and predation and few or no competitive or predaceous nonnative species present, that collectively provide foraging opportunities, cover, and burrow sites.
secondary dunes, generally dominated by sea oats (*Uniola paniculata*), that despite occasional temporary impacts and reconfiguration from tropical storms and hurricanes, provide abundant food resources, burrow sites, and protection from predators.

(iii) Scrub dunes, generally dominated by scrub oaks (*Quercus* spp.), that provide food resources and burrow sites, and provide elevated refugia during and after intense flooding due to rainfall and/or hurricane-induced storm surge.

(iv) Unobstructed habitat connections that facilitate genetic exchange, dispersal, natural exploratory movements, and recolonization of locally extirpated areas.

(v) A natural light regime within the coastal dune ecosystem, compatible with the nocturnal activity of beach mice, necessary for normal behavior, growth, and viability of all life stages.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airport runways, roads, other paved areas, and piers) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Data layers defining map units were created by delineating habitats that contained one or more of the PCEs defined in paragraph (2) of this entry, over 2005 Baldwin County, Alabama color photography (UTM 16, NAD 83).

(5) Note: Index Map (Map 1) follows:

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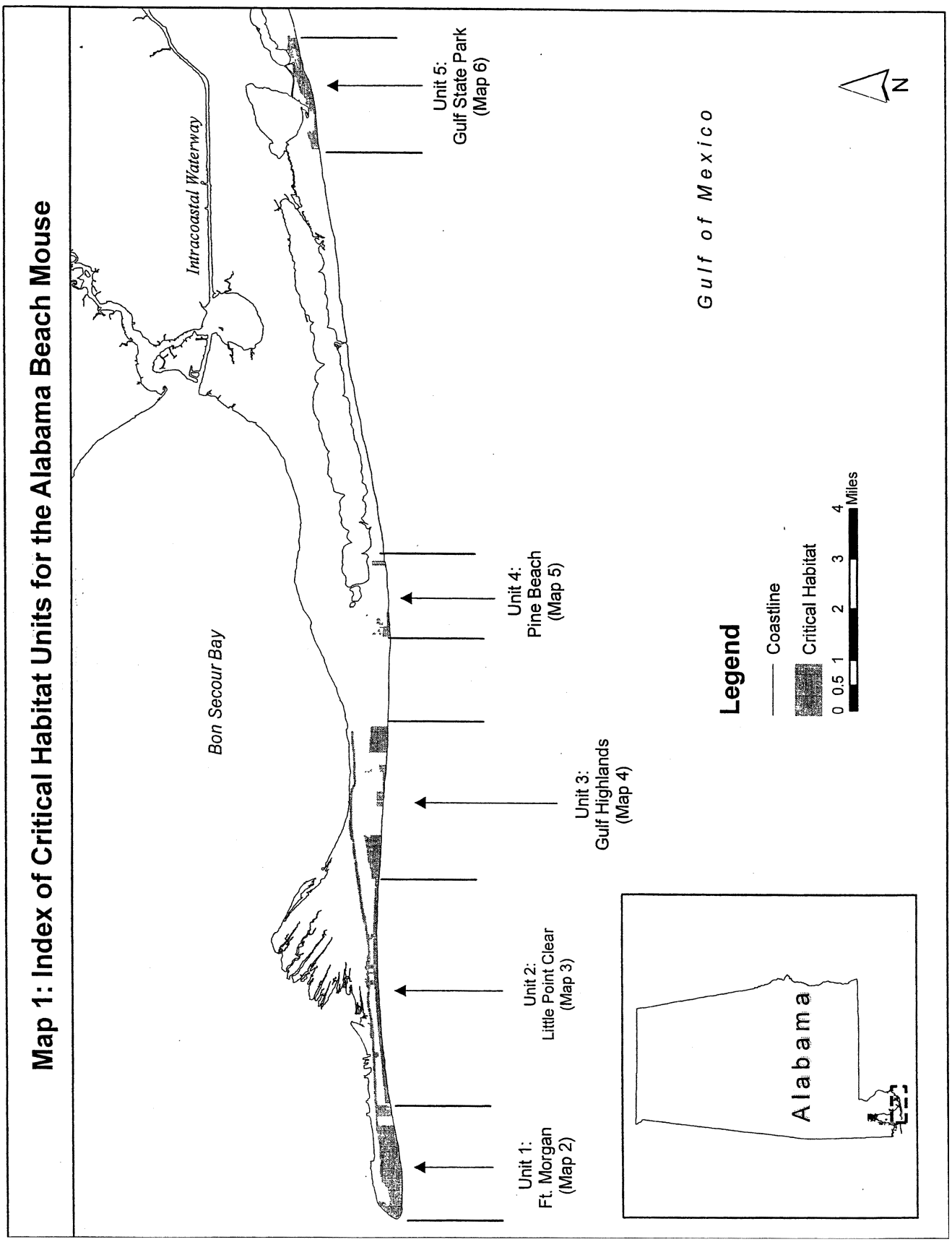
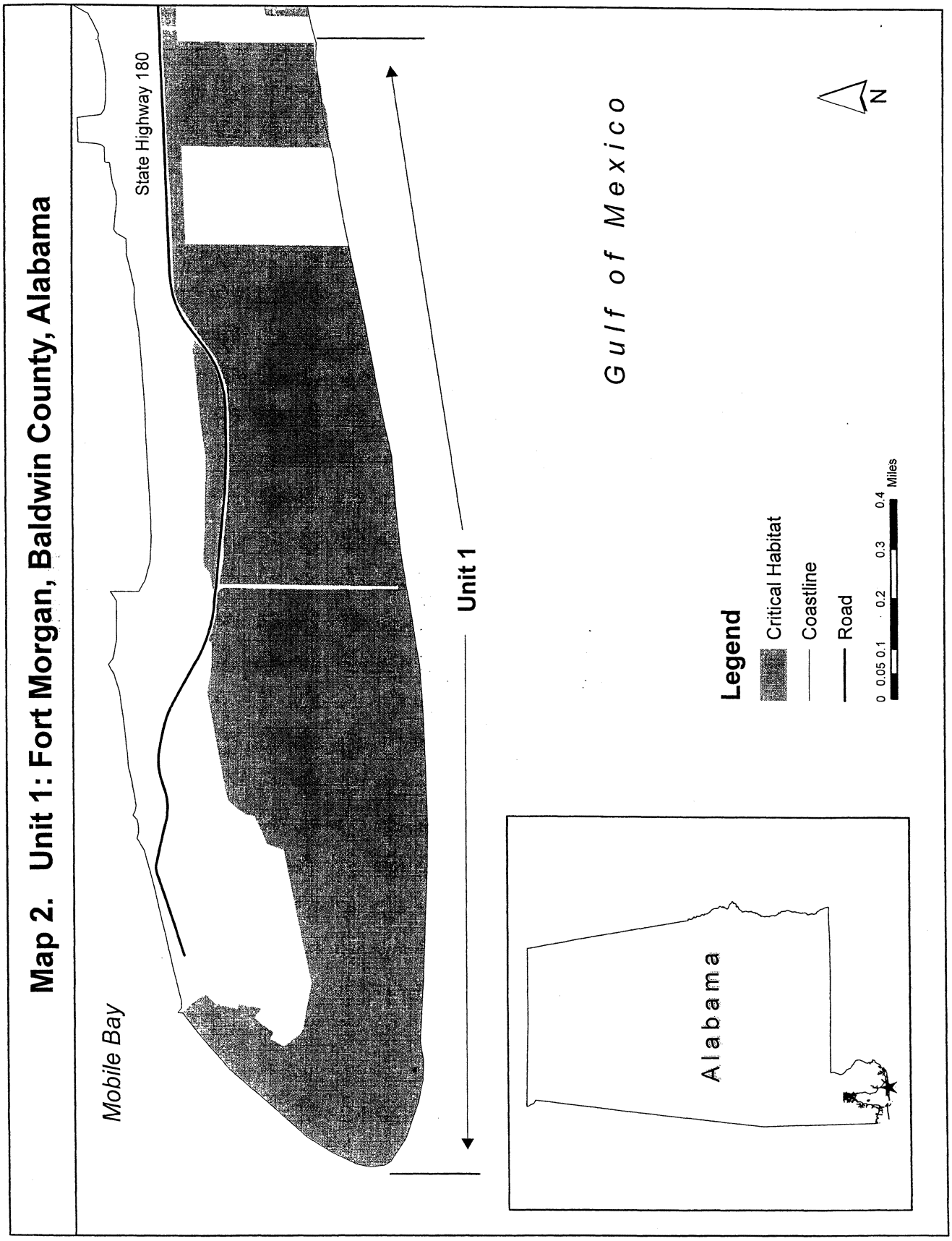

Map 1: Index of Critical Habitat Units for the Alabama Beach Mouse
Intracoastal Waterway
Bon Secour Bay
Gulf of Mexico
Unit 1: Ft. Morgan (Map 2)
Unit 2: Little Point Clear (Map 3)
Unit 3: Gulf Highlands (Map 4)
Unit 4: Pine Beach (Map 5)
Unit 5: Gulf State Park (Map 6)
Legend
Coastline
Critical Habitat
0 0.5 1 2 3 4 Miles
N
Alabama

(6) Unit 1: Fort Morgan, Baldwin County, Alabama.

(i) *General Description:* Unit 1 consists of 446 ac (180 ha) at the extreme western tip of the Fort Morgan Peninsula in Baldwin County, Alabama. This unit encompasses essential features of Alabama beach mouse habitat within the boundary of the Fort Morgan State Historic Site and adjacent properties west of the Bay to Breakers development. The southern and western extents are the mean high water level (MHWL). The unit extends northward to either the seaward extent of maritime forest, developed features associated with the Fort Morgan State Historic Site, or Ft. Morgan Parkway.

(ii) *Coordinates:* From the Fort Morgan and Saint Andrews Bay USGS 1:24,000 quadrangle maps, Alabama, land bounded by the following UTM 16 NAD 83 coordinates (E, N): 401473.62, 3344763.21; 401547.57, 3344692.62; 401513.96, 3344669.09; 01503.87, 3344514.47; 401369.42, 3344440.53; 401577.82, 3344356.49; 402008.06, 3344443.89; 402169.41, 3344622.04; 402525.70, 3344682.54; 403820.62, 3344782.93; 404628.95, 3344823.00; 404623.54, 3344330.64; 404288.09, 3344287.36; 403970.48, 3344745.87; 403970.48, 3344230.37; 403292.55, 3344087.17; 402583.77, 3343995.19; 401269.00, 3343995.19; 400971.42, 3344125.04; 400976.83, 3344206.20; 401301.47, 3344628.22; 404286.32, 3344756.22; 402854.33, 3344659.30; 402903.74, 3344669.55; 402929.27, 3344691.88; 403288.24, 3344682.82; 403627.98, 3344721.72; 403654.87, 3344714.12; 403590.33, 3344665.04; 403546.85, 3344641.30; 403501.91, 3344628.03; 403337.34, 3344622.77; 403056.19, 3344638.97

(iii) Note: Map of Unit 1, Fort Morgan (Map 2), follows:



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(7) Unit 2: Little Point Clear, Baldwin County, Alabama.

(i) *General Description:* Unit 2 consists of 268 ac (108 ha) on the Fort Morgan Peninsula in Baldwin County, Alabama. This unit encompasses essential features of Alabama beach mouse habitat north of the mean high water line (MHWL) and south of the Alabama Department of Environmental Management Coastal Construction Control Line (as defined in Alabama Administrative Code of Regulations 335–8–2–0.8) from the eastern property boundary of Bay to Breakers eastward to the western boundary of the Surfside Shores subdivision. This unit also includes essential features of Alabama beach mouse habitat 160 ft south (except where otherwise noted) of the centerline of Fort Morgan Parkway, from the eastern boundary of Bay to Breakers east to the western boundary of the Surfside Shores subdivision, and associated areas as depicted on Map 3 in paragraph (7)(iii) of this entry and in the coordinates provided in paragraph (7)(ii) of this entry.

(ii) *Coordinates:* From the Saint Andrews Bay USGS 1:24,000 quadrangle map, Alabama, land bounded by the following UTM 16 NAD 83 coordinates (E, N), except those areas covered by incidental take permits shown in the maps: 408673.97, 3345088.73; 408690.96, 3345050.98; 408964.63, 3345069.85; 408992.95, 3345115.15; 409098.64, 3345124.59; 409260.96, 3345071.74; 409306.26, 3345047.20; 409421.39, 3345039.65; 409421.39, 3345018.89; 409839.57, 3345038.68; 410450.38, 3345133.36; 410638.20, 3345180.70; 411632.04, 3345331.96; 411819.06, 3345348.96; 411819.06, 3345276.71; 411455.65, 3345227.83; 411423.77, 3345234.20; 411115.62, 3345195.95; 410735.21, 3345138.57; 410735.21, 3345117.32; 410129.52, 3345030.18; 405929.15, 3344870.87; 406790.26, 3344915.69; 406790.26, 3344944.50; 406889.49, 3344986.11; 406915.10, 3344986.11; 406947.11, 3344973.31; 406972.72, 3344998.92; 406998.33, 3344960.50; 407039.95, 3344973.31; 407065.56, 3344950.90; 407148.55, 3344960.50; 407232.02, 3345008.52; 407238.42, 3345034.13; 407289.64, 3344954.10; 407918.85, 3345054.48; 408411.28, 3345026.14; 408414.83, 3345068.65; 408687.61, 3345125.34; 408723.04, 3345107.62; 406397.69, 3344654.51; 408502.15, 3344816.39; 408502.15, 3344974.12; 408369.32, 3344978.29; 408074.61, 3345003.18; 407842.17, 3344994.88; 407194.65, 3344878.65; 406327.13, 3344837.15; 406318.83, 3344720.92; 406181.85, 3344716.77; 406165.25, 3344837.15; 404625.30, 3344770.73; 408639.12, 3344982.42; 408850.81, 3345011.48; 408626.67, 3344828.84; 408904.77, 3345015.63; 409021.00, 3345003.18; 409033.45, 3344837.15; 410127.40, 3344881.42; 409942.50, 3345003.19; 409321.94, 3344964.94; 409122.17, 3344994.69; 409122.17, 3344839.55; 411303.93, 3344704.32; 410054.54, 3344754.13; 410029.64, 3344741.68; 409992.28, 3344745.83; 409963.23, 3344758.28; 408879.87, 3344720.92; 407157.29, 3344642.06; 406011.67, 3344509.23; 405044.53, 3344417.91; 404700.02, 3344343.20; 404624.32, 3344815.46; 404709.17, 3344488.16; 405203.36, 3344433.41; 405813.57, 3344509.70; 406027.79, 3344616.83; 406662.44, 3344675.99; 406677.12, 3344600.23; 407261.66, 3344729.73; 407664.18, 3344758.57; 407637.12, 3344658.32; 408856.44, 3344833.42; 408903.73, 3344832.33; 409944.78, 3344975.70; 409961.53, 3344931.31; 409960.68, 3344885.70; 409940.98, 3344852.55; 410474.83, 3344831.25; 411896.05, 3344778.56; 411897.06, 3344677.82; 411898.98, 3345357.59; 411899.47, 3345349.16; 411899.92, 3345333.36; 411898.69, 3345292.29

(iii) Note: Map of Unit 2, Little Point Clear (Map 3), follows:

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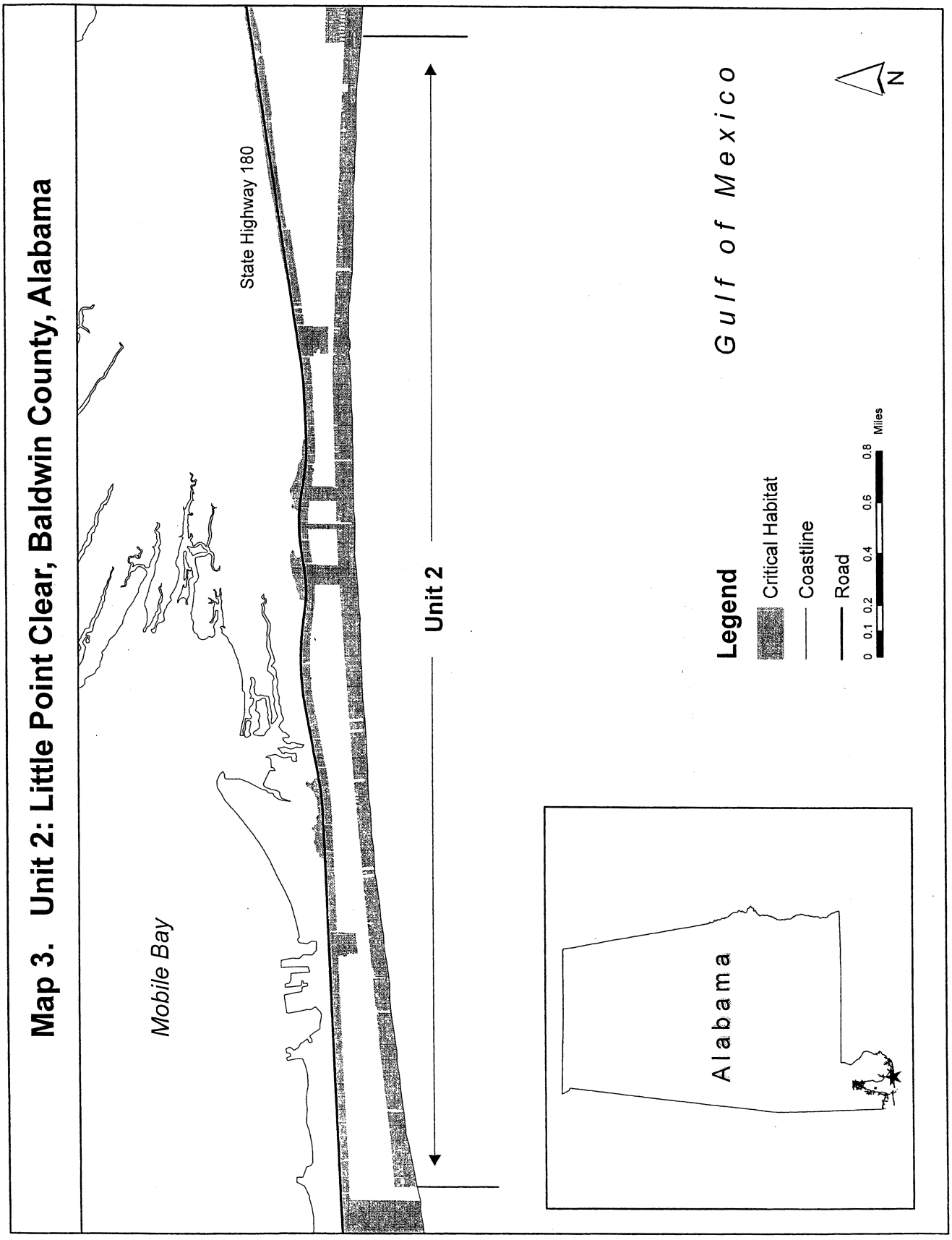


BILLING CODE 4310–55–C

(8) Unit 3: Gulf Highlands, Baldwin County, Alabama.

(i) *General Description:* Unit 3 consists of 275 ac (111 ha) on the Fort Morgan Peninsula in Baldwin County, Alabama. This unit encompasses essential features of Alabama beach mouse habitat north of the mean high water line (MHWL) to the seaward extent of interdunal wetlands as depicted on Map 4 in paragraph (8)(iii) of this entry and in the coordinates in paragraph (8)(ii) of this entry. This unit also includes essential features of Alabama beach mouse habitat 160 ft south of the centerline of Fort Morgan Parkway (except some areas to the north as noted in paragraphs (8)(ii) and (8)(iii) of this entry). Unit 3 is bounded to the west by the eastern property line of the Morgantown subdivision and to the east by the western property line of Martinique on the Gulf.

(ii) *Coordinates:* From the Pine Beach and Saint Andrews Bay USGS 1:24,000 quadrangle maps, Alabama, land bounded by the following UTM 16 NAD 83 coordinates (E, N), except those areas covered by incidental take permits shown in the maps:

(A) Surfside Shores—412122.39, 3344896.76; 412230.61, 3344952.19; 412407.44, 3344970.66; 412407.44, 3344997.06; 413286.34, 3345139.58; 413283.70, 3344598.52; 411897.20, 3344677.62; 411896.72, 3344778.70; 411901.40, 3344895.52; 412585.68, 3344637.82; 413286.36, 3345090.20; 413224.06, 3345080.28; 413224.52, 3344927.47; 413284.56, 3344937.39

(B) Gulf Highlands—414393.00, 3344536.62; 414393.00, 3344732.11; 414676.12, 3344736.60; 415529.98, 3344440.00; 414671.87, 3344524.00; 414736.29, 3344520.49; 414736.41, 3344546.27; 415324.89, 3344541.53; 415326.46, 3344653.21; 415533.04, 3344653.83; 415290.55, 3345011.54; 415327.74, 3345011.79; 415327.61, 3344980.39; 415290.42, 3344981.38; 415308.84, 3344940.80; 415327.02, 3344940.72; 415327.30, 3344910.13; 415308.70, 3344910.21; 415358.01, 3344940.99; 415376.61, 3344940.91; 415376.48, 3344910.33; 415357.88, 3344910.41; 415291.27, 3345081.38; 415309.04, 3345081.30; 415309.47, 3345085.02; 415291.28, 3345084.28; 415326.74, 3345051.69; 415326.74, 3345039.99; 415181.66, 3345041.16; 415184.00, 3345052.86; 415174.64, 3345051.69; 415174.64, 3345041.16; 414954.68, 3345042.33; 414954.68, 3344655.06; 414920.74, 3344656.23; 414920.74, 3344761.53; 414735.88, 3344762.70; 414735.88, 3344773.23; 414921.91, 3344772.06; 414921.91, 3344831.73; 414737.05, 3344832.90; 414737.05, 3344843.43; 414921.91, 3344842.26; 414923.08, 3344903.10; 414735.88, 3344903.10; 414735.88, 3344915.97; 414924.25, 3344913.63; 414921.91, 3344972.13; 414738.22, 3344974.47; 414738.22, 3344983.83; 414921.91, 3344982.66; 414923.08, 3345043.50; 414738.22, 3345043.50; 414738.22, 3345054.03; 414921.91, 3345054.03; 414921.91, 3345071.59; 414953.51, 3345073.93; 414953.51, 3345052.86; 414953.51, 3344876.19;

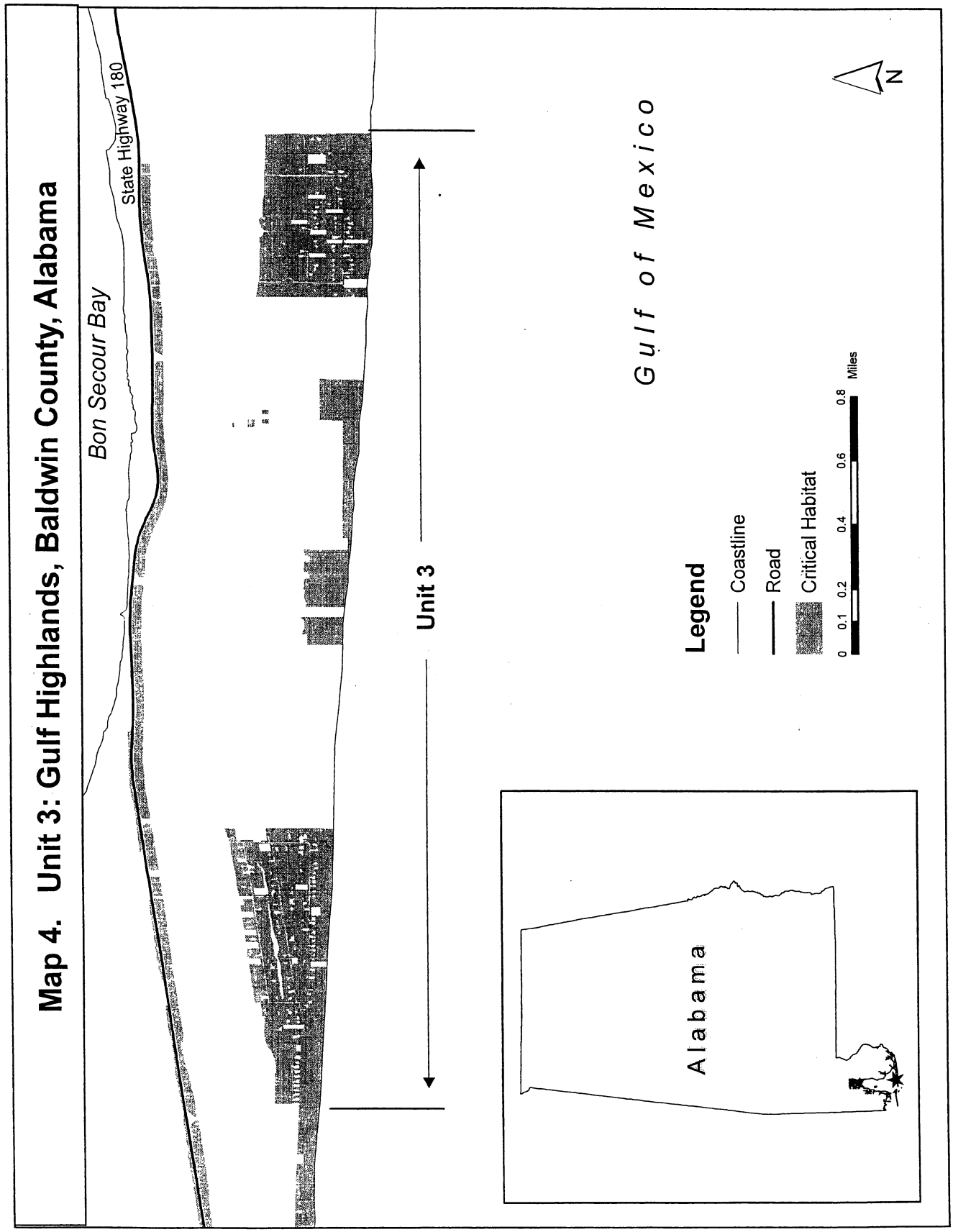
(C) Gulf Shores Plantation—414204.25, 3344552.35; 414204.25, 3344725.37; 414343.57, 3344754.58; 414341.32, 3344543.36

(D) Cabana Beach—415938.37, 3344420.63; 416333.53, 3344954.65; 416756.08, 3344395.60; 416750.70, 3344919.13; 415945.72, 3344968.29

(E) ROW—413472.87, 3345602.80; 413767.66, 3345609.58; 413781.21, 3345585.86; 414496.15, 3345582.47; 414760.44, 3345545.20; 414973.90, 3345460.49; 415278.85, 3345487.60; 416224.19, 3345470.66; 415654.96, 3345426.61; 414973.90, 3345402.89; 414533.42, 3345521.48; 413621.96, 3345538.42; 411899.45, 3345292.57; 411899.63, 3345333.23; 411898.97, 3345349.21; 411898.28, 3345357.92; 416599.61, 3345528.80; 416603.89, 3345480.95

(iii) Note: Map of Unit 3, Gulf Highlands (Map 4), follows:

BILLING CODE 4310–55–P

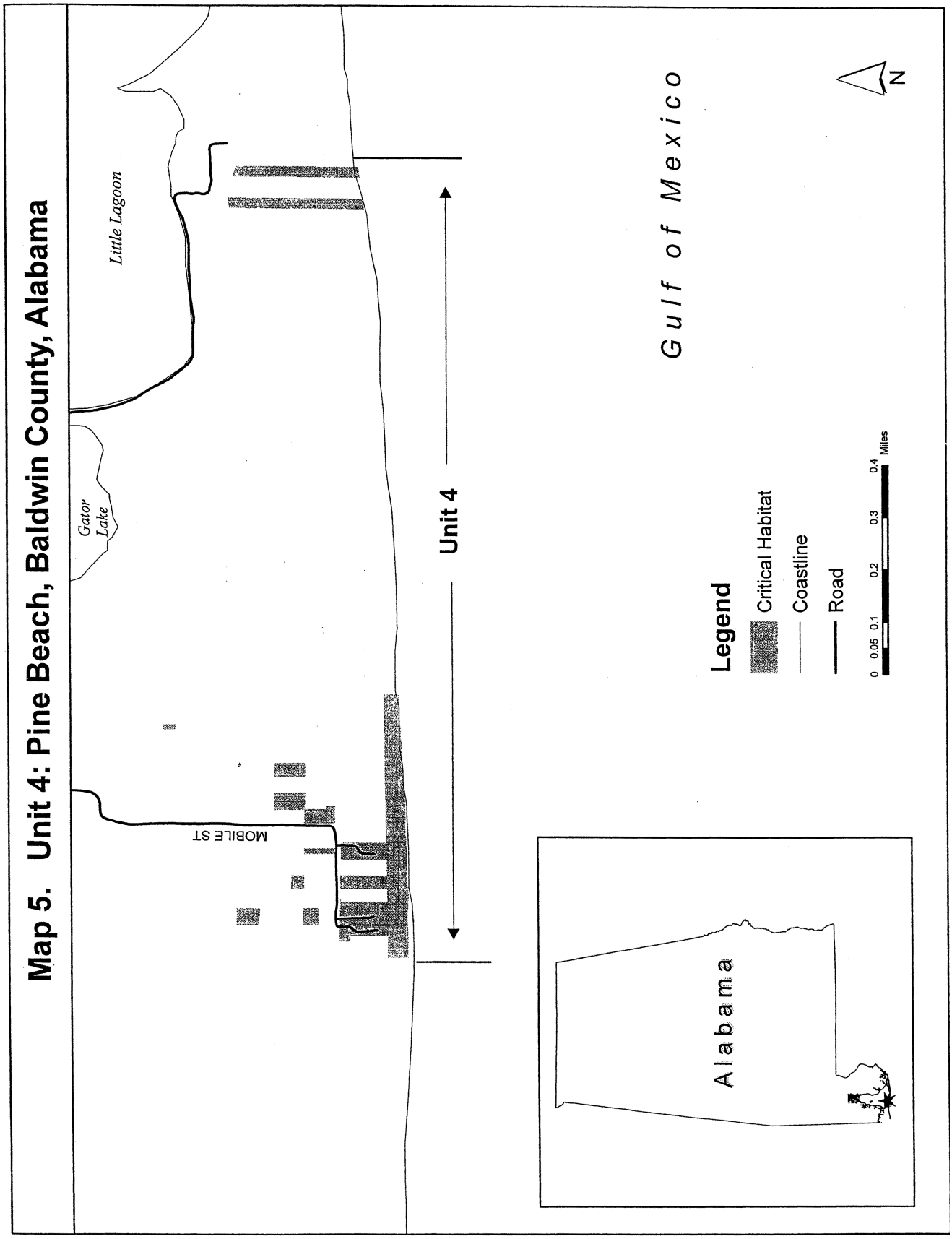

Map 4. Unit 3: Gulf Highlands, Baldwin County, Alabama
Bon Secour Bay
State Highway 180
Unit 3
Gulf of Mexico
N
Legend
Coastline
Road
Critical Habitat
0 0.1 0.2 0.4 0.6 0.8 Miles
Alabama

(9) Unit 4: Pine Beach, Baldwin County, Alabama.

(i) *General Description:* Unit 4 consists of 30 ac (12 ha) on 27 inholdings within the Perdue Unit of the Bon Secour National Wildlife Refuge as depicted on Map 5 in paragraph (9)(iii) of this entry and in the coordinates in paragraph (9)(ii) of this entry.

(ii) *Coordinates:* From the Pine Beach USGS 1:24,000 quadrangle map, Alabama, land bounded by the following UTM 16 NAD 83 coordinates (E, N), except those areas covered by incidental take permits shown on the map in paragraph (9)(iii) of this entry: 419890.08, 3344529.29; 419946.90, 3344389.62; 420406.15, 3344394.35; 420401.42, 3344342.27; 419587.07, 3344320.96; 419589.44, 3344384.88; 419658.09, 3344384.88; 419655.72, 3344503.25; 419636.78, 3344503.25; 419639.15, 3344534.02; 419783.19, 3344531.65; 419783.55, 3344384.88; 419803.49, 3344384.88; 421930.69, 3344448.80; 421895.18, 3344446.43; 422030.12, 3344465.37; 419842.74, 3344635.81; 419797.76, 3344640.55; 419688.86, 3344841.77; 419740.94, 3344841.77; 419688.86, 3344645.28; 419743.31, 3344642.92; 419740.94, 3344593.20; 419688.86, 3344595.57; 420294.50, 3345060.66; 420306.84, 3345060.44; 420306.62, 3345022.12; 420294.28, 3345022.34; 420148.12, 3344725.77; 420190.73, 3344725.77; 420188.36, 3344633.45; 420150.49, 3344633.45; 420046.32, 3344728.14; 420098.40, 3344728.14; 420098.40, 3344635.81; 420046.32, 3344635.81; 420046.32, 3344567.16; 420058.16, 3344567.16; 420058.16, 3344545.86; 420003.71, 3344545.86; 420003.71, 3344638.18; 419906.65, 3344638.18; 419927.96, 3344638.18; 419927.96, 3344545.86; 419906.65, 3344548.22; 419690.90, 3344778.02; 419740.44, 3344772.85; 419801.19, 3344677.57; 419842.01, 3344675.40; 421902.16, 3344854.73; 421932.71, 3344858.24; 421999.30, 3344843.90; 422029.66, 3344830.25; 421996.44, 3344462.00

(iii) Note: Map of Unit 4, Pine Beach (Map 5), follows:

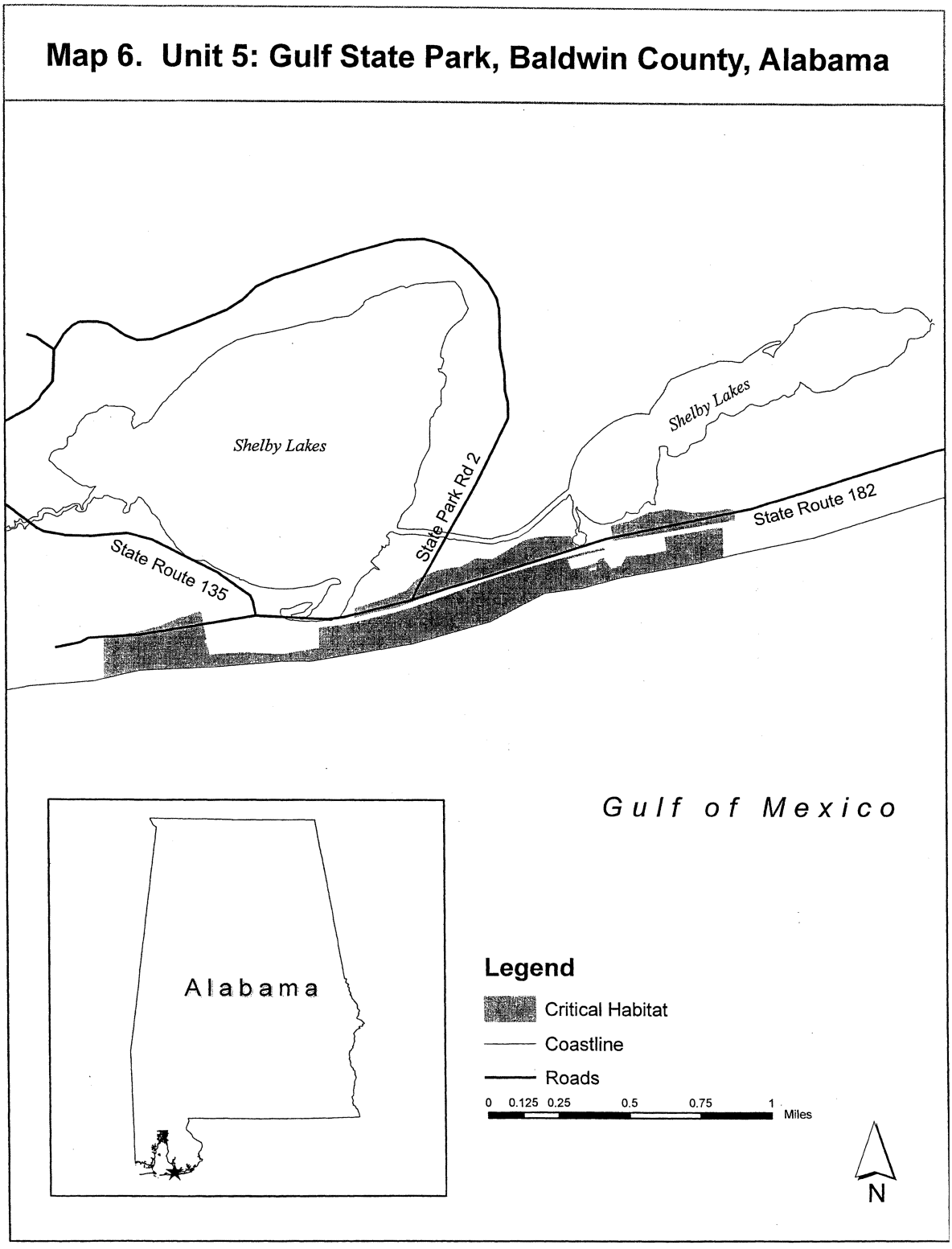

Map 5. Unit 4: Pine Beach, Baldwin County, Alabama
Little Lagoon
Gator Lake
MOBILE ST
Unit 4
Gulf of Mexico
N
Legend
Critical Habitat
Coastline
Road
0 0.05 0.1 0.2 0.3 0.4 Miles
Alabama

(10) Unit 5: Gulf State Park, Baldwin County, Alabama.

(i) *General Description:* Unit 5 consists of 192 ac (78 ha) in Gulf State Park east of the City of Gulf Shores in Baldwin County, Alabama. This unit encompasses essential features of Alabama beach mouse habitat north of the mean high water line (MHWL) to the seaward extent of either coastal wetlands, maritime forest, or Alabama beach mouse habitat managed under the 2004 Gulf State Park habitat conservation plan. Exact boundaries are depicted on Map 6 in paragraph (10)(iii) of this entry and in the coordinates in paragraph (10)(ii) of this entry.

(ii) *Coordinates:* From the Gulf Shores USGS 1:24,000 quadrangle map, Alabama, land bounded by the following UTM 16 NAD 83 coordinates (E, N), except those areas identified as developable in the current incidental take permit for the Alabama Department of Conservation and Natural Resources: 438247.09, 3347462.61; 438384.26, 3347485.47; 438504.29, 3347456.89; 438738.63, 3347479.75; 438738.63, 3347411.17; 438681.48, 3347405.45; 438675.76, 3347193.97; 437681.24, 3346988.21; 436938.21, 3346702.43; 436349.50, 3346599.55; 435377.85, 3346548.11; 435160.66, 3346490.95; 435166.37, 3346736.72; 435606.47, 3346856.75; 436572.41, 3346828.17; 36572.41, 3346913.91; 436881.06, 3347033.94; 436909.64, 3347068.23; 437612.66, 3347325.43; 437818.42, 3347319.72; 437829.85, 3347251.13; 438035.61, 3347308.29; 438041.33, 3347394.02; 435699.17, 3346883.42; 435754.39, 3346634.94; 435940.75, 3346652.19; 436154.72, 3346638.39; 436368.69, 3346683.25; 436368.69, 3346790.24

(iii) Note: Map of Unit 5, Gulf State Park (Map 6), follows:



* * * * *

Dated: January 12, 2007.

Todd Willens,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–270 Filed 1–29–07; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
January 30, 2007

Part III

United States Sentencing Commission

Notice of Proposed Amendments to Sentencing Guidelines, Policy Statements, and Commentary. Request for Public Comment, Including Public Comment Regarding Retroactive Application of Any of the Proposed Amendments. Notice of Public Hearing; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment, including public comment regarding retroactive application of any of the proposed amendments. Notice of public hearing.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the United States Sentencing Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. This notice also provides multiple issues for comment, some of which are contained within proposed amendments.

The specific proposed amendments and issues for comment in this notice are as follows: (A) Proposed amendment to §§ 2A1.1 (First Degree Murder), 2A1.2 (Second Degree Murder), 2A1.3 (Voluntary Manslaughter), 2A1.4 (Involuntary Manslaughter), 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder), 2A2.2 (Aggravated Assault), 2A2.3 (Minor Assault), 2A2.4 (Obstructing or Impeding Officers), 2A5.2 (Interference with Flight Crew Member or Flight Attendant; Interference with Dispatch, Operation, or Maintenance of Mass Transportation Vehicle or a Ferry), 2A6.1 (Threatening or Harrassing Communications; Hoaxes), 2B1.1 (Fraud, Theft, and Property Damage), 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions), 2B2.3 (Trespass), 2K1.4 (Arson; Property Damage by Use of Explosives), 2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction), 2Q1.1 (Knowing Endangerment Resulting From Mishandling Hazardous or Toxic Substances, Pesticides or Other Pollutants), 2X1.1 (Attempt, Solicitation, or Conspiracy (Not Covered by a Specific Offense Guideline)), 2X5.2 (Class A Misdemeanor Offenses (Not Covered by a Specific Offense Guideline)), Appendix A, and issues for comment regarding implementation of the USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. 109–177 (hereinafter the ''PATRIOT Act'') and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109–59, as these laws pertain to transportation offenses; (B) proposed amendment to Chapter Two, Parts A and G, §§ 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse), 2A3.3 (Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts), 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact), 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor), 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct), 2G2.5 (Recordkeeping Offenses Involving the Production of Sexually Explicit Materials; Failure to Provide Required Marks in Commercial Electronic Email), 2G3.1 (Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor; Misleading Domain Names), 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Tax Return Information), 2J1.2 (Obstruction of Justice), 4B1.5 (Repeat and Dangerous Sex Offender Against Minors), 5B1.3 (Conditions of Probation), 5D1.2 (Term of Supervised Release), 5D1.3 (Conditions of Supervised Release), Appendix A, and issues for comment regarding implementation of the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109–248 (hereinafter the ''Adam Walsh Act''); (C) proposed amendment to re-promulgate as a permanent amendment the temporary, emergency amendment to § 2B5.3 (Criminal Infringement of Copyright or Trademark), effective September 12, 2006 (see USSG Supplement to Appendix C (Amendment 682)), and issues for comment regarding implementation of the Stop Counterfeiting in Manufactured Goods Act, Pub. L. 109–181; (D) proposed amendment to Chapter Two, Parts D and X, §§ 2A1.1, 2A1.2, 2B1.1, 2B1.5 (Theft of, Damage to, or Destruction of Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources), 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy), 2E4.1 (Unlawful Conduct Relating to Contraband Cigarettes), 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), 2K1.4, 2M5.3 (Providing Material Support or Resources to Designated Foreign Terrorism Organizations of For a Terrorist Purpose), 2M6.1, 2Q2.1 (Offenses Involving Fish, Wildlife, and Plants), 2X1.1, 2X2.1 (Aiding and Abetting), 2X3.1 (Accessory After the Fact), Appendix A, and issues for comment regarding implementation of the PATRIOT Act and the Department of Homeland Security Appropriations Act, 2007, Pub. L. 109–295, as these laws pertain to terrorism offenses and border protection; (E) proposed amendment to §§ 2D1.1, 2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possessing a Listed Chemical; Attempt or Conspiracy), Appendix A (Statutory Index), and issues for comment regarding implementation of the PATRIOT Act and the Adam Walsh Act as these laws pertain to drug offenses; (F) proposed amendment to §§ 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien), 2L1.2 (Unlawfully Entering or Remaining in the United States), 2L2.1 (Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law), and 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport); (G)(1) proposed amendment to § 2B2.3 (Trespass) to implement the Respect for America's Fallen Heroes Act, Pub. L. 109–228; (2) proposed amendment to § 2H3.1 to implement the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109–162; and (3) issue for comment regarding implementation of the SAFE Port Act, Pub. L. 109–347; (H) proposed amendment to (1) §§ 2B1.1, 2D1.11, 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), and 2L1.1 to correct typographical errors; and (2) Chapter Three, Part D (Introductory Commentary) and § 3D1.1 (Procedure for Determining Offense Level on Multiple Counts) to address cases involving multiple counts contained in multiple indictments; (I)

issue for comment regarding § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons); (J) issues for comment regarding application of certain criminal history rules under § 4A1.2 (Definitions and Instructions for Computing Criminal History); (K) issue for comment regarding implementation of section 4 of the Telephone Records and Privacy Protection Act of 2006, Pub. L. 109–476, which provides the Commission with emergency amendment authority to amend the guidelines applicable to persons convicted of an offense under 18 U.S.C. § 1039; and (L) issue for comment regarding federal cocaine sentencing policy.

DATES: (A) Proposed Amendments.—Written public comment regarding the proposed amendments and issues for comment set forth in this notice, including public comment regarding retroactive application of any of the proposed amendments, should be received by the Commission not later than March 30, 2007.

(B) Public Hearing.—The Commission will be scheduling a public hearing on its proposed amendments. Further information regarding the public hearing, including requirements for testifying and providing written testimony, as well as the date of the hearing, will be provided by the Commission on its Web site at *www.ussc.gov.*

ADDRESSES: *Public comment should be sent to:* United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, *Attention:* Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, *Telephone:* (202) 502–4597.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May of each year pursuant to 28 U.S.C. 994(p).

The Commission seeks comment on the proposed amendments, issues for comment, and any other aspect of the sentencing guidelines, policy statements, and commentary. In addition to the issues for comment presented in the proposed amendments, the Commission requests comment regarding simplification of the guidelines. Specifically, with respect to the guidelines that are the subject of the following proposed amendments, should the Commission make additional amendments to simplify those guidelines and, if so, how?

The Commission also requests public comment regarding whether the Commission should specify for retroactive application to previously sentenced defendants any of the proposed amendments published in this notice. The Commission requests comment regarding which, if any, of the proposed amendments that may result in a lower guideline range should be made retroactive to previously sentenced defendants pursuant to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range).

The proposed amendments in this notice are presented in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part in comment and suggestions regarding alternative policy choices; for example, a proposed enhancement of [2] [4] [6] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's Web site at *www.ussc.gov.*

Authority: 28 U.S.C. § 994(a), (o), (p), (x); USSC Rules of Practice and Procedure, Rule 4.4.

Ricardo H. Hinojosa,

Chair.

1. Transportation

Synopsis of Proposed Amendment: This proposed amendment implements a number of provisions of the USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. 109–177 (hereinafter ''PATRIOT Act'') and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109–59 (hereinafter ''SAFETEA–LU''). The proposed amendments also provide a corresponding amendment to Appendix A (Statutory Index). Specifically:

(A) Section 110 of the PATRIOT Act strikes 18 U.S.C. §§ 1992 and 1993 and creates a new section 1992 (Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air). The legislation creates a statutory maximum term of imprisonment of 20 years and includes a penalty of imprisonment for any years or life or, if the offense resulted in the death of any person, the defendant may be sentenced to death. There are exceptions to the life and death sentences for cases of surveillance, conveying false information, or attempting, threatening, or conspiring to engage in any violation under this section. The statute also contains aggravated offenses. First, a sentence of life or death may be imposed when the offense involved railroad on-track equipment or a mass transportation vehicle carrying a passenger or employee, or carrying hazardous material, or both. Second, a life or death sentence may be given if the offense was committed with the intent to endanger the safety of any person, or with a reckless disregard for the safety of any person, when the railroad on-track equipment or mass transportation vehicle was carrying a defined hazardous material at the time of the offense.

The proposed amendment updates all references to 18 U.S.C. 1992 and eliminates all references to 18 U.S.C. 1993. The proposed amendment also adds 18 U.S.C. 1992 to the referenced statutory provisions in §§ 2A1.1 (First Degree Murder), 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder), and 2A5.2 (Interference with Flight Crew Member or Flight Attendant; Interference with Dispatch, Operation, or Maintenance of Mass Transportation Vehicle or a Ferry). Additionally, the amendment adjusts the definition of ''mass transportation'' in §§ 2A1.4, 2A5.2, and 2K1.4 (Arson; Property Damage by Use of Explosives) to reflect the new defining section, 18 U.S.C. 1992(d)(7). Also proposed is the addition of ''Navigation'' to the title and text of § 2A5.2 to better reflect the full scope of the newly created 18 U.S.C. 1992.

(B) Section 302 of the PATRIOT Act increases the scope of 18 U.S.C. 1036 (Entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport) by

adding to the areas protected from illegal entry under this title secure and restricted areas of a seaport. Section 302 also increases the statutory maximum penalty from five years to ten years.

The proposed amendment refers this offense to § 2B2.3(b)(1) and adds seaports to the list of protected areas warranting a two-level enhancement. The amendment also adds a definition for ''seaport'', as one does not currently exist in the guidelines.

(C) Section 303 of the PATRIOT Act adds a new offense at 18 U.S.C. 2237 (Criminal sanctions for failure to heave to, obstruction of boarding, or providing false information). This new statute makes it a crime to refuse to stop a vessel in violation of a federal law enforcement officer's order or to provide materially false information to a federal law enforcement officer during a boarding of a vessel.

The proposed amendment references this new offense to §§ 2A2.4 (Obstructing or Impeding Officers) and 2B1.1 (Fraud, Theft, and Property Damage).

(D) Section 306 of the PATRIOT Act provides new offenses in 18 U.S.C. 2291 (Destruction of vessel or maritime facility) and 2292 (Imparting or conveying false information). Section 2291 of title 18, United States Code, covers the destruction of vessels and maritime facilities and creates a statutory maximum term of imprisonment of 20 years. If the conduct under this section involves a vessel carrying nuclear or radioactive waste, a statutory maximum life sentence applies, and if death results, a life or death sentence is possible. Section 2292 of title 18, United States Code, prohibits providing false information regarding an attempt or alleged attempt to commit a crime and provides a statutory maximum sentence of five years.

The proposed amendment references 18 U.S.C. 2291 to 2A1.1 (First Degree Murder), 2A1.2 (Second Degree Murder), 2A1.3 (Voluntary Manslaughter), 2A1.4 (Involuntary Manslaughter), 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder), 2A2.2 (Aggravated Assault), 2A2.3 (Minor Assault), 2A6.1 (Threatening or Harrassing Communications; Hoaxes), 2B1.1 (Fraud, Theft, and Property Damage), 2K1.4 (Arson; Property Damage by Use of Explosives) and 2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction). Section 2292 of title 18, United States Code, is referenced to § 2A6.1.

(E) Section 307(c) of the PATRIOT Act directs the Commission to review the guidelines to determine whether a sentencing enhancement is appropriate for any offense under sections 659 or 2311 of title 18, United States Code.

The proposed amendment provides two options to respond to this directive. Option 1 amends § 2B1.1(b)(4) to provide an alternative enhancement if the defendant was convicted under 18 U.S.C. 659. An issue for comment also requests input regarding whether any such enhancement should include convictions under 18 U.S.C. 2312 and 2313. Option 2 responds to the directive by revising § 2B1.1(b)(11). Currently this section provides a minimum offense level of 14 for offenses involving an organized scheme to steal vehicles or vehicle parts. The proposed amendment adds convictions under 18 U.S.C. 659 to this section and also provides a two-level increase for all cases covered under the subsection.

(F) Section 308 of the PATRIOT Act increases the statutory maximum penalties for 18 U.S.C. 2199 (Stowaways on vessels or aircraft). Absent any aggravating factors, the statutory maximum for offenses is increased from one year to five years. Section 308 adds a statutory maximum of 20 years if a person acts with the intent to commit serious bodily injury and serious bodily injury occurs. For offenses involving the intent to kill and death occurs, section 308 also adds a penalty of imprisonment for any term of years, including life or death.

The proposed amendment references 18 U.S.C. 2199 to 2A1.1 (First Degree Murder), 2A1.2 (Second Degree Murder), 2A1.3 (Voluntary Manslaughter), 2A1.4 (Involuntary Manslaughter), 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder), 2A2.2 (Aggravated Assault), and 2A2.3 (Minor Assault).

(G) Section 4210 of SAFETEA–LU creates a new offense at 49 U.S.C. 14915 for failure to release household goods with a statutory maximum of two years.

The proposed amendment references this section to § 2B1.1 as it is the most analogous guideline.

(H) Section 4102(b) of SAFETEA–LU creates a new criminal violation for violating a commercial motor vehicle's out-of-service order. The offense carries a statutory maximum of one year.

The proposed amendment references this section to § 2X5.2 (Class A Misdemeanor (Not Covered by Another Specific Offense Guideline)).

The proposed amendment also includes five issues for comment pertaining to the following:

(1) Section 7121 of SAFETEA–LU creates a new aggravated felony under 49 U.S.C. 5124 that carries a statutory maximum of 10 years when conduct under the section results in the release of a hazardous material that causes bodily injury or death. Appendix A (Statutory Index) currently references 49 U.S.C. 5124 to § 2Q1.2 (Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification; Unlawfully Transporting Hazardous Materials in Commerce). An issue for comment asks whether penalties under § 2Q1.2 are adequate for the new offense.

(2) The proposed amendment adds seaports to the two-level enhancement in § 2B2.3(b)(1). Section 2B2.3(c) also provides a cross reference if the offense was committed with the intent to commit another criminal offense. An issue for comment asks whether, as an alternative to the cross reference provision and as a possible means of simplifying this guideline, it should amend § 2B2.3 (Trespass) to provide instead a general specific offense characteristic for any trespass offense that was committed with the intent to commit another offense.

(3) Section 309 of the PATRIOT Act creates a new offense at 18 U.S.C. 226 (Bribery affecting port security), making it a crime to knowingly, and with the intent to commit international or domestic terrorism, bribe a public official to affect port security. It is also a crime under this section to be the recipient of such a bribe in return for being influenced in the performance of public duties affecting port security with the knowledge that such influence will be used to commit or plan to commit an act of terrorism.

The proposed amendment references 18 U.S.C. 226 to § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Official; Conspiracy to Defraud by Interference with Governmental Functions).

An issue for comment addresses this proposed reference to § 2C1.1 as well as the operation of the cross reference in § 2C1.1(c)(1) in cases involving an intent to commit an act of international or domestic terrorism.

(4) Whether the Commission should use the term ''mass transportation'' or ''public transportation'' in the context of § 2A5.2 and other guidelines.

(5) The proposed amendment provides options for increasing penalties for offenses under 18 U.S.C. 659. An issue for comment asks whether the Commission also should provide similar increases for offenses under 18 U.S.C. 2312 (Transportation of stolen vehicles) and 2313 (Sale or receipt of stolen vehicles).

Proposed Amendment

The Commentary to § 2A1.1 captioned ''Statutory Provisions'' is amended by inserting ''1992(a)(7),'' after ''1841(a)(2)(C),''; and by inserting ''2199, 2291,'' after ''2118(c)(2),''.

The Commentary to § 2A1.2 captioned ''Statutory Provisions'' is amended by inserting ''2199, 2291,'' after ''1841(a)(2)(C),''.

The Commentary to § 2A1.3 captioned ''Statutory Provisions'' is amended by inserting ''2199, 2291,'' after ''1841(a)(2)(C),''.

The Commentary to § 2A1.4 captioned ''Statutory Provisions'' is amended by inserting ''2199, 2291,'' after ''1841(a)(2)(C),''.

The Commentary to § 2A1.4 captioned ''Application Note'' is amended in Note 1 by striking ''18 U.S.C. 1993(c)(5)'' and inserting ''18 U.S.C. 1992(d)(7)''.

The Commentary to § 2A2.1 captioned ''Statutory Provisions'' is amended by striking ''1993(a)(6)'' and inserting ''1992(a)(7), 2199, 2291''.

The Commentary to § 2A2.2 captioned ''Statutory Provisions'' is amended by striking ''1993(a)(6)'' and inserting ''1992(a)(7), 2199, 2291''.

The Commentary to § 2A2.3 captioned ''Statutory Provisions'' is amended by inserting '', 2199, 2291'' after ''1751(e)''.

The Commentary to § 2A2.4 captioned ''Statutory Provisions'' is amended by inserting ''2237(a)(1), (a)(2)(A),'' after ''1502,''.

Section 2A5.2 is amended in the heading by inserting ''Navigation,'' after ''Dispatch,''; and by striking ''or Ferry''.

Sections 2A5.2(a)(1) and (a)(2) are amended by striking the comma after ''facility'' each place it appears and inserting ''or''; and by striking '', or a ferry'' each place it appears.

The Commentary to § 2A5.2 captioned ''Statutory Provisions'' is amended by striking ''1993(a)(4), (5), (6), (b);'' and inserting ''1992(a)(1), (a)(4), (a)(5), (a)(6);''.

The Commentary to § 2A5.2 captioned ''Application Note'' is amended in Note 1 in the last paragraph by striking ''18 U.S.C. 1993(c)(5)'' and inserting ''18 U.S.C. 1992(d)(7)''.

The Commentary to § 2A6.1 captioned ''Statutory Provisions'' is amended by striking ''1993(a)(7), (8),'' and inserting ''1992(a)(9), (a)(10), 2291(a)(8), 2291(e), 2292,''.

[Option 1 (Section 659 offenses)

Section 2B1.1 is amended in subsection (b)(4) by inserting ''(A)'' before ''offense involved''; and by striking ''property, increase'' and inserting ''; or (B) defendant was convicted under 18 U.S.C. § increase''.]

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 5 by inserting ''(A)'' after ''(b)(4)'' each place it appears.]

[Option 2 (Section 659 offenses)

Section 2B1.1 is amended in subsection (b)(11) by inserting ''(A)'' before ''offense involved''; and by striking '', and'' and inserting ''; or (B) defendant was convicted under 18 U.S.C. 659, increase by 2 levels. If''.]

The Commentary to § 2B1.1 captioned ''Statutory Provisions'' is amended by inserting ''(a)(1), (a)(5)'' after ''1992''; by striking ''1993(a)(1), (a)(4),''; by inserting ''2291,'' after ''2113(b),''; and by inserting ''14915,'' after ''49 U.S.C. §§ ''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended by striking Note 10 and inserting the following:

''10. Application of Subsection (b)(11).—Subsection (b)(11) provides a minimum offense level in the case of an ongoing, sophisticated operation (such as an auto theft ring or 'chop shop') to steal vehicles or vehicle parts, or to receive stolen vehicles or vehicle parts. This subsection also applies if the defendant was convicted of cargo theft under 18 U.S.C. 659. For purposes of this subsection, 'vehicle' means motor vehicle, vessel, or aircraft.''.

The Commentary to § 2B1.1 captioned ''Background'' is amended in the paragraph that begins ''A minimum offense level of level 14'' by striking ''Therefore, the'' and inserting ''The''; by inserting ''in subsection (b)(11)(A)'' after ''is used''; and by adding at the end the following:

''The minimum offense level also applies to convictions under 18 U.S.C. 659 for offenses involving cargo theft. Subsection (b)(11)(B) implements the directive in section 307 of Public Law 109–177.''.]

Section 2B2.3 is amended in subsection (b)(1) by striking ''secured'' each place it appears and inserting ''secure''; by redesignating subdivisions (E) and (F) as subdivisions (F) and (G), respectively; and by inserting the following after ''airport;'':

''(E) in a secure area within a seaport;''.

The Commentary to § 2B2.3 captioned ''Statutory Provisions'' is amended by inserting '', 2199'' after ''1036''.

The Commentary to § 2B2.3 captioned ''Application Notes'' is amended in Note 1 by adding at the end the following:

'' 'Seaport' has the meaning given that term in 18 U.S.C. 26.''.

The Commentary to § 2B2.3 captioned ''Background'' is amended by striking '', such as nuclear facilities,'' and inserting ''(such as nuclear facilities) and other locations (such as airports and seaports)''.

The Commentary to § 2C1.1 captioned ''Statutory Provisions'' is amended by inserting ''226,'' after ''§§ 201(b)(1), (2),''.

The Commentary to § 2K1.4 captioned ''Statutory Provisions'' is amended by inserting ''(a)(1), (a)(2), (a)(4)'' after ''1992''; by striking ''1993(a)(1), (a)(2), (a)(3), (b),''; and by inserting ''2291,'' after ''2275''.

The Commentary to § 2K1.4 captioned ''Application Notes'' is amended in Note 1 by striking ''18 U.S.C. 1993(c)(5)'' and inserting ''18 U.S.C. 1992(d)(7)''.

The Commentary to § 2M6.1 captioned ''Statutory Provisions'' is amended by striking ''1993(a)(2), (3), (b), 2332a (only with respect to weapons of mass destruction as defined in 18 U.S.C. 2332a(c)(2)(B), (C), and (D))'' and inserting ''1992(a)(2), (a)(3), (a)(4), (b)(2), 2291,''.

The Commentary to § 2Q1.1 captioned ''Statutory Provisions'' is amended by inserting ''18 U.S.C. 1992(b)(3);'' before ''33 U.S.C. 1319(c)(3);''.

Section 2X1.1 is amended in subsection (d)(1)(A) by inserting ''(a)(1)–(a)(7), (a)(9), (a)(10)'' after ''1992;''; and in subsection (d)(1)(B) by inserting ''and'' after ''§ 32;''; and by striking ''18 U.S.C. 1993; and''.

The Commentary to § 2X5.2 captioned ''Statutory Provisions'' is amended by inserting ''; 49 U.S.C. 31310'' after ''14133''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 225 the following:

''18 U.S.C. 226 2C1.1''; by inserting after the line referenced to 18 U.S.C. 1035 the following:

''18 U.S.C. 1036 2B2.3''; by striking the line referenced to 18 U.S.C. 1992 through the end of the line referenced to 18 U.S.C. 1993(b) and inserting the following:

''18 U.S.C. 1992(a)(1)—2A5.2, 2B1.1, 2K1.4, 2X1.1
18 U.S.C. 1992(a)(2)—2K1.4, 2M6.1, 2X1.1
18 U.S.C. 1992(a)(3)—2M6.1, 2X1.1
18 U.S.C. 1992(a)(4)—2A5.2, 2K1.4, 2M6.1, 2X1.1
18 U.S.C. 1992(a)(5)—2A5.2, 2B1.1, 2X1.1
18 U.S.C. 1992(a)(6)—2A5.2, 2X1.1
18 U.S.C. 1992(a)(7)—2A1.1, 2A2.1, 2A2.2, 2X1.1
18 U.S.C. 1992(a)(8)—2X1.1
18 U.S.C. 1992(a)(9)—2A6.1, 2X1.1
18 U.S.C. 1992(a)(10)—2A6.1, 2X1.1'';

in the line referenced to 18 U.S.C. 2199 by inserting ''2A1.1, 2A1.2, 2A1.3,

2A1.4, 2A2.1, 2A2.2, 2A2.3,'' before ''2B1.1''; by inserting after the line referenced to 18 U.S.C. 2233 the following:

''18 U.S.C. 2237(a)(1), (a)(2)(A)—2A2.4
18 U.S.C. 2237(a)(2)(B)—2B1.1'';

by inserting after the line referenced to 18 U.S.C. § 2281 the following:

''18 U.S.C. 2291—2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A6.1, 2B1.1, 2K1.4, 2M6.1
18 U.S.C. 2292—2A6.1'';

by inserting after the line referenced to 49 U.S.C. 14912'' the following:

''49 U.S.C. 14915—2B1.1''; and

by inserting after the line referenced to 49 U.S.C. 30170'' the following:

''49 U.S.C. 31310—2X5.2''.

Issues for Comment

1. The SAFETEA–LU Act, Pub. L. 109–59, amended 49 U.S.C. 5124 to provide a new aggravated felony, with a 10-year statutory maximum term of imprisonment, for cases involving a release of a hazardous material that results in death or bodily injury. Appendix A (Statutory Index) references 49 U.S.C. § 5124 to § 2Q1.2 (Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification; Unlawfully Transporting Hazardous Materials in Commerce). In 2004 the Commission amended § 2Q1.2 to provide a two-level enhancement in § 2Q1.2(b)(7) for defendants convicted of 49 U.S.C. 5124 or 46312 because ''[t]hese offenses pose an inherent risk to large populations in a manner not typically associated with other pollution offenses sentenced under the same guideline. See USSG App. C (Amendment 672) (effective Nov. 1, 2004). In addition to application of § 2Q1.2(b)(7), a defendant convicted of 49 U.S.C. 5124 likely would receive a four-level enhancement under § 2Q1.2(b)(1)(B) for a release of a hazardous substance (because the offense of conviction necessarily involves such a release) and a nine-level enhancement for the substantial likelihood of death or serious bodily injury under § 2Q1.2(b)(2). When added to the Base Offense Level of 8, the minimum offense level under § 2Q1.2 would be level 23 (46–57 months at CHC I). Further, Application Note 6 states that an upward departure would be warranted in any case in which death or serious bodily injury results. The Commission requests comment regarding whether § 2Q1.2 currently provides adequate penalties for a defendant convicted under 49 U.S.C. 5124. If not, how should the Commission amend § 2Q1.2 to address adequately these offenses? For example, should the Commission provide an enhancement greater than two levels for such offenses? Should the Commission provide a minimum offense level for 49 U.S.C. 5124 offenses that actually result in death or serious bodily injury?

2. The USA PATRIOT Improvement and Reauthorization Act of 2005, Public Law 109–177, amended 18 U.S.C. 1036 to add seaports to the list of covered locations and to increase the statutory maximum term of imprisonment from 5 years to 10 years. The proposed amendment adds seaports to the two-level enhancement in § 2B2.3(b)(1). Section 2B2.3 (Trespass) also provides a cross reference in subsection (c) if the offense was committed with the intent to commit a felony offense. The Commission requests comment regarding whether, as an alternative to the cross reference provision, and as a possible means of simplifying this guideline, it should amend § 2B2.3 to provide instead a general specific offense characteristic for any trespass offense that was committed with the intent to commit a felony. If so, how many levels would be appropriate? Should the Commission consider amending § 2B2.3(b)(1) to provide an additional increase if the trespass on any of the enumerated locations was committed with the intent to commit a felony offense?

3. The USA PATRIOT Improvement and Reauthorization Act provided a new offense at 18 U.S.C. 226 for bribery affecting port security. The provision criminalizes bribery with the intent to commit international terrorism or domestic terrorism and provides a statutory maximum term of imprisonment of 15 years. In general, the guidelines reference bribery offenses to § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions), which provides alternative base offense levels of 14, if the defendant was public official, or 12, otherwise. Section 2C1.1(c)(1) provides a cross reference if the offense was committed for the purpose of facilitating the commission of another criminal offense (and the guideline applicable to a conspiracy to commit that other offense results in a greater offense level than § 2C1.1). The Commission requests comment regarding whether it should reference 18 U.S.C. § 226 to § 2C1.1 and, if so, whether the cross reference provision is a sufficient means of handling bribery cases involving an intent to commit an act of international or domestic terrorism. If the offense is referenced to § 2C1.1, should the Commission, as an alternative to the cross reference provision and as a possible means of simplifying this guideline, provide a specific offense characteristic for convictions of 18 U.S.C. 226 that results in an offense level proportionate to other terrorism-related offenses (e.g., providing a minimum offense level of 26 would provide parity with offenses sentenced under § 2M5.3 (Providing Material Support or Resources to Designated Foreign Terrorist Organizations or for a Terrorist Purpose)). Alternatively, should the Commission reference 18 U.S.C. 226 to 2M5.3?

4. In addition to consolidating 18 U.S.C. 1992 and 1993, the USA PATRIOT Improvement and Reauthorization Act replaced the term ''public transportation'' (added by the SAFETEA–LU Act) with ''mass transportation'' (the term used in 18 U.S.C. 1992 prior to SAFETEA–LU). ''Mass transportation'' now is defined at 18 U.S.C. 1992(d)(7) to have the same meaning as ''public transportation'' (defined at 49 U.S.C. 5302(a)(7)) except that, for purposes of 18 U.S.C. 1992, ''mass transportation'' includes school bus, charter, sightseeing transportation, and passenger vessel. School bus and charter are otherwise expressly excluded from the definition of ''public transportation'' as are intercity bus transportation and intercity passenger rail transportation. The Commission requests comment regarding the appropriate term to use in the context of § 2A5.2 (Interference with Flight Crew Member or Flight Attendant; Interference with Dispatch, Operation, or Maintenance of Mass Transportation Vehicle or a Ferry). Specifically, should the Commission use ''mass transportation'' as that term is now defined by 18 U.S.C. 1992(d)(7) (i.e., including school bus, charter, sightseeing transportation and passenger vessel) or use the more limited term ''public transportation'' (i.e., excluding school bus, charter, intercity bus transportation, and intercity passenger rail transportation)?

5. The proposed amendment provides 2 options for amending § 2B1.1 to address 18 U.S.C. 659 (Cargo theft). The Commission requests comment regarding whether, rather than an enhancement based on the statute of conviction, it ought to provide an enhancement based on real offense conduct such as if the offense involved cargo theft. The Commission also requests comment regarding whether it

should provide an enhancement for conduct covered by convictions under 18 U.S.C. 2312 (Transportation of stolen vehicles) and 2313 (Sale or receipt of stolen vehicles), either as part of the proposed enhancement for 18 U.S.C. 659 offenses or as a separate enhancement.

2. Sex Offenses

Synopsis of Proposed Amendment: This multi-part proposed amendment implements the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109–248. Part I of this proposed amendment implements the directive in section 141 of the Act pertaining to the new offense in 18 U.S.C. 2250 for failure to register as a sex offender. The directive instructs the Commission, in promulgating guidelines for use of a sentencing court in determining the sentence to be imposed for [18 U.S.C. 2250], to consider the following matters:

(1) Whether the person committed another sex offense in connection with, or during, the period for which the person failed to register.

(2) Whether the person committed an offense against a minor in connection with, or during, the period for which the person failed to register.

(3) Whether the person voluntarily attempted to correct the failure to register.

(4) The seriousness of the offense which gave rise to the requirement to register, including whether such offense is a tier I, tier II, or tier III offense, as those terms are defined in section 111 [of the Act].

(5) Whether the person has been convicted or adjudicated delinquent for any offense other than the offense which gave rise to the requirement to register.

Section 2250 of title 18, United States Code, provides a statutory maximum term of imprisonment of ten years for the failure to register. There is an additional mandatory consecutive term of 5 years' imprisonment applicable if a person commits a crime of violence while in failure to register status (18 U.S.C. 2250(c)). The requirements pertaining to who must register, where the registration must occur, and for how long are set forth in 42 U.S.C. 16911.

The proposed amendment provides a new guideline in § 2A3.5 (Failure to Register as a Sex Offender). The proposed amendment presents two options for addressing the fourth matter of the directive. Option One provides multiple base offense levels based on the category of offense that gave rise to the registration requirement: level 16 if the offense that gave rise to the requirement to register was a Tier III offense; level 14 if the offense that gave rise to the requirement to register was a Tier II offense; and level 12 if the offense that gave rise to the requirement to register was a Tier I offense. Option Two provides a base offense level of [12] and a specific offense characteristic in § 2A3.5(b)(1) providing a two-level increase if the offense that gave rise to the requirement to register was a Tier II offense and a four-level increase if the offense that gave rise to the requirement to register was a Tier III offense. The resulting offense level under either option is the same for each tier of offense. The definitions for Tier I, II, and III offenses are the statutory definitions provided in 42 U.S.C. 16911(2), (3), and (4), respectively.

The first and second matters are addressed in § 2A3.5(b)(1) of Option One, and in § 2A3.5(b)(2) of Option Two. Both options provide alternative increases based on the type of offense committed while in a failure to register status and on whether that offense was committed against a minor or an adult. The proposed amendment provides a 6-level increase if, while in a failure to register status, the defendant committed a sex offense against an adult, or kidnapped or falsely imprisoned a minor. If the defendant committed a sex offense against a minor, the proposed amendment provides an 8-level increase and a minimum offense level of [24]–[28].

The third matter is addressed in § 2A3.5(b)(2) in Option One, and in § 2A3.5(b)(3) in Option Two. Both options provide a [2][4]-level decrease if the defendant voluntarily attempted to correct the failure to register.

Issues for comment #2 and #3 in Part V of the proposed amendment request comment regarding the scope of these proposed enhancements. Issue for comment #3 also asks whether the Commission should include an instruction that the reduction does not apply if any of the proposed specific offense characteristics also apply.

The proposed amendment does not specifically address the fifth matter because application of Chapter Four will take into account whether the person has been convicted or adjudicated delinquent for any offense other than the offense which gave rise to the requirement to register.

The proposed amendment also provides another new guideline for certain aggravated offenses related to the requirement to register as a sex offender. As noted previously, 18 U.S.C. 2250(c) provides a mandatory consecutive term of 5 years if a crime of violence was committed while the defendant was in a failure to register status. Section 2260A of title 18, United States Code, provides a mandatory consecutive term of 10 years' imprisonment if a person who is required to register commits an enumerated offense (including kidnapping, human trafficking, and various sex offenses). The new guideline, § 2A3.6 (Aggravated Offenses Relating to Registration as a Sex Offender), will apply to convictions under 18 U.S.C. 2250(c) or 2260A, and instructs the court that the guideline sentence for any such conviction is the term of imprisonment required by statute. Neither Chapters Three nor Four will apply to any count of conviction covered by this guideline. This approach is the same approach the Commission has taken with other statutes that provide mandatory consecutive terms of imprisonment, namely 18 U.S.C. 1028A (see § 2B1.6 (Aggravated Identity Theft) and 18 U.S.C. 924(c) (See § 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes).)

Part II implements other new offenses and increased penalties as follows:

(A) The Act provides a mandatory minimum term of imprisonment of 30 years for convictions under 18 U.S.C. 2241(c) (Aggravated sexual abuse with children). This statute covers crossing state lines to engage in the sexual abuse of a child under the age of 12 years. It also covers engaging in a sexual act under the circumstances described in 18 U.S.C. 2241(a) and (b) (force, threat, or other means) with a child who is between the ages of 12 years and 16 years and is at least four years younger than the person who is engaging in the sexual act. The proposed amendment provides a base offense level of [40] in § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) if the defendant was convicted under 18 U.S.C. 2241(c). The specific offense characteristic for the age of the victim, subsection (b)(2), would not apply because the higher base offense level takes into account the age of the victim. There also is an application note that instructs the court not to apply the enhancement in § 2A3.1(b)(1) (four-level enhancement if the offense involved conduct described in 18 U.S.C. § 2241(a) or (b)) if the basis for the conviction under 18 U.S.C. 2241(c) is that the defendant engaged in conduct described in 18 U.S.C. 2241(a) or (b).

(B) The Act increased the statutory maximum term of imprisonment for convictions under 18 U.S.C. 2243(b) for sexual abuse of a ward from five years to 15 years. The proposed amendment proposes to increase the base offense level in § 2A3.3 (Criminal Sexual Abuse

of a Ward or Attempt to Commit Such Acts) to level [14][16][18][20].

(C) The Act created a new offense in 18 U.S.C. 2244(a)(5) for sexual contact offenses that would have violated 18 U.S.C. 2241(c) had the sexual contact been a sexual act. (Section 2241(c) covers sexual acts with a child under 12 years old or sexual acts involving conduct described in 18 U.S.C. 2241(a) or (b) with a child between the ages of 12 and 16 and who is at least four years younger than the defendant.) The offense has a statutory maximum term of imprisonment of life.

The proposed amendment addresses this new offense by increasing the minimum offense level in the age enhancement in subsection § 2A3.4(b)(1) from level 20 to level 22.

Issue for Comment #4 in Part V of the proposed amendment addresses whether § 2A3.4 already adequately accounts for the new offense and therefore does not need to be amended.

(D) The Act amended 18 U.S.C. 1591 (sex trafficking of children or by force, fraud, or coercion) to provide a mandatory minimum term of imprisonment of 15 years if the sex trafficking offense involved a minor who had not attained the age of 14 years or involved force, fraud, or coercion (subsection 1591(b)(1)) and a mandatory minimum of 10 years if the offense involved a minor who had attained the age of 14 years but had not attained the age of 18 years (subsection 1591(b)(2)). The Act also increased the statutory maximum term of imprisonment from 40 years to life for 18 U.S.C. 1591(b)(2) offenses.

To address the increased statutory minimums, the proposed amendment modifies the base offense levels in §§ 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor) and 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct).

With respect to offenses involving force, fraud, or coercion, the proposed amendment would create a heightened base offense level of [34][36] in § 2G1.1 if the offense of conviction is 18 U.S.C. 1591 and the offense involved conduct described in subsection (b)(1) of that statute. An alternative base offense level of 14 would apply in all other cases. The proposed amendment also excludes application of the enhancement in § 2G1.1(b)(1) to cases that are sentenced under § 2G1.1(a)(1) because cases to which that base offense level apply necessarily involve fraud or coercion.

With respect to offenses involving minors, the proposed amendment would create alternative base offense levels in § 2G1.3 based on the statute of conviction and the conduct described in that conviction. For convictions under 18 U.S.C. 1591 in which the offense involved conduct described in subsection (b)(1) of that statute (*i.e.*, offense was effected by force, fraud, or coercion, or involved a minor who had not attained the age of 14 years), the proposed base offense level is [34][36]. For convictions under 18 U.S.C. 1591 in which the offense involved conduct described in subsection (b)(2) of that statute (*i.e.*, offense involved a minor who had attained the age of 14 but had not attained the age of 18 years), the proposed base offense level is [30][32].

The Act also increased the penalties for 18 U.S.C. 2422(b) (Coercion and enticement [of a minor to engage in criminal sexual activity]) and 2423(a) (Transportation [of a minor] with intent to engage in criminal sexual activity). Both statutes now have a mandatory minimum term of 10 years (increased from 5 years) and a statutory maximum term of imprisonment of life (increased from 30 years). The proposed amendment would add § 2G1.3(a)(3) with a base offense level of [28][30] if the defendant was convicted under 18 U.S.C. 2422(b) or 2423(a). If the Commission decides that the base offense level should be the same for offenses under 18 U.S.C. 1591(b)(2), 2422(b), and 2423(a), then the Team would modify the proposed amendment to consolidate these offenses into one base offense level.

The proposed amendment also provides a range of [4]–[8] at § 2G1.3(b)(5). It also addresses the interaction of subsection (b)(5), which provides an 8-level increase if the offense involved a minor who had not attained the age of 12 years, and the proposed addition of alternative base offense levels. Now that age is a factor the court considers in determining the appropriate base offense level for convictions under 18 U.S.C. 1591, the proposed amendment provides a new application note that instructs the court not to apply subsection (b)(5) if subsection (a)(1) applies. The proposed amendment also provides an option for modifying the enhancement.

Issue for comment #8 asks whether the Commission should consider providing an increase of four or six levels, instead of eight levels, at § 2G1.3(b)(5) in any case in which the age of the minor victim is taken into account by base offense level.

(E) The Act created a new offense in 18 U.S.C. 2257A that imposes recordkeeping requirements on individuals who produce depictions of simulated sexually explicit conduct. Failure to comply with the recordkeeping requirements carries a statutory maximum term of imprisonment of 1 year. If the offense was intended to conceal a child pornography offense, the statute provides a statutory maximum term of imprisonment of 5 years for the first offense; for the second offense, the penalty is a 2-year mandatory minimum and a statutory maximum of 10 years.

The proposed amendment references this new offense to § 2G2.5 (Recordkeeping Offenses Involving the Production of Sexually Explicit Materials; Failure to Provide Required Marks in Commercial Electronic Email).

Issue for Comment #5 in Part V of the proposed amendment requests comment regarding the refusal to allow inspection of records in violation of 18 U.S.C. 2257(f)(5) or 2257A.

(F) The Act created a new offense in 18 U.S.C. 2252A(g) that prohibits engaging in child exploitation enterprises, defined in the statute as violating 18 U.S.C. § 1591, 1201 (if the victim is a minor), Chapter 109A (involving a minor), Chapter 110 (except for 18 U.S.C. 2257 and 2257A), or Chapter 117 (involving a minor), as part of a series of felony violations constituting three or more separate incidents and involving more than one victim, and committing those offenses in concert with three or more other people. The statute provides a mandatory minimum term of imprisonment of 20 years.

The proposed amendment creates a new guideline, § 2G2.6 (Child Exploitation Enterprises), to cover this new offense. The guideline provides a base offense level of [34][35][36][37] and three specific offense characteristics, based on the age of the victim (subsection (b)(1)), whether the defendant was the parent or had some other custodial care of the victim (subsection (b)(2)), and whether the offense involved conduct described in 18 U.S.C. 2241(a) or (b) (subsection (b)(3)).

Issue for Comment #6 requests comment regarding the base offense level, the scope of the proposed specific offense characteristics, and whether the Commission should consider other conduct for purposes of providing additional specific offense characteristics.

(G) The Act created a new offense in 18 U.S.C. 2252C that prohibits knowingly embedding words or images into the source code of a Web site with the intent to deceive a person into

viewing obscenity, or to deceive a minor into viewing material harmful to minors. The statute carries a statutory maximum term of imprisonment of 20 years if the offense involved a minor, or a maximum of 10 years, otherwise. Application Note 2 proposes that the specific offense characteristic at § 2G3.1(b)(3) not apply for offenses under 18 U.S.C. 2252C.

The proposed amendment modifies subsection (b)(2) of § 2G3.1 (Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor; Misleading Domain Names), which currently provides a two-level enhancement if the offense involved misleading domain names. The proposed amendment adds to this enhancement embedding words or digital images on a Web site and also presents the option of providing a four-level increase for this enhancement.

Issue for Comment #7 requests comment regarding whether the Commission should provide an enhancement if the defendant intended to deceive someone other than a minor into viewing obscenity.

Part III addresses other criminal provisions contained in the Act as follows:

(A) The Act created a new Class A misdemeanor in 42 U.S.C. 16984 prohibiting the use of a child's fingerprints that were derived from a program funded by federal grants to support voluntary fingerprinting of children for any purpose other than providing the fingerprints to the child's parents or guardian. The proposed amendment references this new offense to § 2H3.1.1 (Interception of Communications; Eavesdropping; Disclosure of Tax Return Information) and provides a base offense level of 6 for the offense. The heading of the guideline also is amended to cover personal information of this sort.

The Act also created 42 U.S.C. 16962 prohibiting the improper release of information obtained in fingerprint-based checks for the background check of foster or adoptive parents or of a person employed by, or considering employment with, a private or public educational agency. The statute provides a statutory maximum term of imprisonment of 10 years. The proposed amendment references this offense to § 2H3.1 and such offenses will receive a base offense level of 9 under § 2H3.1(a)(1).

(B) The Act amended 18 U.S.C. 1001 to provide an enhanced penalty of up to 8 years if the matter relates to an offense under 18 U.S.C. 1591 or Chapters 109A, 110, or 117 of title 18, United States Code. The proposed amendment adds a [2]–[12] level enhancement in subsection (b)(1)(C) of § 2J1.2 (Obstruction of Justice) to cover such conduct.

(C) The Act added 18 U.S.C. 1591 to the list in 18 U.S.C. 3559(e)(2) of repeated sex offenses committed against children that require a mandatory life imprisonment. The proposed amendment adds 18 U.S.C. 1591 to the list of covered sex offenses in Application Note 2 of § 4B1.5 (Repeat and Dangerous Sex Offender Against Minors).

Part IV addresses the probation and supervised release aspects of the Act. First, the proposed amendment updates subsection (a)(9) of § 5B1.3 (Conditions of Probation) and subsection (a)(7) of § 5D1.3 to include compliance with SORNA as one of the mandatory conditions. Second, it adds to the list of ''special conditions'' in §§ 5B1.3(d) and 5D1.3(d) a condition requiring a sex offender to submit to a search, as added to 18 U.S.C. 3563(b) and 3583(d) by the Act. Third, the proposed amendment modifies § 5D1.2 (Term of Supervised Release) to add Chapter 109B and 18 U.S.C. 1201 and 1591 to the definition of sex offense in Application Note 1 of that guideline.

Part V sets forth all of the issues for comment. In addition to the specific issues noted in this synopsis, Issue for Comment #1 requests input regarding how the Commission should incorporate the mandatory minimum terms of imprisonment created or increased by the Adam Walsh Act and discusses four approaches for incorporating these penalties.

Proposed Amendment

Part I—Implementing Directive Regarding 18 U.S.C. § 2250 Offenses

Chapter Two, Part A, Subpart 3 is amended in the heading by adding at the end ''AND OFFENSES RELATED TO REGISTRATION AS A SEX OFFENDER''; and by adding at the end the following new guidelines and accompanying commentary:

''§ 2A3.5. Failure to Register as a Sex Offender

Option 1:

[(a) Base Offense Level:

(1) 16, if the offense that gave rise to the requirement to register was a Tier III offense;

(2) 14, if the offense that gave rise to the requirement to register was a Tier II offense; or

(3) 12, if the offense that gave rise to the requirement to register was a Tier I offense.

(b) Specific Offense Characteristics:

(1) If, while in a failure to register status, the defendant (A)(i) committed a sex offense against someone other than a minor; or (ii) kidnapped or falsely imprisoned a minor, increase by 6 levels; or (B) committed a sex offense against a minor, increase by 8 levels. If the offense level resulting from application of subdivision (B) is less than level [24]–[28], increase to level [24]–[28].

(2) If the defendant voluntarily attempted to correct the failure to register, decrease by [2][4]levels.]

Option 2:

[(a) Base Offense Level: 12

(b) Specific Offense Characteristics

(1) If the offense that gave rise to the requirement to register was a (A) Tier II offense, increase by 2 levels; or (B) Tier III offense, increase by 4 levels.

(2) If, while in a failure to register status, the defendant (A)(i) committed a sex offense against a person other than a minor; or (ii) kidnapped or falsely imprisoned a minor, increase by 6 levels; or (B) committed a sex offense against a minor, increase by 8 levels. If the offense level resulting from application of subdivision (B) is less than level [24]–[28], increase to level [24]–[28].

(3) If the defendant voluntarily attempted to correct the failure to register, decrease by [2][4] levels.]

Commentary

Statutory Provision: 18 U.S.C. 2250(a).

Application Note:

1. Definitions.—For purposes of this guideline:

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years; and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

'Sex offense' has the meaning given that term in 42 U.S.C. § 16911(5), except that kidnapping and false imprisonment are not included.

['Tier I offense',] 'tier II offense', and 'tier III offense' have the meaning given those terms in 42 U.S.C. § 16911[(2)], (3) and (4), respectively.

§ 2A3.6. Aggravated Offenses Relating to Registration as a Sex Offender

(a) If the defendant was convicted under 18 U.S.C. 2250(c) or § 2260A, the guideline sentence is the term of imprisonment required by statute. Chapters Three (Adjustments) and Four

(Criminal History and Criminal Livelihood) shall not apply to that count of conviction.

Commentary

Statutory Provisions: 18 U.S.C. 2250(c), 2260A.

Application Notes:

1. In General.—Sections 2250(c) and 2260A of title 18, United States Code, provide mandatory minimum terms of imprisonment that are required to be imposed consecutively to other offenses. Accordingly, the guideline sentence for a defendant convicted under either statute is the term required by the statute.

2. Inapplicability of Chapters Three and Four.—Do not apply Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) to any offense sentenced under this guideline. Such offenses are excluded from application of those chapters because the guideline sentence for each offense is determined only by the relevant statute. See §§ 3D1.1 (Procedure for Determining Offense Level on Multiple Counts) and 5G1.2 (Sentencing on Multiple Counts of Conviction).''

Part II—Implementing New Sex Offenses and Increased Penalties

(A) New Mandatory Minimum for 18 U.S.C. 2241(c):

Section 2A3.1(a) is amended by striking ''30'' and inserting the following:

''(1) 40, if the defendant was convicted under 18 U.S.C. 2241(c); or

(2) 30, otherwise.''.

Section 2A3.1(b)(2) is amended by striking ''(A) If'' and inserting ''If subsection (a)(2) applies and (A)''; and by striking ''if'' after ''(B)''.

The Commentary to § 2A3.1 captioned ''Application Notes'' is amended in Note 2 by inserting ''A. Definitions.—'' before ''For purposes of subsection (b)(1),''; and by adding at the end following paragraph:

''B. Application in Cases Involving a Conviction under 18 U.S.C. 2241(c).—If the conduct that forms the basis for a conviction under 18 U.S.C. 2241(c) is that the defendant engaged in conduct described in 18 U.S.C. § 2241(a) or (b), do not apply subsection (b)(1).''.

The Commentary to § 2A3.1 captioned ''Background'' is amended in the first paragraph in the third sentence by inserting ''in subsection (a)(2)'' after ''offense level''; and in the second paragraph in the second sentence by inserting '', except when subsection (b)(2) applies'' after ''twelve years of age''.

(B) Increased Statutory Maximum in 18 U.S.C. § 2423(b):

Section 2A3.3(a) is amended by striking ''12'' inserting ''[12][14][16][18][20]''.

The Commentary to § 2A3.3 captioned ''Application Notes'' is amended in Note 1 by striking ''Minor'' through the end of that sentence and inserting the following:

'''Minor' means (A) an individual who had not attained the age of 18; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years; and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.''.

The Commentary to § 2A3.3 is amended by striking the Background.

(C) New Offense in 18 U.S.C. § 2244(a)(5):

Section 2A3.4(b)(1) is amended by striking ''20'' each place it appears and inserting ''22''.

The Commentary to § 2A3.4 captioned ''Statutory Provisions'' is amended by striking ''(a)(1), (2), (3)''.

(D) Increased Penalties (statutory minimum and maximum) for 18 U.S.C. § 1591 Section 2G1.1(a) is amended by striking ''14'' and inserting the following:

''(1) [34][36], if the offense of conviction is 18 U.S.C. 1591 and the offense involved conduct described in subsection (b)(1) of that statute; or

(2) 14, otherwise.''.

Section 2G1.1(b)(1) is amended by inserting ''subsection (a)(2) applies and'' after ''If''.

The Commentary to § 2G1.1 captioned ''Application Notes'' is amended in Note 2 by adding at the end the following:

''Do not apply this enhancement if the base offense level is determined under subsection (a)(1) because subsection (a)(1) necessarily involves fraud or coercion.''.

Section 2G1.3(a) is amended by striking ''24'' and inserting:

''(1) [34][36], if the defendant was convicted under 18 U.S.C. § 1591 and the offense involved conduct described in subsection (b)(1) of that statute;

(2) [30][32], if the defendant was convicted under 18 U.S.C. § 1591 and the offense involved conduct described in subsection (b)(2) of that statute;

(3) [28][30], if the defendant was convicted under 18 U.S.C. § 2422(b) or § 2423(a); or

(4) 24, otherwise.''.

Section 2G1.3 is amended in subsection (b)(5) by striking ''8'' and inserting ''[4][6][8]''.

The Commentary to § 2G1.3 captioned ''Statutory Provisions'' is amended by striking ''2422(b),''.

The Commentary to § 2G1.3 captioned ''Application Notes'' is amended by redesignating Notes 5 through 7 as Notes 6 through 8, respectively, and inserting the following after Note 4:

''5. Interaction of Subsections (a)(1) and (b)(5).—If subsection (a)(1) applies, do not apply subsection (b)(5).''.

(E) New Recordkeeping Offense in 18 U.S.C. § 2257A:

The Commentary to § 2G2.5 captioned ''Statutory Provisions'' is amended by inserting ''§ '' before ''2257''; and by inserting '', 2257A'' after ''2257''.

(F) New Offense in § 2252A(g) for Child Exploitation Enterprise Chapter Two, Part G, Subpart Two is amended by adding at the end the following new guideline and accompanying commentary:

''§ 2G2.6. Child Exploitation Enterprises

(a) Base Offense Level: [34][[35][36][37]

(b) Specific Offense Characteristics

(1) If a victim (A) had not attained the age of 12 years, increase by 4 levels; or (B) had attained the age of 12 years but had not attained the age of 16 years, increase by 2 levels.

(2) If (A) the defendant was a parent, relative, or legal guardian of a minor victim; or (B) a minor victim was otherwise in the custody, care, or supervisory control of the defendant, increase by 2 levels.

(3) If the offense involved conduct described in 18 U.S.C. 2241(a) or (b), increase by 2 levels.

Commentary

Statutory Provision: 18 U.S.C. 2252A(g).

Application Notes:

1. Application of Subsection (b)(2).—

(A) Custody, Care, or Supervisory Control.—Subsection (b)(2) is intended to have broad application and includes offenses involving a victim less than 18 years of age entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the minor and not simply to the legal status of the defendant-minor relationship.

(B) Inapplicability of Chapter Three Adjustment.—If the enhancement under subsection (b)(1) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

2. Application of Subsection (b)(3).—For purposes of subsection (b)(3), 'conduct described in 18 U.S.C. § 2241(a) or (b)' is: (i) Using force against the minor; (ii) threatening or placing the minor in fear that any person will be subject to death, serious bodily injury, or kidnapping; (iii) rendering the minor unconscious; or (iv) administering by force or threat of force, or without the knowledge or permission of the minor, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the minor to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the minor to appraise or control conduct was substantially impaired by drugs or alcohol.

3. Definition of Minor.—'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years; and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.''

(G) New Offense in 18 U.S.C. 2252C for Embedding Words or Images

Section 2G3.1 is amended by striking subsection (b)(2) and inserting the following:

''(2) If, with the intent to deceive a minor into viewing material that is harmful to minors, the offense involved the use of (A) a misleading domain name on the Internet; or (B) embedded words or digital images in the sourcecode of a Web site, increase by [2][4] levels.''.

The Commentary to § 2G3.1 captioned ''Statutory Provisions'' is amended by inserting '', 2252C'' after ''2252B''.

The Commentary to § 2G3.1 captioned ''Application Notes'' is amended in Note 2 by inserting ''or § 2252C'' after ''§ 2252B''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 2245 the following:

''18 U.S.C. 2250(a)—2A3.5
18 U.S.C. 2250(c)—2A3.6'';

by inserting after the line referenced to 18 U.S.C. 2252B the following:

''18 U.S.C. 2252C—2G3.1'';

by inserting after the line referenced to 18 U.S.C. 2257 the following:

''18 U.S.C. 2257A—2G2.5'';

and by inserting after the line referenced to 18 U.S.C. 2260(b) the following:

''18 U.S.C. 2260A—2A3.6''.

Part III—Other Criminal Provisions

(A) New Offenses in 42 U.S.C. 16962 and 16984 Relating to Fingerprints:

Section 2H3.1 is amended in the heading by striking ''Tax Return Information'' and inserting ''Certain Personal Information''.

Section 2H3.1(a)(2) is amended in by striking ''or 26 U.S.C. 7216'' and inserting '', § 7216, or 42 U.S.C. § 16984''.

The Commentary to § 2H3.1 captioned ''Statutory Provisions'' is amended by inserting ''42 U.S.C. 16962, 16984;'' after ''7216;''.

The Commentary to § 2H3.1 captioned ''Application Notes'' is amended by striking ''Notes'' and inserting ''Note''; by striking Note 1; and by redesignating Note 2 as Note 1.

(B) Increased Penalty in 18 U.S.C. 1001:

Section 2J1.2(b)(1)(B) is amended by inserting ''the'' after ''If''; and by striking ''the'' after ''(ii)''.

Section 2J1.2(b)(1) is amended by adding at the end the following:

''(C) If the (i) defendant was convicted under 18 U.S.C. 1001; and (ii) statutory maximum term of imprisonment relating to sex offenses under 18 U.S.C. § 1591 or chapters 109A, 109B, 110, or 117 of title 18, United States Code, is applicable, increase by [2]–[12] levels.''.

The Commentary to § 2J1.2 captioned ''Statutory Provisions'' is amended by striking:

''when the statutory maximum term of imprisonment relating to international terrorism or domestic terrorism is applicable'', and inserting: ''(when the statutory maximum term of imprisonment relating to international terrorism, domestic terrorism, or sex offenses under 18 U.S.C. 1591 or chapters 109A, 109B, 110, or 117 of title 18, United States Code, is applicable)''.

(D) 18 U.S.C. 1591 Added to List of Covered Sex Offenses:

The Commentary to § 4B1.5 captioned ''Application Notes'' is amended by striking Note 1 and inserting the following:

''1. Definition.—For purposes of this guideline, 'minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years; and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.''.

The Commentary to § 4B1.5 captioned ''Application Notes'' is amended in Note 2 by inserting ''or (iv) 18 U.S.C. § 1591;'' after ''alien individual;''; and by striking ''through (iii)'' and inserting ''through (iv)''.

The Commentary to § 4B1.5 captioned ''Background'' is amended by striking the first and second sentences and inserting the following:

''This guideline applies to offenders whose instant offense of conviction is a sex offense committed against a minor and who present a continuing danger to the public.''

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. 1001 by striking: ''when the statutory maximum term of imprisonment relating to international terrorism or domestic terrorism is applicable'', and inserting: ''(when the statutory maximum term of imprisonment relating to international terrorism, domestic terrorism, or sex offenses under 18 U.S.C. 1591 or chapters 109A, 109B, 110, or 117 of title 18, United States Code, is applicable)''; and by inserting after the line referenced to 42 U.S.C. 14905 the following:

''42 U.S.C. 16962—2H3.1
42 U.S.C. 16984—2H3.1''.

Part IV—Provisions Regarding Probation and Supervised Release

Section 5B1.3(a)(9) is amended by striking ''a defendant'' and all that follows through the end of ''student;'' and inserting the following:

''a sex offender shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. 16913) by (A) registering, and keeping such registration current, where the offender resides, where the offender is an employee, and where the offender is a student, and for the initial registration, a sex offender also shall register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence; (B) providing information required by 42 U.S.C. 16914; and (C) keeping such registration current for the full registration period as set forth in 42 U.S.C. 16915;''.

Section 5B1.3(d)(7) is amended by adding at the end the following:

''(C) A condition requiring the defendant to submit to a search, at any time, with or without a warrant, and by any law enforcement or probation officer, of the defendant's person and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects, upon reasonable suspicion concerning a violation of a condition of probation or unlawful conduct by the defendant, or by any

probation officer in the lawful discharge of the officer's supervision functions.''.

The Commentary to § 5D1.2 captioned ''Application Notes'' is amended by striking Note 1 and inserting the following:

''1. Definitions.—For purposes of this guideline:

'Sex offense' means (A) an offense, perpetrated against a minor, under (i) chapter 109A of title 18, United States Code; (ii) chapter 109B of such title; (iii) chapter 110 of such title, not including a recordkeeping offense; (iv) chapter 117 of such title, not including transmitting information about a minor or filing a factual statement about an alien individual; (v) an offense under 18 U.S.C. 1201; or (vi) an offense under 18 U.S.C. 1591; or (B) an attempt or a conspiracy to commit any offense described in subdivisions (A)(i) through (vi) of this note.

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years; and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.''.

Section 5D1.3(a)(7) is amended by striking ''a defendant'' and all that follows through the end of ''student;'' and inserting the following:

''a sex offender shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. 16913) by (A) registering, and keeping such registration current, where the offender resides, where the offender is an employee, and where the offender is a student, and for the initial registration, a sex offender also shall register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence; (B) providing information required by 42 U.S.C. 16914; and (C) keeping such registration current for the full registration period as set forth in 42 U.S.C. 16915;''.

Section 5D1.3(d)(7) is amended by adding at the end the following:

''(C) A condition requiring the defendant to submit to a search, at any time, with or without a warrant, and by any law enforcement or probation officer, of the defendant's person and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects upon reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the defendant, or by any probation officer in the lawful discharge of the officer's supervision functions.''.

Part V—Issues for Comment:

1. The Commission requests comment regarding how it should incorporate the mandatory minimum terms of imprisonment created or increased by the Adam Walsh Child Protection Act of 2006. There are four potential approaches to consider. First, the Commission can set the base offense level to correspond to the first offense level on the sentencing table with a guideline range in excess of the mandatory minimum. Historically, this is the approach the Commission has taken with respect to drug offenses. For example, a 10-year mandatory minimum would correspond to a base offense level of 32 (121–151 months). Second, the Commission can set the base offense level such that the guideline range is the first on the sentencing table to include the mandatory minimum term of imprisonment at any point within the range. Under this approach, a 10-year mandatory minimum would correspond to a base offense level of 31 (108–135 months). Third, the Commission could set the base offense level such that the corresponding guideline range is lower than the mandatory minimum term of imprisonment but then anticipate that certain frequently applied specific offense characteristics would increase the offense level and corresponding guideline range to encompass the mandatory minimum. The Commission took this approach in 2004 when it implemented the PROTECT Act. Fourth, the Commission could decide not to change the base offense levels and allow § 5G1.1(b) to operate. Section 5G1.1(b) provides that if a mandatory minimum term of imprisonment is greater than the maximum of the applicable guideline range, the statutorily required minimum sentence shall be the guideline sentence.

2. Pursuant to the directive in section 141 of the Act, the Commission must consider, ''whether the person committed an offense against a minor in connection with, or during, the period for which the person failed to register.'' In light of this consideration, the Commission requests comment regarding the scope of the proposed enhancement in § 2A3.5(b)(1) of Option 1 and § 2A3.5(b)(2) of Option 2 with respect to minors. Should the Commission expand the proposed six-level enhancement so that it would apply in the case of any non-sexual offense committed against a minor? As an alternative to providing tiered enhancements based on the type of offense committed against a minor (as presented in the proposed amendment), should the Commission structure the enhancement so that any offense committed against a minor would warrant an eight-level enhancement and any offense committed against a person other than a minor would warrant a six-level enhancement? If so, should the enhancement also provide a minimum offense level of [24]–[28]?

3. The proposed amendment provides in § 2A3.5 a [2][4]-level reduction if the defendant voluntarily attempted to correct the failure to register. The Commission requests comment regarding this reduction. Specifically, how should the Commission address circumstances in which it was impossible for the defendant to register, for example, the defendant had a debilitating illness or severe mental impairment, or the jurisdiction in which the defendant works or is a student does not allow non-residents to register. Should the proposed reduction be extended to such circumstances or is there an alternative way in which the Commission should take such circumstances into account in the guidelines?

The Commission also requests comment regarding whether it should provide an instruction that the reduction does not apply if any of the proposed specific offense characteristics also apply.

4. The Adam Walsh Child Protection Act created a new offense at 18 U.S.C. 2244(a)(5), with a statutory maximum term of imprisonment of life, for sexual contact that would have violated 18 U.S.C. 2241(c) (Aggravated sexual abuse with children) had the sexual contact been a sexual act. The proposed amendment addresses this new offense in § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact) by increasing the minimum offense level in subsection (b)(1) (if the victim was under the age of 12 years) from level 20 to level 22. The Commission requests comment regarding whether it should amend § 2A3.4 to account specifically for this new offense or whether the current provisions of the guideline are adequate to account for this new offense.

5. The proposed amendment references 18 U.S.C. 2257A (Record keeping requirements) to § 2G2.5 (Recordkeeping Offenses Involving the Production of Sexually Explicit Materials; Failure to Provide Required Marks in Commercial Electronic Email). For offenses in which the defendant refused to allow an inspection of records in violation of 18 U.S.C.

2257(f)(5) or § 2257A, the Commission requests comment regarding whether it should provide an application note that provides for an upward departure in such cases or instructs the court to apply § 3C1.1.

6. The Commission requests comment regarding the proposed new guideline in § 2G2.6 that would implement 18 U.S.C. 2252A(g). Specifically, the Commission requests comment regarding the appropriate base offense level for this new guideline given that the statute provides a mandatory minimum term of imprisonment of 20 years. Additionally, the proposed specific offense characteristics are targeted to offense conduct involving minors. Section 1591 is included as one of the predicate offenses under 18 U.S.C. 2252A(g) but it is not limited to offenses committed against minors. The Commission requests comment regarding whether it should provide a specific offense characteristic, or expand a proposed specific offense characteristic, to cover all 18 U.S.C. 1591 offenses. With respect to enhancements, is there additional conduct for which the Commission should consider providing specific offense characteristics? If so, for what conduct, and what is an appropriate increase for that conduct? The Commission further requests comment regarding whether this guideline should provide a decrease if the defendant's conduct was limited to possession or receipt of material involving the sexual exploitation of a minor and the defendant did not intend to traffic in or distribute such material.

The Commission also requests comment regarding whether it should provide an enhancement for the use of a computer or interactive an interactive computer service and if so, what would be an appropriate increase for such conduct. The Commission specifically asks whether this enhancement is appropriate if the base offense level is at the lower end of the proposed options.

7. The proposed amendment adds to the misleading domain name enhancement in subsection (b)(5) of § 2G3.1 the use of embedded words or digital images in the source code of a Web site to deceive a minor into viewing matter that would be harmful to the minor. The Commission requests comment regarding whether it also should include an enhancement if the offense involved the use of embedded words or digital images to deceive a person other than a minor into viewing obscenity. If so, how many levels would be appropriate for such an enhancement? For example, should the Commission provide two levels for such an enhancement and four levels if the offense deceived a minor into viewing harmful matter?

8. The Commission requests comment regarding the interaction of the age enhancement in § 2G1.3(b)(5) and the proposed base offense levels. The proposed amendment presents options for reducing the age enhancement in § 2G1.3(b)(5) to as far as four levels. Should the Commission consider providing an increase of less than eight levels in any case in which the age of the minor victim is taken into account by the base offense level (because age is an element of the offense)? For example, should four levels be applied if the base offense level takes into account the age of the minor and eight levels be applied if the base offense level does not take age into account?

9. The Commission requests comment regarding the interaction of § 2G1.3 and § 2A3.1, particularly with respect to the application of the cross reference in § 2G1.3(c)(3) and the proportionality of resulting offenses levels for a case involving a minor who had not attained the age 12 years. Do any of the proposed offense levels in either guideline need to be increased in order to provide proportionality between §§ 2G1.3 and 2A1.3 in cases involving a minor who had not attained the age of 12 years, taking into account the new mandatory minimum penalties provided for offenses referenced to these two guidelines? For example, the proposed amendment provides a base offense level of [28][30] if the defendant was convicted under 18 U.S.C. 2422(b) or § 2423(a). If § 2G1.3(c)(3) applies because, for example, the offense involved interstate travel with a minor who had not attained the age of 12 years, the court would apply § 2A3.1 and the resulting offense level under that guideline would be 34 (BOL of 30 plus 4 levels for age of minor). If the court does not apply the cross reference and stays in § 2G1.3, the resulting offense level would be [36][38] (BOL of [28][30] plus 8 levels for the age of the minor). Are these offense levels appropriate given new mandatory minimum penalties and offense levels currently provided in § 2G1.3 and § 2A3.1, respectively, or should the Commission provide higher base offense levels in § 2G1.3?

3. Technical and Clarifying Amendments to the Sentencing Guidelines

Synopsis of Proposed Amendment: This proposed amendment makes various technical and conforming changes to the guidelines.

Specifically, Part A of the proposed amendment corrects typographical errors in §§ 2B1.1(b)(13)(C), 2D1.11(a), 2K2.1 (Application Note 14), and 2L1.1(b)(1). The proposed amendment also updates Appendix A by eliminating an outdated statutory reference and by including a statutory reference for 18 U.S.C. 931 to 2K2.6 (Possessing, Purchasing, or Owning Body Armor by Violent Felons).

In Part B, the proposed amendment addresses application of the grouping rules when a defendant is sentenced on multiple counts contained in different indictments as, for example, when a case is transferred to another district for purposes of sentencing, pursuant to Fed. R. Crim.P. 20(a). Section 3D1.1 (Procedure for Determining Offense Level on Multiple Counts) is silent as to this issue. The four circuits that have addressed the issue have concluded that the grouping rules apply when a defendant is sentenced on multiple indictments. See *United States* v. *Hernandez Coplin,* 24 F.3d 312 (1st Cir. 1994) (holding that § 5G1.2's rules regarding sentences imposed at the same time for different indictments must apply to Chapter 3, Part D); *United States* v. *Herula,* 464 F.3d 1132 (10th Cir. 2006) (holding that § 5G1.2 required that § 3D1.4 apply in cases involving multiple counts in separate indictments); *United States* v. *Tolbert,* 306 F.3d 244 (5th Cir. 2002) (holding that § 5G1.2 requires that total punishment be determined by the grouping principles from Chapter 3, Part D, thus requiring grouping for counts contained in different indictments). *See also United States* v. *Greer,* 91 F.3d 996 (7th Cir. 1996) (holding that the district court had erred by not using § 5G1.2 to sentence the defendant, who was sentenced for two separate crimes within minutes of each other).

The proposed amendment adopts the reasoning of these cases and clarifies that the grouping rules apply not only to multiple counts in the same indictment but also to multiple counts contained in different indictments when a defendant is sentenced on the indictments simultaneously. The proposed amendment provides clarifying language in the Introductory Commentary of Chapter Three, Part D, as well as in § 3D1.1. The proposed language is the same language that currently is provided in *5G1.2 (Sentencing on Multiple Counts of Conviction) and relied on by the courts cited in the previous paragraph.

Proposed Amendment

Part A:

Section 2B1.1(b)(13)(C) is amended by striking ''(12)'' and inserting ''(13)''.

Section 2D1.11(a) is amended by striking ''(e)'' and inserting ''(d)''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended in Note 14 in subdivision (B) by striking ''(b)(1)'' and inserting ''(b)(6)''.

Section 2L1.1(b)(1)(B) is amended by striking ''(2)'' and inserting ''(3)''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 930 the following new line:

''18 U.S.C. 931–2K2.6'';

and by striking the following:

''18 U.S.C. 3174–2J1.7''.

Part B:

Chapter 3, Part D is amended in the Introductory Commentary in the first paragraph by inserting ''These rules apply to multiple counts of conviction (1) contained in the same indictment or information, or (2) contained in different indictments or informations for which sentences are to be imposed at the same time or in a consolidated proceeding.'' after ''is convicted.''.

The Commentary to § 3D1.1 captioned ''Application Note'' is amended by striking ''Note'' and inserting ''Notes''; by redesignating Note 1 as Note 2; and by inserting the following as new Note 1:

''1. In General.—For purposes of sentencing multiple counts of conviction, counts can be (A) contained in the same indictment or information; (B) contained in different indictments or informations for which sentences are to be imposed at the same time or contained in a consolidated proceeding.''.

4. Miscellaneous Laws

Synopsis of Proposed Amendment: This is a two-part amendment that implements recently enacted legislation. Part One of this proposed amendment operates to support the Respect for America's Fallen Heroes Act, Public Law 109–228, which created a new offense in 38 U.S.C. 2413, prohibiting certain demonstrations at Arlington National Cemetery and at cemeteries under control of the National Cemetery Administration. The penalty for a violation of 38 U.S.C. 2413 is imprisonment of not more than one year, a fine, or both.

The proposed amendment references this new crime to § 2B2.3, because the new crime shares with other crimes that are referred to the trespass guideline the basic element of unauthorized access to particular federal land or site. The proposed amendment expands the two-level enhancement in § 2B2.3(b)(1) to include Arlington National Cemetery or a cemetery under the control of the National Cemetery Association. (Arlington National Cemetery is, of course, considered a national cemetery, but it is not maintained by the National Cemetery Administration. Rather, it is maintained by the Department of the Army and should be named separately in the Guidelines.).

Part Two of this proposed amendment operates to support the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA), Public Law 109–162. VAWA includes the International Marriage Broker Regulation Act of 2005 (IMBRA), which requires marriage brokers to collect background information about United States clients and places limitations on the marriage brokers' sharing of information about foreign national clients. A violation of 8 U.S.C. 1375a(d)(3)(C) is subject to a misdemeanor conviction with a base offense level of 6. The felony offenses covered under 8 U.S.C. § 1375a(d)(5)(B) will receive a base offense level of 9.

The proposed amendment refers the new offense to § 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Tax Return Information) and expands the heading of the guideline to include the unauthorized disclosure of private information. Currently, the guideline covers the wrongful disclosure of certain tax information. In addition to expanding the guideline to cover IMBRA offenses, the Commission also may wish to consider referencing other similar privacy statutes to this guideline, such as 18 U.S.C. 1905 (Disclosure of confidential information generally (by an officer or employee of the U.S.)), 42 U.S.C. 405(c)(2)(C)(viii)(I)–(IV) (pertaining to the unauthorized willful disclosure of social security account numbers and related information), and 42 U.S.C. 1320d(6) (wrongful disclosure of individually identifiable heath information), which currently are not included in Appendix A. The proposed amendment brackets language that would include the wrongful disclosure of confidential information covered by these additional statutes.

Following the proposed amendment is an issue for comment regarding implementation of 31 U.S.C. 5363, which prohibits the acceptance of any financial instrument for unlawful Internet gambling. The offense was created by the Safety and Accountability for Every Port Act (SAFE Port Act), Public Law 109–347.

Proposed Amendment

I. Respect for America's Fallen Heroes Act (Pub. L. 109–228)

Section 2B2.3(b)(1) is amended by redesignating subdivision (F) as subdivision (G); and by inserting ''(F) at Arlington National Cemetery or a cemetery under the control of the National Cemetery Administration;'' after ''residence;''.

The Commentary to § 2B2.3 captioned ''Statutory Provisions'' is amended by inserting ''38 U.S.C. 2413;'' after ''1036;''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 38 U.S.C. 787 the following new line:

''38 U.S.C. 2413—2B2.3''.

II. Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109–162)

Section 2H3.1 is amended in the heading by striking ''Tax Return Information'' and inserting ''Certain Personal Information''.

Section 2H3.1(a)(2) is amended by inserting ''8 U.S.C. 1375(d)(3)(C); 18 U.S.C. 1905;'' after ''convicted of''; and inserting ''[; 42 U.S.C. 405(c)(2)(C)(viii)(I)–(IV); or 42 U.S.C. 1320d–6]'' after ''7216''.

The Commentary to § 2H3.1 captioned ''Statutory Provisions'' is amended by inserting ''8 U.S.C. 1375(d)(3)(C), (d)(5)(B);'' before ''18 U.S.C.''; by inserting ''§ 1905,'' before ''2511''; and by inserting ''[42 U.S.C. 405(c)(2)(C)(viii)(I)–(IV); 42 U.S.C. 1320d–6;]'' after ''7216;''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 8 U.S.C. 1328 the following new line:

''8 U.S.C. 1375a—2H3.1'';

by inserting after the line referenced to 42 U.S.C. 300i–l the following new line:

''[42 U.S.C. 405(c)(2)(C)(viii)(I)–(IV)—2H3.1'']; and

by inserting after the line referenced to 42 U.S.C. 1320a–7b the following new line:

''[42 U.S.C. 1320d–6—2H3.1]''.

Issue for Comment:

The SAFE Port Act, Pub. L. 109–347, created a new offense in 31 U.S.C. 5363, prohibiting the acceptance of any financial instrument for unlawful Internet gambling Section 5366 of title 31, United States Code, and providing a statutory maximum term of imprisonment of not more than 5 years. The Commission requests comment regarding how it should implement the new offense. Specifically, should the

offense be referenced to § 2E3.1 (Gambling Offenses), which provides a base offense level of 6 or, alternatively, a base offense level of 12, if the offense was (A) engaging in a gambling business; (B) transmission of wagering information; or (C) committed as part of, or to facilitate, a commercial gambling operation. If the Commission should reference this statute to § 2E3.1, are there additional amendments that should be made to this guideline in order to implement fully the new offense? For example, should the Commission provide a cross reference to either § 2S1.1 (Laundering of Monetary Instruments) or § 2S1.3 (Structuring Transactions to Evade Reporting Requirements) if the offense involves conduct more adequately covered by either of those guidelines? Alternatively, should 31 U.S.C. 5363 be referenced to either § 2S1.1 or § 2S1.3 instead of § 2E3.1, and if so, what other modifications, if any, should be made in those guidelines to implement fully the new offense?

5. Re-Promulgation of Emergency Intellectual Property Amendment

Synopsis of Proposed Amendment: This proposed amendment re-promulgates the emergency amendment, effective September 12, 2006, that responded to the directive contained in section 1(c) of the Stop Counterfeiting in Manufactured Goods Act, Pub. L. 109–181. The directive, which required the Commission to promulgate an amendment under emergency amendment authority by September 12, 2006, instructs the Commission to ''review, and if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of any offense under section 2318 or 2320 of title 18, United States Code.'' The directive further provides that the Commission shall: Determine whether the definition of ''infringement amount'' set forth in application note 2 of section 2B5.3 of the Federal sentencing guidelines is adequate to address situations in which the defendant has been convicted of one of the offenses [under section 2318 or 2320 of title 18, United States Code] and the item in which the defendant trafficked was not an infringing item but rather was intended to facilitate infringement, such as an anti-circumvention device, or the item in which the defendant trafficked was infringing and also was intended to facilitate infringement in another good or service, such as a counterfeit label, documentation, or packaging, taking into account cases such as *U.S.* v. *Sung,* 87 F.3d 194 (7th Cir. 1996).

The emergency amendment added subdivision (vii) to Application Note 2(A) of § 2B5.3 (Criminal Infringement of Copyright or Trademark) to provide that the infringement amount is based on the retail value of the infringed item in a case under 18 U.S.C. 2318 or 2320 that involves a counterfeit label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature (I) that has not been affixed to, or does not enclose or accompany a good or service; and (II) which, had it been so used, would appear to a reasonably informed purchaser to be affixed to, enclosing or accompanying an identifiable, genuine good or service. In such a case, the ''infringed item'' is the identifiable, genuine good or service. This proposed amendment would re-promulgate this application note as a permanent amendment to § 2B5.3.

The emergency amendment did not address the portion of the directive pertaining to anti-circumvention devices. This proposed amendment addresses that portion of the directive in two ways. First, the proposed amendment presents two options for addressing the trafficking in devices that circumvent a technological measure. Option One expands the specific offense characteristic in § 2B5.3(b)(3) to include convictions under 17 U.S.C. 1201(b) for trafficking in devices that circumvent a technological measure. Currently, § 2B5.3(b)(3) provides a two-level enhancement and a minimum offense level of 12 for cases involving the manufacture, importation, or uploading of infringing items. The purpose of the enhancement in § 2B5.3(b)(3) is to provide greater punishment for defendants who put infringing items into the stream of commerce, thereby enabling other individuals to infringe the copyright or trademark. See App. C (Amendment 594, effective Nov. 1, 2000). A defendant who traffics in devices that circumvent a technological measure similarly enables others to infringe a copyright and arguably warrants greater punishment. The minimum offense level guarantees the defendant will be in Zone D of the Sentencing Table. Under this option, the minimum offense level also works as a proxy for the infringement amount.

Options Two and Three address trafficking in devices used to circumvent a technological measure by providing a special rule under Application Note 1 for determining the infringement amount. Option Two adds trafficking cases to the note pertaining to the retail value of the infringing item. Under this option, the court would use the retail value of the device (the ''infringing item'') multiplied by the number of devices involved in the offense. Option Three is similar but provides two alternative measures under a new Application Note 1(C). It instructs the court to determine the infringement amount by using the greater of two calculations: (i) The retail value of the device multiplied by the number of such devices; and (ii) the number of such devices multiplied by the price a person legitimately using the device to access or make use of a copyrighted work would have paid.

All options use the statutory definition of ''circumvent a technological measure'' found in 17 U.S.C. 1201(a)(3)(A), which is ''to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner.''

Second, the proposed amendment adds an application note regarding the determination of the infringement amount in cases under 17 U.S.C. 1201 and 1204 in which the defendant circumvented a technological measure. In such an offense, the ''retail value of the infringed item'' is the price the user would have paid to access lawfully the copyrighted work, and the ''infringed item'' is the accessed work.

Two issues for comment follow the proposed amendment. The first issue is regarding whether the Commission should amend § 2B5.3 to provide a downward departure for cases in which the infringement amount overstates the seriousness of the offense. The second issue is regarding the interaction between the proposed provisions on circumventing a technological measure and application of § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Proposed Amendment

[Option 1:

Section 2B5.3 is amended by striking subsection (b)(3) and inserting the following:

''(3) If the (A) offense involved the manufacture, importation, or uploading of infringing items; or (B) defendant was convicted under 17 U.S.C. 1201(b) and 1204 for trafficking in devices used to circumvent a technological measure, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.''.]

The Commentary to § 2B5.3 captioned ''Statutory Provisions'' is amended by inserting '', 1201, 1204'' after ''506(a)''.

The Commentary to § 2B5.3 captioned ''Application Notes'' is amended in Note 1 by inserting after ''Definitions.—

For purposes of this guideline:'' the following:

'' 'Circumvent a technological measure' has the meaning given that term in 17 U.S.C. 1201(a)(3)(A).''.

The Commentary to § 2B5.3 captioned ''Application Notes'' is amended in Note 2(A) by adding at the end the following:

''(vii) A case under 18 U.S.C. 2318 or 2320 that involves a counterfeit label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature (I) that has not been affixed to, or does not enclose or accompany a good or service; and (II) which, had it been so used, would appear to a reasonably informed purchaser to be affixed to, enclosing or accompanying an identifiable, genuine good or service. In such a case, the 'infringed item' is the identifiable, genuine good or service.

(viii) A case under 17 U.S.C. 1201 and 1204 in which the defendant circumvented a technological measure. In such an offense, the 'retail value of the infringed item' is the price the user would have paid to access lawfully the copyrighted work, and the 'infringed item' is the accessed work.''.

[Option 2:

The Commentary to § 2B5.3 captioned ''Application Notes'' is amended in Note 2 in subdivision (B) by adding at the end the following:

''This note also applies in a case involving the trafficking of devices used to circumvent a technological measure in violation of 17 U.S.C. 1201 and 1204. In such a case the 'infringing item' is the device.''.]

[Option 3:

The Commentary to § 2B5.3 captioned ''Application Notes'' is amended in Note 2 by redesignating subdivisions (C) through (E) as subdivisions (D) through (F), respectively; and by inserting after subdivision (B) the following:

''(C) Determination of Infringement Amount in Cases Involving Trafficking in Devices Used to Circumvent a Technological Measure.—In a case in which the defendant is convicted under 17 U.S.C. §§ 1201(b) and 1204 for trafficking in a device used to circumvent a technological measure, the infringement amount is the greater of the following:

(i) The number of such devices multiplied by the retail value of the device; or

(ii) The number of such devices multiplied by the price a person legitimately using the device to access or make use of a copyrighted work would have paid.''.]

The Commentary to § 2B5.3 captioned ''Background'' is amended by adding at the end the following:

''[Option One: Subsection (b)(3)(B) and] Application Notes 1(a)(vii) and [Option Two: (viii)][Option Three: 1(C)] implement the directive in section 1(c) of Public Law 109–181.''.

Issues for Comment:

1. The Commission requests comment regarding whether it should provide a downward departure provision for cases in which the infringement amount overstates the seriousness of the offense.

2. The Commission requests comment regarding the interaction of Application Note 4 pertaining to the application of § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). This application note, added in 2000 as part of the Commission's implementation of the No Electronic Theft Act, provides that an adjustment under § 3B1.3 shall apply in any case in which the defendant de-encrypted or otherwise circumvented a technological security measure to gain initial access to an infringed item. The Commission has received comment that not every de-encryption or circumvention case involves a ''special skill'' as that term is defined in § 3B1.3 (''a skill not possessed by members of the general public and usually requiring substantial education, training or licensing''). Additionally, the proposed amendment specifically addresses cases involving the circumvention of a technological measure, either in the form of trafficking in devices used to circumvent a technological measure or in the determination of infringement amount in cases involving actual circumvention. Should the Commission delete Application Note 4 because the skill, whatever degree, needed to de-encrypt or circumvent a technological measure would be taken into account in § 2B5.3? As an alternative, should the Commission modify the note to emphasize that § 3B1.3 applies only when the defendant's skill in de-encrypting or otherwise circumventing a technological measure was one not possessed by the general public, as contemplated by § 3B1.3?

6. Terrorism

Synopsis of Proposed Amendment: This multi-part proposed amendment implements the USA PATRIOT Improvement and Reauthorization Act of 2005 (the ''USA PATRIOT Act''), Pub. L. 109–177, and the Department of Homeland Security Appropriations Act, 2007 (the ''Homeland Security Act''), Pub. L. 109–295.

Part I of the proposed amendment addresses section 122 of the PATRIOT Act, which created a new offense in 21 U.S.C. 960a covering narco-terrorism. This new offense prohibits engaging in conduct that would be covered under 21 U.S.C. 841(a) if committed under the jurisdiction of the United States, knowing or intending to provide, directly or indirectly, anything of pecuniary value to any person or organization that has engaged or engages in terrorist activity (defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or terrorism (defined in section 140(d)(2) of the Foreign Relations Authorization Act). The penalty is not less than twice the minimum punishment under 21 U.S.C. 841(b)(1) and not more than life. Section 960a also provides a mandatory term of supervised release of at least 5 years.

The proposed amendment presents two options for addressing this new offense, although under either option the sentence determination is the same. Option 1 would amend § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) to provide a new base offense level of 6 plus the offense level specified in the Drug Quantity Table if the defendant was convicted under 21 U.S.C. 960a (see proposed § 2D1.1(a)(4)). Option 2 would create a new guideline in § 2D1.14 (Narco-Terrorism) that would add 6 levels to the offense level determined under § 2D1.1. Both options bracket the exclusion of the mitigating role cap in § 2D1.1(a)(3) and the safety valve reduction in § 2D1.1(b)(9) to highlight this discussion point for the Commission. The proposed amendment also provides a corresponding amendment to Appendix A (Statutory Index).

Part II of the proposed amendment addresses section 551 of the Homeland Security Act, which created a new offense in 18 U.S.C. 554 regarding the construction of border tunnels and subterranean passages that cross the international boundary between the United States and another country. (The USA PATRIOT Act also amended title 18, United States Code, to provide a new offense in 18 U.S.C. 554 for smuggling goods from the United States. For purposes of presenting proposed statutory references, the proposed amendments to Appendix A (Statutory Index) for border tunnels is presented in Part II and the proposed amendments to Appendix A (Statutory Index) for smuggling goods from the United States is presented in Part IV.) Section 554(a) prohibits the construction or financing of such tunnels and passages and provides a statutory maximum term of imprisonment of 20 years. Section

554(b) prohibits the knowing or reckless disregard of the construction on land the person owns or controls and provides a statutory maximum term of imprisonment of 10 years. Section 554(c) prohibits the use of the tunnels to smuggle an alien, goods (in violation of 18 U.S.C. 545), controlled substances, weapons of mass destruction (including biological weapons), or a member of a terrorist organization (defined in 18 U.S.C. 2339B(g)(6)) and provides a penalty of twice the maximum term of imprisonment that would have otherwise been applicable had the unlawful activity not made use of the tunnel or passage.

Section 551(c) of the Homeland Security Act also directs the Commission, under its regular amendment authority, to promulgate or amend the guidelines to provide for increased penalties for persons convicted of offenses under 18 U.S.C. 554. In carrying out this directive, the Commission ''shall—

(A) Ensure that the sentencing guidelines, policy statements, and official commentary reflect the serious nature of the offenses described in section 554 of title 18, United States Code, and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(B) Provide adequate base offense levels for offenses under such section;

(C) Account for any aggravating or mitigating circumstances that might justify exceptions, including—

(i) The use of a tunnel or passage described in subsection (a) of such section to facilitate other felonies; and

(ii) The circumstances for which the sentencing guidelines currently provide applicable sentencing enhancements;

(D) Ensure reasonable consistency with other relevant directives, other sentencing guidelines, and statutes;

(E) Make any necessary and conforming changes to the sentencing guidelines and policy statements; and

(F) Ensure that the sentencing guidelines adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code.

The proposed amendment provides a new guideline in § 2X7.1 (Border Tunnels and Subterranean Passages) for this offense. If the defendant was convicted under 18 U.S.C. 554(a) or (c), the base offense level would be 4 plus the offense level applicable to the underlying smuggling offense. If the defendant was convicted under 18 U.S.C. 554(b), the proposed amendment provides a base offense level of 8.

Part III of the proposed amendment addresses other new offenses created by the PATRIOT Act. Based on an assessment of similar offenses already covered by the relevant guidelines, the proposed amendment provides for the following:

(A) The new offense in 18 U.S.C. 554, pertaining to smuggling of goods from the United States is referenced to §§ 2B1.5 (Cultural Heritage), 2M5.2 (Exportation of Arms, Munitions, or Military Equipment or Services Without Required Validated Export License), and 2Q2.1 (Offenses Involving Fish, Wildlife, and Plants).

(B) The new offense in 18 U.S.C. 2282A, pertaining to mining of U.S. navigable waters, is referenced to §§ 2A1.1 (First Degree Murder), 2A1.2 (Second Degree Murder), 2B1.1 (Fraud, Theft, and Property Damage), 2K1.4 (Arson; Property Damage by Use of Explosives), and 2X1.1 (Attempt, Solicitation, or Conspiracy (Not Covered by a Specific Offense Guideline)). The proposed amendment also adds vessel, maritime facility, and a vessel's cargo to § 2K1.4(a)(1) and (a)(2) to cover conduct described in 18 U.S.C. 2282A. The definitions provided for vessel, maritime facility, and aids to maritime navigation come from title 33 of the Code of Federal Regulations pertaining to the United States Coast Guard, specifically Navigation and Navigable Waters.

Section 2282B, pertaining to violence against maritime navigational aids, is referenced to §§ 2B1.1, 2K1.4, and 2X1.1. Section 2K1.4(a) is amended to provide a new base offense level of [16] [if the offense involved the destruction of or tampering with aids to maritime navigation][if the offense of conviction is 18 U.S.C. 2282B].

(C) The new offense in 18 U.S.C. 2283 pertaining to transporting biological and chemical weapons is referenced to §§ 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), 2M5.3 (Providing Material Support or Resources to Designated Foreign Terrorism Organizations of For a Terrorist Purpose), 2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction). The new offense in 18 U.S.C. 2284 pertaining to transporting terrorists is referenced to §§ 2M5.3, 2X2.1 (Aiding and Abetting), and 2X3.1 (Accessory After the Fact).

Part IV of the proposed amendment addresses two other statutes that were amended by the PATRIOT Act as follows:

(A) Section 2341 of title 18, United States Code, which provides definitions for offenses involving contraband cigarettes and smokeless tobacco, was amended to reduce the number of contraband cigarettes necessary to violate the substantive offenses set forth in 18 U.S.C. 2342 and 2344 from 60,000 to 10,000. The proposed amendment makes conforming changes to the background commentary of § 2E4.1 (Unlawful Conduct Relating to Contraband Cigarettes). The proposed amendment also expands the headings of Chapter Two, Part E, Subpart 4 and § 2E4.1 to include smokeless tobacco.

(B) The Act increased the statutory maximum term of imprisonment for offenses covered by the International Emergency Economic Powers Act (50 U.S.C. 1705) from 10 years to 20 years to make penalties for these offenses commensurate with terrorist financing violations. The proposed amendment references 50 U.S.C. 1705 to § 2M5.3 and also modifies the heading of the guideline to include ''specially designated global terrorist'' because it is another list identifying terrorists and terrorist organizations.

Part V of the proposed amendment sets forth all of the proposed statutory references in Appendix A (Statutory Index) for the new offenses described in Parts III and IV.

Part VI of the proposed amendment presents two issues for comment. The first requests comment regarding whether current guideline penalties are sufficient for increases in statutory maximum terms of imprisonment to 18 U.S.C. 545 and 549. The second issue for comment addresses a directive contained in the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109–162, regarding a defendant who is convicted of a Federal offense while wearing or displaying insignia and uniform received in violation of 18 U.S.C. 716.

Proposed Amendment

Part I Narco-Terrorism

[Option 1:

Section 2D1.1(a)(3) is amended by inserting before ''the offense level'' the following:

''[except if the defendant is convicted under 21 U.S.C. 960a,]''; and by striking the period at the end and inserting ''; or''.

Section 2D1.1(a) is amended by inserting after subsection (a)(3) the following:

''(4) [4][6] plus the offense level specified in the Drug Quantity Table set forth in subsection (c) if the defendant was convicted under 21 U.S.C. 960a.''.

Section 2D1.1(b)(9) is amended by inserting before ''decrease by two levels.'' the following:

''[and the defendant was not convicted under 21 U.S.C. 960a,]''. [Use with Option to add 6 levels under proposed subsection (a)(4):

The Commentary to § 2D1.1 captioned ''Background'' is amended by inserting after the third paragraph the following:

''Section 960a of title 21, United States Code, provides that a defendant shall be sentenced to a term of imprisonment of not less than twice the minimum punishment under 21 U.S.C. 841(b)(1). Adding six levels to the offense level determined under the Drug Quantity Table for convictions under 21 U.S.C. 960a establishes a guideline range with a lower limit as close to twice the statutory minimum as possible; e.g., offense level 32 plus [6] levels provides a range of 235 to 293 months, corresponding to a statutory minimum of 20 years or 240 months.''.]

[Option 2:

Chapter 2, Part D, Subpart 1, is amended by adding at the end the following new guideline and accompanying commentary:

''§ 2D1.14.—Narco-Terrorism

(a) Base Offense Level: [4][6] plus the offense level from § 2D1.1 applicable for the underlying offense[, except that § 2D1.1(a)(3) and (b)(9) shall not apply].

Commentary

Statutory Provision: 21 U.S.C. 960a.

Application Note:

1. In General.—The base offense level is determined using the Drug Quantity Table in § 2D1.1(c) and any appropriate specific offense characteristics in § 2D1.1(b)(1) through (b)(8).

Background: This guideline implements 21 U.S.C. § 960a, which provides that a defendant shall be sentenced to a term of imprisonment of not less than twice the minimum punishment under 21 U.S.C. § 841(b)(1). [Use the following with Option to add six levels under subsection (a): Adding six levels to the offense level determined under § 2D1.1 establishes a guideline range with a lower limit as close to twice the statutory minimum as possible; *e.g.*, offense level 32 plus 6 levels provides a range of 235 to 293 months, corresponding to a statutory minimum of 20 years or 240 months.].'']

Appendix A (Statutory Index) is amended by inserting after the line referenced to 21 U.S.C. § 960(d)(7) the following:

''21 U.S.C. § 960a—[Option 1: 2D1.1][Option 2: 2D1.14]''.

Part II—Border Tunnels

Chapter 2, Part X is amended by adding at the end the following new guideline and accompanying commentary:

''7. OFFENSES INVOLVING BORDER TUNNELS

§ 2X7.1.—Border Tunnels and Subterranean Passages

''(a) Base Offense Level:

(1) If the defendant was convicted under 18 U.S.C. § 554(c), [4] plus the offense level applicable to the underlying smuggling offense. If the resulting offense level is less than level [16], increase to level [16].

(2) [16], if the defendant was convicted under 18 U.S.C. § 554(a); or

(3) [8][9], if the defendant was convicted under 18 U.S.C. § 554(b).

Commentary

Statutory Provision: 18 U.S.C. 554.

Application Note:

1. Definition.—For purposes of this guideline, 'underlying smuggling offense' means the smuggling offense the defendant committed through the use of the tunnel or subterranean passage.''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 553(a)(2) the following:

''18 U.S.C. 554—2X7.1''.

Part III—Other New Offenses

The Commentary to § 2B1.5 captioned ''Statutory Provisions'' is amended by inserting ''554,'' before ''641,''.

The Commentary to § 2M5.2 captioned ''Statutory Provisions'' is amended by inserting ''18 U.S.C. 554,'' before ''22 U.S.C. 2778, 2780.''.

The Commentary to § 2Q2.1 captioned ''Statutory Provisions'' is amended by inserting '', 554'' after ''545''.

The Commentary to § 2Q2.1 captioned ''Background'' is amended by striking ''§ 545 where'' and inserting ''§§ 545 and 554 if''.

Section 2K1.4 is amended in subsections (a)(1) and (a)(2) by striking ''a ferry,'' each place it appears and inserting ''a maritime facility, a vessel, or a vessel's cargo,''; by redesignating subsection (a)(3) as (a)(4); and by inserting the following after subsection (a)(2):

''(3) [16,] [if the offense involved the destruction of or tampering with aids to maritime navigation][if the offense of conviction is 18 U.S.C. 2282B]; or''.

Section 2K1.4(b)(2) is amended by striking ''(a)(3)'' and inserting ''(a)(4)''.

The Commentary to § 2K1.4 captioned ''Statutory Provisions'' is amended by inserting ''2282A, 2282B,'' after ''2275,''.

The Commentary to § 2K1.4 captioned ''Application Notes'' is amended in Note 1 by inserting after ''For purposes of this guideline:'' the following paragraph:

'' 'Aids to maritime navigation' means any device external to a vessel intended to assist the navigator to determine position or save course, or to warn of dangers or obstructions to navigation.''; by inserting after ''destructive device.'' the following paragraph:

'' 'Maritime facility' means any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the United States and used, operated, or maintained by a public or private entity, including any contiguous or adjoining property under common ownership or operation.''; by striking ''1993(c)(5)'' and inserting ''1992(d)(7)''; and by adding at the end the following:

'' 'Vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.''.

The Commentary to § 2K1.3 captioned ''Statutory Provisions'' is amended by inserting '', 2283'' after ''1716''.

The Commentary to § 2M5.3 captioned ''Statutory Provisions'' is amended by inserting '', 2283, 2284'' after ''18 U.S.C. §§ ''.

Section 2M6.1 is amended in the heading by inserting ''Transport,'' after ''Transfer,''.

The Commentary to § 2M6.1 captioned ''Statutory Provisions'' is amended by inserting ''§ 2283,'' before ''2332a''.

The Commentary to § 2X2.1 captioned ''Statutory Provisions'' is amended by inserting ''2284,'' after ''2''.

The Commentary to § 2X3.1 captioned ''Statutory Provisions'' is amended by inserting ''2284,'' after ''1072,''.

Part IV—Other PATRIOT Act Statutes

Chapter Two, Part E, Subpart Four is amended in the heading by adding at the end ''AND SMOKELESS TOBACCO''.

Section 2E4.1 is amended in the heading by adding at the end ''and Smokeless Tobacco''.

The Commentary to § 2E4.1 captioned ''Background'' is amended by striking ''60,000'' and inserting ''10,000''.

Section 2M5.3 is amended in the heading by inserting ''Specially Designated Global Terrorists, or'' after ''Organizations or''.

The Commentary to § 2M5.3 captioned ''Statutory Provisions'' is amended by striking the period at the end and inserting ''; 50 U.S.C. 1705; 50 U.S.C. App. § 1701.''.

The Commentary to § 2M5.3 captioned ''Application Notes'' is amended in Note 1 by adding at the end the following paragraph:

'' 'Specially designated global terrorist' means any foreign person or

person so designated pursuant to Executive Order 13224 of September 23, 2001.''.

Part V—Statutory Index Amendments

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. § 553(a)(2) the following:

''18 U.S.C. § 554 2B1.5, 2M5.2, 2Q2.1'';

by inserting after the line referenced to 18 U.S.C. 2281 the following:

''18 U.S.C. § 2282A—2A1.1, 2A1.2, 2B1.1, 2K1.4, 2X1.1
18 U.S.C. § 2282B—2B1.1, 2K1.4, 2X1.1
18 U.S.C. § 2283—2K1.3, 2M5.3, 2M6.1
18 U.S.C. § 2284—2M5.3, 2X2.1, 2X3.1'';

in the line referenced to 18 U.S.C. § 2339 by inserting ''2M5.3,'' before ''2X2.1'';

by inserting after the line referenced to 50 U.S.C. § 783(c) the following:

''50 U.S.C. § 1705—2M5.3''; and

in the line referenced to 50 U.S.C. App. § 1701 by inserting '', 2M5.3'' after ''2M5.2''.

Part VI—Issues for Comment

1. The USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. 109–177 increased the statutory maximum terms of imprisonment for 18 U.S.C. 545 from 5 years to 20 years and for 18 U.S.C. 549 from 2 years to 10 years. The guidelines currently reference 18 U.S.C. 545 offenses to §§ 2B1.5 (Cultural Heritage), 2Q2.1 (Offenses Involving Fish, Wildlife, and Plants), and 2T3.1 (Evading Import Duties; Smuggling). Section 549 offenses are referenced to §§ 2B1.1 (Theft, Fraud, and Property Damage) and 2T3.1. The Commission requests comment regarding whether the current referenced guidelines provide sufficient penalties for 18 U.S.C. 545 and 549 offenses in light of the increased statutory maximum terms of imprisonment. If not, how should the Commission amend these guidelines to provide adequate punishment?

2. Part II of the proposed amendment creates a new guideline, § 2X7.1 (Border Tunnels and Subterranean Passages) to implement the new offense in 18 U.S.C. 554. The Commission requests comment regarding the proposed offense levels, specifically whether the offense levels for any of subsections ought to be higher than proposed, and if so, what would be appropriate offense levels for convictions under 18 U.S.C. 554(a), (b), and (c), respectively?

3. Section 1191(c) of Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109–162, directs the Commission to amend the guidelines ''to assure that the sentence imposed on a defendant who is convicted of a Federal offense while wearing or displaying insignia and uniform received in violation of section 716 of title 18, United States Code, reflects the gravity of this aggravating factor.'' Section 716, of title 18, United States Code, is a class B misdemeanor to which the guidelines do not apply. Notwithstanding, the Commission requests comment regarding how it should address this directive. For example, should the Commission provide a Chapter Three adjustment applicable in any case in which a uniform or insignia received in violation of 18 U.S.C. 716 was worn or displayed during the commission of the federal offense? If so, how many levels would be appropriate for such an adjustment? If not, what alternatives should the Commission consider? Alternatively, should the Commission amend Chapter Five, Part K (Departures) to provide a new upward departure provision for such cases? The Commission also requests comment regarding whether, instead of an adjustment or departure, the Commission should provide an application note, perhaps in § 1B1.9 (Class B or C Misdemeanors and Infractions), recognizing the directive but explaining that the guidelines do not apply to Class B or C misdemeanors.

7. Drugs

Synopsis of Proposed Amendment: This proposed amendment addresses new offenses created by the USA PATRIOT Improvement and Reauthorization Act of 2005 (the ''PATRIOT Act''), Pub. L. 109–177, and the Adam Walsh Child Protection and Safety Act of 2006 (the ''Adam Walsh Act''), Pub. L. 109–248.

First, the proposed amendment addresses 21 U.S.C. 865, which provides a mandatory consecutive sentence of not more than 15 years' imprisonment for any drug offense involving the smuggling of methamphetamine or any listed chemical while using a facilitated entry program for entry into the United States. The proposed amendment provides a new two-level enhancement in §§ 2D1.1(b)(5) and 2D1.11(b)(5) if the defendant is convicted under 21 U.S.C. 865. A proposed application note in both guidelines provides instruction as to how the court should impose a sentence in order to comply with the statutory requirement of a consecutive sentence.

Second, the proposed amendment provides three options for addressing the new offense in 21 U.S.C. 841(g), which was created by the Adam Walsh Act. This offense prohibits the use of the Internet to distribute a date rape drug to any person, ''knowing or with reasonable cause to believe that—(A) the drug would be used in the commission of criminal sexual conduct; or (B) the person is not an authorized purchaser;'' The statute defines ''date rape drug'' as ''(i) gamma hydroxybutyric acid (GHB) or any controlled substance analogue of GHB, including gamma butyrolactone (GBL) or 1,4-butanediol; (ii) ketamine; (iii) flunitrazipam; or (iv) any substance which the Attorney General designates * * * to be used in committing rape or sexual assault.'' The penalty is not more than 20 years' imprisonment.

Option One provides a new [two-] [four-]level enhancement in § 2D1.1(b)(9) if the defendant was convicted under 21 U.S.C. 841(g). Option Two focuses on the more serious conduct of distributing the drug knowing or having reason to believe it would be used to commit criminal sexual conduct. This option also requires a conviction under 21 U.S.C. 841(g) but provides a four-level enhancement if the defendant knew or had reasonable cause to believe the drug would be used in the commission of criminal sexual conduct. Option Three adopts a tiered approach: If the defendant knew the drug was to be used to commit criminal sexual conduct, add six levels with a floor of 29; if the defendant had reasonable cause to believe the drug would be used to commit criminal sexual conduct, add three levels with a floor of 26; in all other cases involving a conviction under this section, that is to say, the defendant sold the drug to an unauthorized purchaser, add two levels. ''Criminal sexual conduct'' is defined as any offense covered by the criminal sexual abuse guidelines (Chapter 2, Part A, Section 3). (Section 841(g) of title 21, United States Code, does not define this term.)

Third, the proposed amendment addresses the new offense in 21 U.S.C. 860a, which provides a mandatory consecutive term of imprisonment of not more than 20 years for manufacturing, distributing, or possessing with the intent to manufacture or distribute, methamphetamine on a premises in which a minor is present or resides. Two options are presented. The first option recognizes that currently § 2D1.1(b)(8) provides a six-level enhancement and a minimum offense level of 30, if the offense involved the manufacture of methamphetamine or amphetamine and the offense created a substantial risk of harm to the life of a minor or incompetent (the ''substantial risk of harm'' enhancement). The Commission added this provision in 2000 in response to a very specific

congressional directive contained in the Methamphetamine Anti-Proliferation Act of 2000, Pub. L. 106–310. See USSG App. C (amendments 608 and 620 (effective Dec. 12, 2000, and Nov. 1, 2001, respectively)). To address the overlap of conduct covered by the substantial risk of harm enhancement and the new offense, the proposed amendment would apply in any case in which the defendant is convicted under 21 U.S.C. § 860a and the substantial risk of harm enhancement does not apply. Thus, two levels will be applied in a case in which a minor is present, but in which the offense did not create a substantial risk of harm to the life of a minor. In any methamphetamine manufacturing case in which the government proves a substantial risk of harm to the life of a minor, the offense level will be increased by six levels and the defendant will be subject to a minimum offense level of 30. The second option, recognizing that manufacturing methamphetamine poses an inherent danger to minors, establishes an enhancement for manufacturing and possession with intent to manufacture that is separate and apart from proving substantial risk of harm to the life of the minor under existing § 2D1.1(b)(8). Option Two adds six levels with a floor of 29 if the defendant manufactured or possessed with intent to manufacture methamphetamine on premises where a minor resides or was present. If a defendant distributed or possessed with intent to distribute where a minor resides or was present, add three levels with a floor of 15.

Fourth, the proposed amendment eliminates the offense level cap of 20 for ketamine. Ketamine is a schedule III controlled substance. Currently, the Drug Quantity Table provides a maximum of level 20 for most schedule III substances because such substances are subject to a statutory maximum of 5 years. If a defendant is convicted under 21 U.S.C. § 860a for distributing ketamine, however, the defendant is subject to a statutory maximum of 20 years. Accordingly, the Drug Quantity Table in § 2D1.1(c) is modified to allow for sentencing of 21 U.S.C. 860a offenses involving quantities of ketamine corresponding to offense levels greater than level 20. The proposed amendment also provides a marihuana equivalency in Application Note 10 for ketamine (1 unit of ketamine = 1 gram of marihuana).

Fifth, the proposed amendment adds to Application Note 10 a new drug equivalency table for 1,4-butanediol (BD) and gamma butyrolactone (GBL), both of which are included in the definition of date rape drugs under 21 U.S.C. 841(g). Neither is a controlled substance. The proposed drug equivalency is 1 ml of BD or GBL equals 8.8 grams of marihuana.

Sixth, the proposed amendment updates Appendix A (Statutory Index) to include references to the new offenses.

Finally, issues for comment request input regarding the proposals addressing 21 U.S.C. 841(g), 860a, and 865.

Proposed Amendment

Section 2D1.1(b) is amended by redesignating subdivisions (8) and (9) as subdivisions [Option 1 (21 U.S.C. 860a: (11) and (12), respectively] [Option 2 (21 U.S.C. 860a: (10) and (11), respectively]; and by redesignating subdivisions (5) through (7) as subdivisions (6) through (8), respectively; and by inserting after subdivision (4) the following:

''(5) If the defendant is convicted under 21 U.S.C. 865, increase by 2 levels.''.

Section 2D1.1(b) is amended by inserting after subdivision (8), as redesignated by this amendment, the following:

[Option 1 (21 U.S.C. 841(g)):

''(9) If the defendant was convicted under 21 U.S.C. 841(g), increase by [2][4] levels.''.]

[Option 2 (21 U.S.C. 841(g)):

''(9) If the defendant was convicted under 21 U.S.C. 841(g) of knowing, or having reasonable cause to believe, that the drug would be used in the commission of criminal sexual conduct, increase by [4] levels.''.]

[Option 3 (21 U.S.C. 841(g)):

''(9) (A) If the defendant committed the offense under 21 U.S.C. 841(g)(1)(A) and (i) knew that the date rape drug was to be used to commit criminal sexual conduct, add 6 levels; if the offense level is less than 29, increase to 29; or (ii) had reasonable cause to believe that the drug would be used to commit criminal sexual conduct, add 3 levels. If the offense level is less than 26, increase to 26.

(B) If the defendant committed the offense under 21 U.S.C. 841(g)(1)(B) and knew or had reasonable cause to believe that the buyer was not an authorized purchaser, increase by 2 levels.''.]

[Option 1: (21 U.S.C. 860a):

Section 2D1.1(b) is amended by inserting after subdivision (9), as amended by this amendment, the following:

''(10) If (A) the defendant was convicted under 21 U.S.C. 860a; and (B) subsection (b)(11)(C) does not apply, increase by 2 levels.'';

and in subdivision (11), as redesignated by this amendment, by striking ''greater'' and inserting ''greatest''.]

[Option 2: (21 U.S.C. 860a):

Section 2D1.1 is amended in subsection (b)(10), as redesignated by this amendment, by striking ''greater'' and inserting ''greatest''; and by inserting after subdivision (C) the following:

''(D) (i) If (I) the defendant was convicted under 21 U.S.C. 860a; and (II) the offense involved the manufacturing or possession with intent to manufacture methamphetamine on premises in which an individual under the age of 18 years is present or resides, add [6] levels. If the resulting offense level is less than [29], increase to level [29]; or

(ii) If (I) the defendant was convicted under 21 U.S.C. 860a; and (II) the offense involved the distribution or possession with intent to distribute methamphetamine on premises in which an individual under the age of 18 years is present or resides, increase by [2][3] levels. If the resulting offense level is less than [15], increase to [15]''.]

Section 2D1.1(c)(1) is amended by inserting ''30,000,000 units or more of Ketamine;'' after the line referenced to ''Hashish Oil''.

Section 2D1.1(c)(2) is amended by inserting ''At least 10,000,000 but less than 30,000,000 units of Ketamine;'' after the line referenced to ''Hashish Oil''.

Section 2D1.1(c)(3) is amended by inserting ''At least 3,000,000 but less than 10,000,000 units of Ketamine;'' after the line referenced to ''Hashish Oil''.

Section 2D1.1(c)(4) is amended by inserting ''At least 1,000,000 but less than 3,000,000 units of Ketamine;'' after the line referenced to ''Hashish Oil''.

Section 2D1.1(c)(5) is amended by inserting ''At least 700,000 but less than 1,000,000 units of Ketamine;'' after the line referenced to ''Hashish Oil''.

Section 2D1.1(c)(6) is amended by inserting ''At least 400,000 but less than 700,000 units of Ketamine;'' after the line referenced to ''Hashish Oil''.

Section 2D1.1(c)(7) is amended by inserting ''At least 100,000 but less than 400,000 units of Ketamine;'' after the line referenced to ''Hashish Oil''.

Section 2D1.1(c)(8) is amended by inserting ''At least 80,000 but less than 100,000 units of Ketamine;'' after the line referenced to ''Hashish Oil''.

Section 2D1.1(c)(9) is amended by inserting ''At least 60,000 but less than 80,000 units of Ketamine;'' after the line referenced to ''Hashish Oil''.

Section 2D1.1(c)(10) is amended by inserting ''At least 40,000 but less than 60,000 units of Ketamine;'' after the line

referenced to ''Hashish Oil''; and by inserting ''(except Ketamine)'' after ''Schedule III substances''.

Section 2D1.1(c)(11) is amended by inserting ''At least 20,000 but less than 40,000 units of Ketamine;'' after the line referenced to ''Hashish Oil''; and by inserting ''(except Ketamine)'' after ''Schedule III substances''.

Section 2D1.1(c)(12) is amended by inserting ''At least 10,000 but less than 20,000 units of Ketamine;'' after the line referenced to ''Hashish Oil''; and by inserting ''(except Ketamine)'' after ''Schedule III substances''.

Section 2D1.1(c)(13) is amended by inserting ''At least 5,000 but less than 10,000 units of Ketamine;'' after the line referenced to ''Hashish Oil''; and by inserting ''(except Ketamine)'' after ''Schedule III substances''.

Section 2D1.1(c)(14) is amended by inserting ''At least 2,500 but less than 5,000 units of Ketamine;'' after the line referenced to ''Hashish Oil''; and by inserting ''(except Ketamine)'' after ''Schedule III substances''.

Section 2D1.1(c)(15) is amended by inserting ''At least 1,000 units but less than 2,500 units of Ketamine;'' after the line referenced to ''Hashish Oil''; and by inserting ''(except Ketamine)'' after ''Schedule III substances''.

Section 2D1.1(c)(16) is amended by inserting ''At least 250 units but less than 1,000 units of Ketamine;'' after the line referenced to ''Hashish Oil''; and by inserting ''(except Ketamine)'' after ''Schedule III substances''.

Section 2D1.1(c)(17) is amended by inserting ''Less than 250 units of Ketamine;'' after the line referenced to ''Hashish Oil''; and by inserting ''(except Ketamine)'' after ''Schedule III substances''.

The Commentary to § 2D1.1 captioned ''Statutory Provisions'' is amended by inserting ''(g), 860a, 865,'' after ''(3), (7),''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10 in the ''Drug Equivalency Tables'' in the subdivision captioned ''Schedule III Substances'' by inserting in the heading ''(except ketamine)'' after ''Substances'';

by adding after the subdivision captioned ''Schedule III Substances'' the following new subdivision:

''Ketamine

1 unit of ketamine = 1 gm of marihuana'';

and by adding after the subdivision captioned ''List I Chemicals (relating to the manufacture of amphetamine or methamphetamine)'' the following new subdivision: ''Date Rape Drugs (except flunitrazipam, GHB, or ketamine)

1 ml of 1,4-butanediol = 8.8 gm marihuana

1 ml of gamma butyrolactone = 8.8 gm marihuana''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 19 [Option 1 (21 U.S.C. 860a): By striking ''(b)(8)'' each place it appears and inserting ''(b)(11)''] [[Option 2 (21 U.S.C. 860a): By striking ''(b)(8)'' and inserting each place it appears''(b)(10)''].

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 20 [[Option 1 (21 U.S.C. 860a): By striking ''(b)(8)'' each place it appears and inserting ''(b)(11)''] [[Option 2 (21 U.S.C. 860a): By striking ''(b)(8)'' each place it appears and inserting ''(b)(10)''].

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 21 [[Option 1 (21 U.S.C. 860a): By striking ''(b)(9)'' each place it appears and inserting ''(b)(12)''] [[Option 2 (21 U.S.C. 860a): by striking ''(b)(9)'' each place it appears and inserting ''(b)(11)''].

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended by redesignating Notes 22 through 25 as Notes 23 through 26, respectively; and by inserting after Note 21 the following:

''22. Imposition of Consecutive Sentence for 21 U.S.C. 860a or 865.—Sections 860a and 865 of title 21, United States Code, require the imposition of a mandatory consecutive term of imprisonment of not more than 20 years and 15 years, respectively. In order to comply with the relevant statute, the court should determine the appropriate ''total punishment'' and divide the sentence on the judgment form between the sentence attributable to the underlying drug offense and the sentence attributable to 21 U.S.C. 860a or 865, specifying the number of months to be served consecutively for the conviction under 21 U.S.C. 860a or 865. [For example, if the applicable adjusted guideline range is 151–188 months and the court determines a ''total punishment'' of 151 months is appropriate, a sentence of 130 months for the underlying offense plus 21 months for the conduct covered by 21 U.S.C. 860a or 865 would achieve the 'total punishment' in a manner that satisfies the statutory requirement of a consecutive sentence.''.]

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 23, as redesignated by this amendment, by striking ''(5)'' each place it appears and inserting ''(6)''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 25, as redesignated by this amendment, by striking ''(6)'' each place it appears and inserting ''(7)''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 26, as redesignated by this amendment, by striking ''(7)'' each place it appears and inserting ''(8)''.

[Option 2 (21 U.S.C. 841(g)):

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended by adding at the end the following:

''27. Application of Subsection (b)(9).—For purposes of this subsection, 'criminal sexual conduct' means an offense covered by Chapter Two, Part A, Subpart 3 (Criminal Sexual Abuse).''.]

The Commentary to § 2D1.1 captioned ''Background'' is amended in the ninth paragraph [[Option 1 (21 U.S.C. 860a): By striking ''(b)(8)'' and inserting ''(b)(11)''] [[Option 2 (21 U.S.C. 860a): By striking ''(b)(8)'' and inserting ''(b)(10)'']; and in the last paragraph [[Option 1 (21 U.S.C. 860a): by striking ''(b)(8)'' and inserting ''(b)(11)''] [[Option 2 (21 U.S.C. 860a): By striking ''(b)(8)'' and inserting ''(b)(10)''].

Section 2D1.11(b) is amended by adding at the end the following subdivision:

''(5) If the defendant is convicted under 21 U.S.C. 865, increase by 2 levels.''.

The Commentary to § 2D1.11 captioned ''Statutory Provisions'' is amended by inserting ''865,'' after ''(f)(1),''.

The Commentary to § 2D1.11 captioned ''Application Notes'' is amended by adding at the end the following:

''8. Imposition of Consecutive Sentence for 21 U.S.C. 865.—Section 865 of title 21, United States Code, requires the imposition of a mandatory consecutive term of imprisonment of not more than 15 years. In order to comply with the relevant statute, the court should determine the appropriate 'total punishment' and, on the judgment form, divide the sentence between the sentence attributable to the underlying drug offense and the sentence attributable to 21 U.S.C. 865, specifying the number of months to be served consecutively for the conviction under 21 U.S.C. 865. [For example, if the applicable adjusted guideline range is 151–188 months and the court determines a 'total punishment' of 151 months is appropriate, a sentence of 130 months for the underlying offense plus 21 months for the conduct covered by 21 U.S.C. 865 would achieve the 'total punishment' in a manner that satisfies the statutory requirement of a consecutive sentence.''.]

Appendix A (Statutory Index) is amended by inserting after the line referenced to 21 U.S.C. 841(f)(1) the following:

''21 U.S.C. § 841(g)—2D1.1'';
by inserting after the line referenced to 21 U.S.C. § 860 the following:
''21 U.S.C. § 860a—2D1.1'';
and by inserting after the line referenced to 21 U.S.C. § 864 the following:
''21 U.S.C. § 865—2D1.1, 2D1.11''.

Issues for Comment:

1. Section 201 of the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109–248, created a new offense in 21 U.S.C. 841(g) for ''knowingly using the Internet to distribute a date rape drug to any person, knowing or with reasonable cause to believe that (A) the drug would be used in the commission of criminal sexual conduct; or (B) the person is not an authorized purchaser.'' The Commission requests comment regarding this offense, particularly with respect to the criminal sexual conduct aspect. The proposed amendment presents two options. Option One would provide a [two-][four-]level increase if the defendant was convicted under 21 U.S.C. 841(g), regardless of what the defendant knew or had reasonable cause to believe. Option Two would provide a four-level increase if the defendant was convicted under 21 U.S.C. 841(g) and the defendant knew or had reason to believe the drug would be used in the commission of criminal sexual conduct. Option Three would provide a six level increase with a floor of 29 if the defendant knew the drug would be used in the commission of criminal sexual conduct, and a three level increase with a floor of 26 if the defendant had reasonable cause to believe that the drug would be used to commit criminal sexual conduct. Where the defendant sold the drug using the internet to an unauthorized purchaser, add two levels. Is there an alternative approach that the Commission should consider with respect to the criminal sexual abuse aspect of the offense? For example, should the Commission provide a cross reference to the criminal sexual abuse guidelines (§§ 2A3.1–2A3.4) for defendants convicted under 21 U.S.C. 841(g)(A) even though it is not the defendant who committed the criminal sexual conduct?

The Commission also requests comment regarding whether any enhancement for a conviction under 21 U.S.C. 841(g) also should provide a minimum offense level. If so, what offense level would be appropriate?

2. Section 860a of title 21, United States Code, prohibits manufacturing or distributing, or possessing with the intent to manufacture or distribute, methamphetamine on a premises in which an individual under the age of 18 years is present or resides. Two options are presented. The first option uses the existing § 2D1.1(b)(8)(C) in cases where the government proves that manufacturing methamphetamine poses a substantial risk of harm to the minor (add 6 levels with a floor of 30), and in all other cases (i.e. distribution and possession with intent to distribute), add two levels. The second option presumes that manufacturing methamphetamine on premises where a minor resides or was present poses a risk of harm and thus calls for adding six levels with a floor of 29. In distribution or possession with intent to distribute cases, option two would add three levels with a floor of 15. The Commission requests comment on which option is preferable, or whether there is an alternative approach that should be considered. If Option One's approach were to be adopted, the Commission requests comment regarding whether the substantial risk of harm enhancement (currently in § 2D1.1(b)(8)(C) but proposed to be redesignated as § 2D1.1(b)(11)(C)) should be expanded to include distribution of methamphetamine such that distribution offenses that create a substantial risk of harm to the life of a minor or incompetent also would be subject to the six-level enhancement and the minimum offense level of 30. Similarly, should it be expanded to include possession with intent to distribute or manufacture? If so, what would constitute a substantial risk of harm to the life of a minor or incompetent in a case involving methamphetamine distribution or possession with intent to distribute or manufacture methamphetamine? With regard to Option Two, the Commission requests comment on whether the six level increase with a floor of 29, and the three level increase with a floor of 15, in manufacturing and distribution cases, respectively, is appropriate, or whether other levels would be more appropriate for the offense.

Both options presented in the proposed amendment are statute of conviction based. As an alternative to a statute of conviction based enhancement, the Commission requests comment regarding whether any enhancement that implements 21 U.S.C. 860a should be relevant conduct based. Additionally, rather than limit an enhancement to the manufacture and/or distribution of methamphetamine where a minor resides or is present, should the Commission expand any enhancement to all drugs. Finally, should the Commission expand the enhancement to apply when this conduct occurs where an incompetent resides or is present?

3. The USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. 109–177, established a new offense at 21 U.S.C. 865 that provides a mandatory consecutive sentence of not more than 15 years' imprisonment for any drug offense involving the smuggling of methamphetamine or methamphetamine precursor chemical while using a dedicated commuter lane, an alternative or accelerated inspection system, or other facilitated entry program for entry into the United States. The proposed amendment provides a two-level enhancement in §§ 2D1.1(b)(5) and 2D1.11(b)(5) if the defendant is convicted in 21 U.S.C. 865.

The Commission requests comment regarding this proposed enhancement. Specifically, the Commission requests comment on the following:

(a) Should this enhancement be greater than two levels and, if so, what would be appropriate? Additionally, should there be a minimum offense level and, if so, what offense level would be appropriate?

(b) Should the Commission provide an enhancement in §§ 2D1.1 and 2D1.11. that applies if the offense involved the use of a facilitated entry program to import drugs, regardless of the type of drug the defendant is convicted of importing, or conspiring to import, under 21 U.S.C. 960 or 963, respectively?

(c) Should the Commission amend § 3B1.3 (Abuse of Position of Trust or Use of Special Skill), Application Note 2, to include offenses that involve use of a facilitated entry program into the United States among cases that receive the § 3B1.3 adjustment? If so, should the Commission provide a special instruction in §§ 2D1.1 and 2D1.11 that § 3B1.3 applies if the defendant is convicted of an offense under 21 U.S.C. 865?

8. Immigration

Synopsis of Proposed Amendment: In April 2006, the Commission promulgated a number of amendments to the immigration guidelines, primarily focusing on smuggling offenses. These amendments became effective November 1, 2006. This proposed amendment addresses the number of aliens involved in an offense, the number of documents involved in an offense, and options for modifying to § 2L1.2 (Unlawfully Entering or Remaining in the United States). Two issues for comment follow the proposed amendment. The first requests input regarding base offense levels in §§ 2L1.1 (Smuggling, Transporting, or Harboring

an Unlawful Alien), 2L2.1 (Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law), and 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport). The second issue requests comment regarding *Lopez* v. *Gonzalez*, 127 S.Ct. 625 (Dec. 5, 2006).

Number of Aliens and Number of Documents

The proposed amendment provides two options for amending § 2L1.1(b)(2) and 2L2.1(b)(2) regarding the number of aliens and number of documents, respectively, involved in the offense. The first option maintains the current structure of the table, which provides a three-level increase for offenses involving six to 24 aliens, a six-level increase for offenses involving 25 to 99 aliens, and a nine-level increase for offenses involving 100 or more aliens. Option One amends the table to provide a nine-level increase for offenses involving 100 to 199 aliens, a [12]-level increase for offenses involving 200 to 299 aliens, and a [15]-level increase for offenses involving 300 or more aliens. Option Two, in part, mirrors Option One by providing the same increases at the top end of the table for offenses involving 100 or more aliens. However, Option Two also provides smaller categories at the low end of the table. Offenses involving six to [15] aliens would receive an increase of three levels, [16 to 49] aliens would receive an increase of [six] levels, and [50 to 99] aliens would receive an increase of [nine] levels.

§ 2L1.2 (Unlawfully Entering or Remaining in the United States)

The current structure of § 2L1.2 requires the court, using the ''categorical approach,'' to assess whether a prior conviction qualifies for a particular category under the guideline. This analysis is often complicated by lack of documentation, competing case law decisions, and the volume of cases. In addition, § 2L1.2 contains different definitions of covered offenses from the statute. Courts, then, are faced with making these assessments multiple times in the same case. The proposed amendment provides six options to address the complexity of this guideline.

The first, second, and third options amend the structure of § 2L1.2 by using the statutory definition of aggravated felony in combination with the length of the sentence imposed for that prior felony conviction. Option One provides a 16-level increase for an aggravated felony in which the sentence of imprisonment imposed exceeded 13 months; a 12-level increase for an aggravated felony in which the sentence of imprisonment imposed was less than 13 months; and an eight-level increase for all other aggravated felonies. Option Two provides a 16-level increase for an aggravated felony in which the sentence of imprisonment imposed exceeded two years; a 12-level increase for an aggravated felony in which the sentence of imprisonment imposed was at least one year, but less than two years; and an eight-level increase for all other aggravated felonies. Option Three, mirroring the criminal history guidelines, provides a 16-level increase for an aggravated felony in which the sentence imposed exceeded 13 months; a 12-level increase for an aggravated felony in which the sentence imposed was at least 60 days but did not exceed 13 months; and an eight-level increase for all other aggravated felonies.

For Options One through Three, the proposed amendment also eliminates the categories of crimes of violence and drug trafficking offenses from § 2L1.2(b)(1)(E) (three or more misdemeanor offenses).

The fourth option maintains the current structure of § 2L1.2, except that the categories of offenses delineated under this guideline are defined by 8 U.S.C. 1101(a)(43), the statute providing definitions for ''aggravated felonies''. Additionally, this option provides use of length of sentence of imprisonment imposed in conjunction with ''crime of violence'' to further distinguish between the numerous types of prior convictions that fall within this category.

The proposed amendment also provides for an upward departure in any case in which reliable information indicates that the elements of the offense set forth in the prior conviction under-represent the seriousness of that prior offense. This note is modeled after § 4A1.3 and could be used in conjunction with any of Options One through Four.

The fifth option provides an increased base offense level and a reduction if the prior conviction is not a felony.

The sixth option provides a 20-level increase for prior convictions for a national security or terrorism offense and creates further distinctions among type of conviction and length of prior sentence in relation to enhancements based on specific offense characteristics.

Proposed Amendment

[Option 1:

Section 2L1.1(b)(2) is amended by striking subdivision (C) and inserting the following:

''(C) 100–199—add 9
(D) 200–299—add [12]
(E) 300 or more—add [15].]''

[Option 2:

Section 2L1.1(b)(2) is amended by striking subdivisions (A) through (C) and inserting the following:

''(A) 6–[15]—add 3
(B) [16–49]—add [6]
(C) [50–99]—add [9]
(D) [100–199]—add [12]
(E) [200–299]—add [15]
(F) [300 or more]—add [18].''.]

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended in Note 3 by striking ''100'' and inserting ''300''.

Section 2L2.1(b)(2) is amended by striking subdivision (C) and inserting the following:

[Option 1:

''(C) 100–199—add 9
(D) 200–299—add [12]
(E) 300 or more—add [15].]''

[Option 2:

Section 2L2.1(b)(2) is amended by striking subdivisions (A) through (C) and inserting the following:

(A) 6–[15]—add 3
(B) [16–49]—add [6]
(C) [50–99]—add [9]
(D) [100–199]—add [12]
(E) [200–299]—add [15]
(F) [300 or more]—add [18].''.]

The Commentary to § 2L2.1 captioned ''Application Notes'' is amended in Note 5 by inserting ''Application of Subsection (b)(2).—'' before ''If the''; and by striking ''100'' and inserting ''300''.

Section 2L1.2 is amended by striking the guideline and accompanying commentary and inserting the following:

[Option 1:

''§ 2L1.2. Unlawfully Entering or Remaining in the United States

(a) Base Offense Level: 8

(b) Specific Offense Characteristic

(1) Apply the Greatest:

If the defendant previously was deported, or unlawfully remained in the United States, after—

(A) A conviction for an aggravated felony for which a sentence of imprisonment exceeding 13 months was imposed, increase by 16 levels;

(B) A conviction for an aggravated felony for which a sentence of imprisonment of 13 months or less was imposed, increase by 12 levels;

(C) A conviction for an aggravated felony not covered by subdivision (b)(1)(A) or (b)(1)(B), increase by 8 levels;

(D) A conviction for any other felony, increase by 4 levels; or

(E) Three or more convictions for misdemeanors, increase by 4 levels.

Commentary

Statutory Provisions: 8 U.S.C. 1325(a) (second or subsequent offense only), 8 U.S.C. 1326. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. Application of Subsection (b)(1).—

(A) In General.—For purposes of subsection (b)(1):

(i) A defendant shall be considered to be deported after a conviction if the defendant has been removed or has departed the United States while an order of exclusion, deportation, or removal was outstanding.

(ii) A defendant shall be considered to be deported after a conviction if the deportation was subsequent to the conviction, regardless of whether the deportation was in response to the conviction.

(iii) A defendant shall be considered to have unlawfully remained in the United States if the defendant remained in the United States following a removal order issued after a conviction, regardless of whether the removal order was in response to the conviction.

(iv) Subsection (b)(1) does not apply to a conviction for an offense committed before the defendant was eighteen years of age unless such conviction is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted.

(B) Definitions.—For purposes of subsection (b)(1):

(i) 'Aggravated felony' has the meaning given that term in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(43)), without regard to the date of conviction for the aggravated felony.

(ii) 'Aggravated felony not covered by subdivision (b)(1)(A) or (b)(1)(B)' means an aggravated felony for which the sentence imposed was a sentence other than imprisonment (*e.g.*, probation).

(iii) 'Felony' means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.

(iv) 'Sentence of imprisonment' has the meaning given that term in Application Note 2 and subsection (b) of § 4A1.2 (Definitions and Instructions for Computing Criminal History), without regard to the date of the conviction. The length of the sentence imposed includes any term of imprisonment given upon revocation of probation, parole, or supervised release.

2. Application of Subsection (b)(1)(E).—For purposes of subsection (b)(1)(E):

(A) 'Misdemeanor' means any federal, state, or local offense punishable by a term of imprisonment of one year or less.

(B) 'Three or more convictions' means at least three convictions for offenses that are not considered 'related cases', as that term is defined in Application Note 3 of § 4A1.2 (Definitions and Instructions for Computing Criminal History).

3. Aiding and Abetting, Conspiracies, and Attempts.—Prior convictions of offenses counted under subsection (b)(1) include the offenses of aiding and abetting, conspiring, and attempting, to commit such offenses.

4. Computation of Criminal History Points.—A conviction taken into account under subsection (b)(1) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).

[5. Upward Departure Provision.—If reliable information indicates that the elements of the offense set forth in the prior conviction under-represent the seriousness of that prior offense, an upward departure may be warranted.]''.]

[Option 2:

''§ 2L1.2. Unlawfully Entering or Remaining in the United States

(a) Base Offense Level: 8

(b) Specific Offense Characteristic

(1) Apply the Greatest:

If the defendant previously was deported, or unlawfully remained in the United States, after—

(A) A conviction for an aggravated felony for which the sentence imposed exceeded 2 years, increase by 16 levels;

(B) A conviction for an aggravated felony for which the sentence imposed was at least 12 months but did not exceed 2 years, increase by 12 levels;

(C) A conviction for an aggravated felony, not covered in (b)(1)(A) or (b)(1)(B), increase by 8 levels;

(D) A conviction for any other felony, increase by 4 levels; or

(E) Three or more convictions for misdemeanors, increase by 4 levels.

Commentary

Statutory Provisions: 8 U.S.C. 1325(a) (second or subsequent offense only), 8 U.S.C. § 1326. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. Application of Subsection (b)(1).—

(A) In General.—For purposes of subsection (b)(1):

(i) A defendant shall be considered to be deported after a conviction if the defendant has been removed or has departed the United States while an order of exclusion, deportation, or removal was outstanding.

(ii) A defendant shall be considered to be deported after a conviction if the deportation was subsequent to the conviction, regardless of whether the deportation was in response to the conviction.

(iii) A defendant shall be considered to have unlawfully remained in the United States if the defendant remained in the United States following a removal order issued after a conviction, regardless of whether the removal order was in response to the conviction.

(iv) Subsection (b)(1) does not apply to a conviction for an offense committed before the defendant was eighteen years of age unless such conviction is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted.

(B) Definitions.—For purposes of subsection (b)(1):

(i) 'Aggravated felony' has the meaning given that term in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)), without regard to the date of conviction for the aggravated felony.

(ii) 'Aggravated felony not covered by subdivision (b)(1)(A) or (b)(1)(B)' means an aggravated felony for which the sentence imposed was a sentence other than imprisonment (*e.g.*, probation).

(iii) 'Felony' means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.

(iv) ''Sentence of imprisonment' has the meaning given that term in Application Note 2 and subsection (b) of § 4A1.2 (Definitions and Instructions for Computing Criminal History), without regard to the date of the conviction. The length of the sentence imposed includes any term of imprisonment given upon revocation of probation, parole, or supervised release.

2. Application of Subsection (b)(1)(E).—For purposes of subsection (b)(1)(E):

(A) 'Misdemeanor' means any federal, state, or local offense punishable by a term of imprisonment of one year or less.

(B) 'Three or more convictions' means at least three convictions for offenses that are not considered 'related cases',

as that term is defined in Application Note 3 of § 4A1.2 (Definitions and Instructions for Computing Criminal History).

3. Aiding and Abetting, Conspiracies, and Attempts.—Prior convictions of offenses counted under subsection (b)(1) include the offenses of aiding and abetting, conspiring, and attempting, to commit such offenses.

4. Computation of Criminal History Points.—A conviction taken into account under subsection (b)(1) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).

[5. Upward Departure Provision.—If reliable information indicates that the elements of the offense set forth in the prior conviction under-represent the seriousness of that prior offense, an upward departure may be warranted.''].]

[Option 3:

''§ 2L1.2. Unlawfully Entering or Remaining in the United States

(a) Base Offense Level: 8

(b) Specific Offense Characteristic

(1) Apply the Greatest:

If the defendant previously was deported, or unlawfully remained in the United States, after—

(A) A conviction for an aggravated felony for which the sentence imposed exceeded 13 months, increase by 16 levels;

(B) A conviction for an aggravated felony for which the sentence imposed was at least 60 days but did not exceed 13 months, increase by 12 levels;

(C) A conviction for an aggravated felony not covered in (b)(1)(A) or (b)(1)(B), increase by 8 levels;

(D) A conviction for any other felony, increase by 4 levels; or

(E) Three or more convictions for misdemeanors, increase by 4 levels.

Commentary

Statutory Provisions: 8 U.S.C. 1325(a) (second or subsequent offense only), 8 U.S.C. § 1326. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. Application of Subsection (b)(1).—

(A) In General.—For purposes of subsection (b)(1):

(i) A defendant shall be considered to be deported after a conviction if the defendant has been removed or has departed the United States while an order of exclusion, deportation, or removal was outstanding.

(ii) A defendant shall be considered to be deported after a conviction if the deportation was subsequent to the conviction, regardless of whether the deportation was in response to the conviction.

(iii) A defendant shall be considered to have unlawfully remained in the United States if the defendant remained in the United States following a removal order issued after a conviction, regardless of whether the removal order was in response to the conviction.

(iv) Subsection (b)(1) does not apply to a conviction for an offense committed before the defendant was eighteen years of age unless such conviction is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted.

(B) Definitions.—For purposes of subsection (b)(1):

(i) 'Aggravated felony' has the meaning given that term in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(43)), without regard to the date of conviction for the aggravated felony.

(ii) 'Aggravated felony not covered by subdivision (b)(1)(A) or (b)(1)(B)' means an aggravated felony for which the sentence imposed was a sentence other than imprisonment (*e.g.*, probation).

(iii) 'Felony' means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.

(iv) 'Sentence of imprisonment' has the meaning given that term in Application Note 2 and subsection (b) of § 4A1.2 (Definitions and Instructions for Computing Criminal History), without regard to the date of the conviction. The length of the sentence imposed includes any term of imprisonment given upon revocation of probation, parole, or supervised release.

2. Application of Subsection (b)(1)(E).—For purposes of subsection (b)(1)(E):

(A) 'Misdemeanor' means any federal, state, or local offense punishable by a term of imprisonment of one year or less.

(B) 'Three or more convictions' means at least three convictions for offenses that are not considered 'related cases', as that term is defined in Application Note 3 of § 4A1.2 (Definitions and Instructions for Computing Criminal History).

3. Aiding and Abetting, Conspiracies, and Attempts.—Prior convictions of offenses counted under subsection (b)(1) include the offenses of aiding and abetting, conspiring, and attempting, to commit such offenses.

4. Computation of Criminal History Points.—A conviction taken into account under subsection (b)(1) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).

[5. Upward Departure Provision.—If reliable information indicates that the elements of the offense set forth in the prior conviction under-represent the seriousness of that prior offense, an upward departure may be warranted.''].

[Option 4:

''§ 2L1.2. Unlawfully Entering or Remaining in the United States

(a) Base Offense Level: 8

(b) Specific Offense Characteristic

(1) Apply the Greatest:

If the defendant previously was deported, or unlawfully remained in the United States, after—

(A) a conviction for an aggravated felony that is (i) a drug trafficking offense for which the sentence imposed exceeded 13 months; (ii) a crime of violence for which the sentence imposed exceeded 13 months; (iii) a firearms offense; (iv) a child pornography offense; (v) a national security or terrorism offense; (vi) a human trafficking offense; or (vii) an alien smuggling offense, increase by 16 levels;

(B) A conviction for an aggravated felony that is a (i) drug trafficking offense for which the sentence imposed was 13 months or less; or (ii) crime of violence for which the sentence imposed was 13 months or less, increase by 12 levels;

(C) A conviction for an aggravated felony not covered by subdivisions (b)(1)(A) or (b)(1)(B), increase by 8 levels;

(D) A conviction for any other felony, increase by 4 levels; or

(E) Three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses, increase by 4 levels.

Commentary

Statutory Provisions: 8 U.S.C. § 1325(a) (second or subsequent offense only), 8 U.S.C. § 1326. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. Application of Subsection (b)(1).—

(A) In General.—For purposes of subsection (b)(1):

(i) A defendant shall be considered to be deported after a conviction if the defendant has been removed or has departed the United States while an order of exclusion, deportation, or removal was outstanding.

(ii) A defendant shall be considered to be deported after a conviction if the deportation was subsequent to the conviction, regardless of whether the deportation was in response to the conviction.

(iii) A defendant shall be considered to have unlawfully remained in the

United States if the defendant remained in the United States following a removal order issued after a conviction, regardless of whether the removal order was in response to the conviction.

(iv) Subsection (b)(1) does not apply to a conviction for an offense committed before the defendant was eighteen years of age unless such conviction is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted.

(B) Definitions.—For purposes of subsection (b)(1):

(i) 'Alien smuggling offense' has the meaning given that term in section 101(a)(43)(N) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)(N)).

(ii) 'Child pornography offense' is an offense described in 8 U.S.C. 1101(a)(43)(I).

(iii) 'Crime of violence' has the meaning given that term in 18 U.S.C. § 16.

(iv) 'Drug trafficking offense' has the meaning given that term in 18 U.S.C. 924(c).

(v) 'Firearms offense' is an offense described in 8 U.S.C. 1101(a)(43)(C) and (E).

(vi) ''Human trafficking offense' is an offense described in 8 U.S.C. 1101(a)(43)(K).

(vii) 'Sentence imposed' has the meaning given the term 'sentence of imprisonment' in Application Note 2 and subsection (b) of § 4A1.2 (Definitions and Instructions for Computing Criminal History), without regard to the date of the conviction. The length of the sentence imposed includes any term of imprisonment given upon revocation of probation, parole, or supervised release.

(viii) 'National security or terrorism offense' is an offense described in 8 U.S.C. 1101(a)(43)(L).

2. Definition of 'Felony'.—For purposes of subsection (b)(1)(A), (B), and (D), 'felony' means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.

3. Application of Subsection (b)(1)(C).—(A) Definitions.—For purposes of subsection (b)(1)(C), 'aggravated felony' has the meaning given that term in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)), without regard to the date of conviction for the aggravated felony.

(B) In General.—The offense level shall be increased under subsection (b)(1)(C) for any aggravated felony (as defined in subdivision (A)), with respect to which the offense level is not increased under subsections (b)(1)(A) or (B).

4. Application of Subsection (b)(1)(E).—For purposes of subsection (b)(1)(E):

(A) 'Misdemeanor' means any federal, state, or local offense punishable by a term of imprisonment of one year or less.

(B) 'Three or more convictions' means at least three convictions for offenses that are not considered 'related cases', as that term is defined in Application Note 3 of § 4A1.2 (Definitions and Instructions for Computing Criminal History).

5. Aiding and Abetting, Conspiracies, and Attempts.—Prior convictions of offenses counted under subsection (b)(1) include the offenses of aiding and abetting, conspiring, and attempting, to commit such offenses.

6. Computation of Criminal History Points.—A conviction taken into account under subsection (b)(1) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).

[7. Upward Departure Provision.–If reliable information indicates that the elements of the offense set forth in the prior conviction under-represent the seriousness of that prior offense, an upward departure may be warranted.''.]]

[Option 5:

''§ 2L1.2. Unlawfully Entering or Remaining in the United States

(a) Base Offense Level:[16][20][24]

(b) Specific Offense Characteristic

[(1) If the defendant does not have a prior conviction for a felony, decrease by [8][6][4] levels.]

Commentary

Statutory Provisions: 8 U.S.C. 1325(a) (second or subsequent offense only), 8 U.S.C. § 1326. For additional statutory provision(s), see Appendix A.

Application Notes:

1. Definition of 'Felony'.—For purposes of subsection (b)(1)(A), (B), and (D), 'felony' means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.

2. Aiding and Abetting, Conspiracies, and Attempts.—Prior convictions of offenses counted under subsection (b)(1) include the offenses of aiding and abetting, conspiring, and attempting, to commit such offenses.''.]

[Option 6:

''§ 2L1.2. Unlawfully Entering or Remaining in the United States

(a) Base Offense Level: 8

(b) Specific Offense Characteristic

(1) Apply the Greatest:

If the defendant previously was removed, deported, or unlawfully remained in the United States, after—

(A) a prior conviction for a national security or terrorism offense, increase by 20 levels;

(B) A prior conviction resulting in a sentence of imprisonment of at least 13 months, or a prior conviction for murder, rape, a child pornography offense or an offense involving sexual abuse of a child, or three prior convictions resulting in sentences of imprisonment of at least 60 days, increase by 16 levels;

(C) A prior conviction resulting in a sentence of imprisonment of at least 6 months, or two prior convictions resulting in sentences of imprisonment of at least 60 days, increase by 12 levels;

(D) A prior conviction resulting in a sentence of imprisonment of at least 60 days, increase by 8 levels;

(E) A prior conviction resulting in a sentence of imprisonment or a conviction for any other felony, increase by 4 levels.

Commentary

Statutory Provisions: 8 U.S.C. 1325(a) (second or subsequent offense only), 8 U.S.C. § 1326. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. Application of Subsection (b)(1).—

(A) In General.-For purposes of subsection (b)(1):

(i) A defendant shall be considered to be deported after a conviction if the defendant has been removed or has departed the United States while an order of exclusion, deportation, or removal was outstanding.

(ii) A defendant shall be considered to be deported after a conviction if the deportation was subsequent to the conviction, regardless of whether the deportation was in response to the conviction.

(iii) A defendant shall be considered to have unlawfully remained in the United States if the defendant remained in the United States following a removal order issued after a conviction, regardless of whether the removal order was in response to the conviction.

(iv) Subsection (b)(1) does not apply to a conviction for an offense committed before the defendant was eighteen years of age unless such conviction is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted.

(B) Definitions.—For purposes of subsection (b)(1):

(i)'Child pornography offense' means (I) an offense described in 18 U.S.C.

§ 2251, § 2251A, § 2252, § 2252A, or § 2260; or (II) an offense under state or local law consisting of conduct that would have been an offense under any such section if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(ii) 'Offense involving sexual abuse of a child' means an offense where the victim is under 18 years of age and is any of the following: an offense described in 18 U.S.C. 2242, a forcible sex offense, statutory rape, or sexual abuse of a minor.

(iii) 'Sentence of imprisonment' has the meaning given in Application Note 2 and subsection (b) of § 4A1.2 (Definitions and Instructions for Computing Criminal History), without regard to the date of the conviction. The length of the sentence imposed includes any term of imprisonment given upon revocation of probation, parole, or supervised release.

(iv) 'National security offense' means an offense to which the Chapter 2M guidelines apply. 'Terrorism offense' means any offense involving, or intending to promote, a 'Federal crime of terrorism', as that term is defined in 18 U.S.C. 2332b(g)(5).

2. Definition of 'Felony'.—For purposes of subsection (b)(1)(E), 'felony' means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.

3. Sentences of imprisonment are counted separately if they are for offenses that are not considered 'related cases', as that term is defined in Application Note 3 of § 4A1.2 (Definitions and Instructions for Computing Criminal History).

4. Aiding and Abetting, Conspiracies, and Attempts.—Prior convictions of offenses counted under subsection (b)(1) include the offenses of aiding and abetting, conspiring, and attempting, to commit such offenses.

5. Computation of Criminal History Points.—A conviction taken into account under subsection (b)(1) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).''.] Issues for Comment:

1. In April 2006, the Commission promulgated an amendment that increased the base offense level in § 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) for offenses related to national security. See USSG App C (amendment 692) (effective Nov. 1, 2006). The Commission requests comment regarding whether it should increase the base offense levels in § 2L1.1(a)(2) (providing level 23 for previous conviction for an aggravated felony) and (a)(3) (providing level 12, otherwise). Should the Commission increase the base offense levels in §§ 2L2.1 (Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law) and 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport)? If so, what offense levels would be appropriate for each relevant guideline?

2. The Commission requests comment regarding the Supreme Court's decision in *Lopez* v. *Gonzalez,* 126 S.Ct. 625 (Dec. 5, 2006). In Lopez, the Supreme Court held that state drug convictions for conduct treated as a felony by the state, but as a misdemeanor under the federal Controlled Substances Act, do not constitute aggravated felonies under the Immigration and Nationality Act. Under federal criminal law, a conviction for an aggravated felony subjects an alien who unlawfully re-enters the United States to an enhanced statutory maximum penalty (see 8 U.S.C. 1326(b)(2)) and to an 8-level enhancement under the subsection (b)(1)(C) of § 2L1.2. Section 2L1.2 defines ''aggravated felony'' as having the same meaning given that term in 8 U.S.C. 1101(a)(43). Given that the guidelines reference the statutory definition of ''aggravated felony,'' the Commission requests comment regarding whether the guidelines should be amended, if at all, in light of *Lopez* v. *Gonzalez*?

9. Issue for Comment: Reductions In Sentence Based on BOP Motion (Compassionate Release)

In April 2006, the Commission promulgated a new policy statement at § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons), which became effective November 1, 2006. On May 15, 2006, the Commission published an issue for comment stating its intent to consider, in the 2006–2007 amendment cycle, developing further criteria and a list of specific examples of extraordinary and compelling reasons for sentence reduction pursuant to such statute. *See* 71 FR 28062. The Commission requested comment and specific suggestions for appropriate criteria and examples, as well as guidance regarding the extent of any such reduction and modifications to a term of supervised release.

The Commission received comment pursuant to this request and hereby requests any additional comment regarding appropriate criteria and examples of extraordinary and compelling reasons. For example, should the Commission modify § 1B1.13 to provide that a reduction in a term of imprisonment should be made only if the extraordinary and compelling reason warranting the reduction involves a circumstance or condition that (i) was unknown to the court at the time of sentencing; (ii) was known to or anticipated by the court at the time of sentencing but that has changed substantially since that time; or (iii) was prohibited from being taken into account by the court at the time of sentencing but is no longer prohibited because of a change in applicable law? With respect to examples of extraordinary and compelling reasons, should the fact that the defendant is suffering from a terminal illness be a sufficient basis for a reduction, or should a reduction be limited to situations in which the defendant's terminal illness reduces the defendant's life expectancy to less than 12 months? Should examples of extraordinary and compelling reasons be limited to medical conditions, and if not, what other factors should provide a basis for a reduction under § 1B1.13? Should the Commission provide for a combination approach, allowing the court to consider more than one reason, each of which alone is not extraordinary and compelling but that, taken together, make the rationale for a reduction extraordinary and compelling? Should § 1B1.13 provide that the Bureau of Prisons may determine that, in any particular defendant's case, an extraordinary and compelling reason other than a reason identified by the Commission warrants a reduction?

10. Issues for Comment: Criminal History

1. The Commission has identified as a policy priority for this amendment cycle the continuation of its policy work on Chapter Four (Criminal History and Criminal Livelihood), in part because criminal history is among the most frequently cited reasons for a below guideline range sentence. See 71 FR 56578 (Sept. 27, 2006). The Commission has begun examining ways to improve the operation of Chapter Four.

As part of this process the Commission held two round-table discussions regarding criminal history

in Washington, DC, on November 1 and 3, 2006, to gather input from judges, academics, federal prosecutors, federal public defenders and other defense practitioners, probation officers, and other users of the federal sentencing guidelines. One topic of interest was the use of minor offenses (i.e., misdemeanor and petty offenses) in determining a defendant's criminal history score. Pursuant to § 4A1.2(c), sentences for misdemeanors and petty offenses (''minor offenses'') are counted for criminal history purposes with a limited number of exceptions. Some minor offenses are counted only if the sentence was a term of probation of at least one year or a term of imprisonment of at least 30 days, or the prior offense was similar to the instant offense. Examples of offenses that fall within this exception include reckless driving, disorderly conduct, driving with a suspended license, gambling, prostitution, and resisting arrest. See § 4A1.2(c)(1) for the full list of offenses in this category. Certain minor offenses such as hitchhiking, juvenile status offenses and truancy, loitering, minor traffic infractions (e.g., speeding), public intoxication, and vagrancy are never counted in criminal history. See § 4A1.2(c)(2). Furthermore, several circuit courts have developed varying tests to determine if a conviction falls within the list of offenses provided in § 4A1.2(c)(1) or (c)(2).

The Commission requests comment regarding the use of minor offenses in determining a defendant's criminal history score. Specifically, how reflective of the defendant's culpability are minor offenses? Should the Commission consider specifically excluding other minor offenses from the criminal history determination and, if so, which offenses should be excluded? Conversely, should the Commission consider specifically including additional minor offenses for purposes of determining a defendant's criminal category? Should the Commission include any minor offense that has a term of probation of at least one year, or a term of imprisonment of at least 30 days, or if the prior offense was similar to the instant offense (as currently provided in § 4A1.2(c)(1))?

The Commission also requests comment regarding whether there is an alternate point value that the Commission should consider assigning to minor offenses, or whether there is an alternative way of counting minor offenses for criminal history purposes. For example, should the Commission consider providing criminal history points only after a defendant has multiple convictions for minor offenses? Should the Commission consider not assigning or assigning some alternative point value for recency and status points to minor offenses? (See § 4A1.1(d)–(e).) Alternatively, should minor offenses be used only for purposes of an upward departure under § 4A1.3 (Departures Based on Inadequacy of Criminal History Category)?

2. Another topic of interest among the round-table participants was the definition of ''related cases'' under Application Note 3 of § 4A1.2 (Definitions and Instructions for Computing Criminal History). Currently, prior sentences are considered related if there is not intervening arrest and they resulted from offenses that (A) occurred on the same occasion; (B) were part of a single common scheme or plan; or (C) were consolidated for trial or sentencing. Each of these criteria has been the subject of much litigation in the district and appellate courts, including a decision by the Supreme Court regarding the consolidation aspect of the definition. *See Buford* v. *United States,* 532 U.S. 59 (2001). Furthermore, a number of appellate opinions have suggested that the Commission reexamine the application of the definition of related cases when sentences are not separated by an intervening arrest. The Commission requests comment regarding the definition of ''related cases.'' With respect to the instances described in subdivisions (A), (B), and (C), are there factors that would help the court determine whether a case is related to another case? For example, should the Commission provide a list of factors for the court to use in determining whether prior convictions are consolidated for sentencing? In general, is the current definition for related cases too restrictive and, if so, how should the definition be modified or expanded?

11. Issue for Comment: Implementation of the Telephone Records and Privacy Protection Act of 2006

The Telephone Records and Privacy Protection Act of 2006, Pub. L. 109–476, created a new offense in 18 U.S.C. 1039 pertaining to the fraudulent acquisition or disclosure of confidential telephone records. Section 4 of the Act requires the Commission to ''review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of any offense under section 1039 of title 18, United States Code.'' The Act requires the Commission to promulgate an amendment not later than 180 days after the enactment of the Act.

The Commission requests comment regarding how best to implement this legislation, particularly in light of the mandatory consecutive penalties provided for certain forms of aggravated conduct, and keeping in mind the Commission's simplification efforts. For example, should the Commission reference this offense to § 2H3.1 as it is proposed to be amended in the Miscellaneous Laws proposed amendment? That proposed amendment expands the heading of the guideline to include the unauthorized disclosure of any private information, which would include confidential telephone records. If it should be referenced to § 2H3.1, are there additional modifications (*e.g.* special offense characteristics) that should be made to that guideline to implement the new offense?

12. Issue for Comment: Cocaine Sentencing Policy

The Commission identified as a policy priority for the current amendment cycle ending May 1, 2007, the ''continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on cocaine sentencing policy'', including updating the Commission's 2002 Report to Congress, Cocaine and Federal Sentencing Policy, which is available on the Commission's Web site at *www.ussc.gov*.

In working to address this priority, the Commission currently is updating the information contained in its 2002 Report. As part of this process, the Commission gathered information at a public hearing it held on cocaine sentencing policy on November 14, 2006. At that hearing, the Commission received testimony from the executive and judicial branches of the federal government, State and local agencies, the defense bar, medical and drug treatment experts, academics, and community interest groups. Witnesses at that hearing expressed a variety of views about the nature and characteristics of cocaine offenses and offenders and suggested a number of proposals for addressing federal cocaine penalties. Testimony of the witnesses, as well as a transcript of the public hearing, can be found on the Commission's Web site.

The Commission invites comment on any or all of the testimony received at the November 14, 2006, public hearing, including comment on any of the suggestions at that hearing or any other suggestions (such as possible changes in the Drug Quantity Table) for addressing federal cocaine penalties.

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 65

Inspection Authorization 2-Year Renewal; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 65

[Docket No.: FAA–2007–27108; Amendment No. 65–50]

RIN 2120–AI83

Inspection Authorization 2-Year Renewal

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) is amending the regulations for the Inspection Authorization (IA) renewal period. The current IA regulation has a 1-year renewal period. This rulemaking changes the renewal period to once every two years. By changing the renewal period, the FAA reduces the renewal administrative costs by 50%. Both the FAA and the mechanic holding the IA will realize this cost reduction. Aviation safety will not be affected because this rulemaking does not change the requirements of the prior rule for annual activity (work performed, training, or oral examination).

DATES: Effective March 1, 2007.

Comments for inclusion in the Rules Docket must be received on or before March 1, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–27108 using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kim Barnette, AFS–350, 800 Independence Ave, SW., Washington, DC 20591. Telephone number: 202–493–4922; e-mail: *kim.barnette@faa.gov*; Fax is 202–267–5115.

SUPPLEMENTARY INFORMATION: This rulemaking responds to ongoing discussions between the FAA and industry groups concerning ways to reduce the administrative burden associated with the renewal of inspection authorizations under § 65.93, Inspection authorization: Renewal, of Title 14 of the Code of Federal Regulations (14 CFR). Historically, inspection authorizations have been renewed every year during the month of March. Discussions between the FAA and industry representatives, including the Professional Aviation Maintenance Association (PAMA), concluded that changing the renewal period to once every two years, while maintaining requirements for activity (work performed, training, or oral examination) on an annual basis would reduce the administrative burden without affecting safety. The FAA therefore decided to promulgate this rulemaking as a direct final rule because these non-controversial administrative changes will result in appreciable benefits and will not have any adverse impact on safety.

The rule amends § 65.92(a) and § 65.93(a) and (b), and adds a new paragraph (c) to § 65.93. The amendment to § 65.92(a) changes the expiration date of an inspection authorization from ''March 31 of each year'' to ''March 31 of each odd-numbered year.'' The amendment to § 65.93(a) changes the renewal period for inspection authorizations from every year to once every two years, reflecting the expiration date change to odd-numbered years. The rule retains an annual activity requirement for each year of the 2-year IA period. Consistent with the annual aspects of the current rule, an IA holder must perform one of the five activities listed in § 65.93(a) (1)–(5) during the first year (April 1 to the following March 31) of the 2-year IA period. As provided in new paragraph (c) to § 65.93, if the IA holder does not complete one of those activities by March 31 of the first-year, the holder may not exercise the inspection authorization privileges after that date. However, the holder may resume exercising IA privileges during the second year after he or she passes an oral test given by an FAA inspector to determine if the holder's knowledge of applicable regulations and standards is current. When the holder passes the oral test, the FAA will deem the first-year requirement completed. Each IA holder also must perform one of the five activities listed in § 65.93(a) (1)–(5) during the second year of the inspection authorization period to be eligible for renewal.

The amendment for § 65.93(b) addresses the case of a holder of an inspection authorization that has been in effect for less than 90 days before March 31 of an even-numbered year. That IA holder need not comply with the activity requirements of § 65.93(a) (1) through (5) for the first year of the 2-year inspection authorization period.

This rulemaking has both FAA and industry support because it provides for a 2-year inspection authorization renewal instead of an annual requirement. Extending the inspection authorization period to two years reduces the paperwork requirements, therefore reducing costs for both IA holders and the FAA by 50%.

As noted before, § 65.92(a) sets March 31 as the date when each inspection authorization expires. The FAA selected March 1, 2007, as the effective date so that the new rule will be in effect when current IAs expire. During March 2007, when mechanics apply to their local Flight Standards District Office/International Field Office (FSDO/IFO) for renewal of their IAs, the FAA Inspector will sign FAA Form 8310–5, Inspection Authorization, for a 2-year period if the mechanics meet the requirements for renewal. The FAA recognizes that during this transition to a 2-year renewal period, the FAA will be looking only at a 1-year period (April 1, 2006 to March 31, 2007) with respect to meeting the requirements of § 65.93(a) (1)–(5).

Inspection Authorization: Duration

The FAA is changing § 65.92(a) to state that each inspection authorization expires on March 31 of each odd-numbered year. This action ensures that §§ 65.92 and 65.93 consistently address the 2-year renewal period.

Inspection Authorization: Renewal

The FAA is changing § 65.93 to provide that:

- The renewal period for an inspection authorization is changed to every two years, from April 1 of each odd-numbered year to March 31 of the next odd-numbered year.
- The IA period is made up of two periods of one year duration, each with an activity (work performed, training, or oral examination) requirement.
- During March of every odd-numbered year, an applicant for renewal must present evidence to the FAA of meeting the inspection authorization renewal requirements of § 65.93(a).
- To maintain currency and ensure a consistent level of safety, IA holders must fulfill one of the activities of § 65.93(a) (1) through (5) during the first year of the 2-year IA period.
- If an IA holder does not complete the activity requirement by March 31 of the first year of the 2-year IA period, the IA holder may not exercise the privileges of the authorization after that date. The IA holder may resume exercising inspection authorization privileges during the second year of the 2-year IA period after the IA holder passes an oral test. That test is administered by an FAA inspector to determine that the IA holder's knowledge of applicable regulations and standards is current. Upon passing the oral test, the IA holder will be deemed in compliance with the first year activity (work performed, training, or oral examination) requirement. Alternatively, the IA holder may surrender the inspection authorization and retake the IA examination without a waiting period before re-examination.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority set forth in 49 U.S.C. 44701(a)(2)(A). This regulation is within the scope of that authority because the Administrator is charged with promoting safe flight of civil aircraft by, among other things, prescribing regulations that the Administrator finds necessary inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule as a result of the strong support from the mechanics who hold inspection authorizations. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the requirements in this document. The most helpful comments reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

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

If you want the FAA to acknowledge receipt of your comments on this direct final rule, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

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 (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policy Web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

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. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBRFA on the Internet at our site, *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

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 these sections to the Office of Management and Budget for its review. The collection of information was approved and assigned OMB Control Number 2120–0022. 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 Office of Management and Budget (OMB) control number. This final rule extends the renewal period for Inspection Authorizations from one year to two years. With this change, the FAA reduces the renewal administrative costs and the paperwork by 50 percent. Both the FAA and the mechanic holding the IA will realize this cost reduction. The rule is expected to result in cost savings over ten years of approximately $795,000 ($545,863 discounted) to industry and $430,000 ($295,856 discounted) to the FAA.

Individuals and organizations may submit comments on the information collection requirement by March 1, 2007, and should direct them to the address listed in the **ADDRESSES** section of this document.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization International Standards and Recommended practices and has identified no differences in these proposed amendments and the foreign regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall 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 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) 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 with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this direct final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this direct final rule. The reasoning for this determination follows.

Since this direct final rule extends the time between the renewal of the inspection authorization from one to two years, the expected outcome will be a cost savings. This is because the frequency with which mechanics will have to complete and submit renewal applications and FSDOs will have to review these applications will be cut in half. The rule is expected to result in cost savings over ten years of approximately $795,000 ($545,863 discounted) to industry and $430,000 ($295,856 discounted) to the FAA. There is no impact on safety because the rule does not change the requirements for annual activity (work performed, training, or oral examination).

Assumptions

- Discount rate—7%.
- Period of analysis—2007 through 2016.
- All monetary values are expressed in 2005 dollars.
- In 2007 approximately 15,000 mechanics will renew their inspection authorization. The number of mechanics will drop to about 12,000 by 2011.
- An airframe and powerplant (A&P) mechanic's time is costed out at $36.69 [1] an hour including fringe benefits.
- The A&P will need approximately 20 minutes to fill out Form 8610–1.
- The cost for a mechanic to complete and mail each form is $12.62 [2].
- The hourly rate for a GS–11 is $36.36 [3] including fringe benefits.
- A GS–11 at the FSDO and a GS–11 at Oklahoma City will each need approximately 5 minutes to process the application.
- The cost to the FAA to process each application including postage is $6.84 [4].

The following steps take place during the process of renewing an inspection authorization. The A&P mechanic fills out Form 8610–1 and mails it to the local FSDO where a staff member reviews the application to make sure it meets the requirements, confirms the signature, signs the card and mails it back to the mechanic and mails the application to Oklahoma City. At Oklahoma City, a staff member files the application and transfers the name.

The following tables detail the cost savings to industry and to the United States Government.

INDUSTRY COST SAVINGS

Year	Number renewing without rule	Cost per application	Total cost without the rule	Number renewing with rule	Total Cost with the rule	Net cost savings of the rule	Discount Rate	Net present value of cost savings
2007	15,000	12.62	189,300	15,000	189,300	0	0.9346	0
2008	14,250	12.62	179,835	0	0	179,835	0.8734	157,075
2009	13,500	12.62	170,370	13,500	170,370	0	0.8163	0
2010	12,750	12.62	160,905	0	0	160,905	0.7629	122,754
2011	12,000	12.62	151,440	12,000	151,440	0	0.7130	0
2012	12,000	12.62	151,440	0	0	151,440	0.6663	100,911
2013	12,000	12.62	151,440	12,000	151,440	0	0.6227	0
2014	12,000	12.62	151,440	0	0	151,440	0.5820	88,139
2015	12,000	12.62	151,440	12,000	151,440	0	0.5439	0

[1] The annual salary of an A&P maintenance technician is estimated at $57,614 in 2002 as discussed on pg. 7–10 in ''Economic Values for FAA Investment and Regulatory Decisions, A Guide, Contract No. DTFA 01–02–C00200, Draft final Report, December 31, 2004. To convert to 2005 dollars the FAA used the *Budget of the United States Government, Fiscal Year 2006,* Table 10.1—Gross Domestic Product and Deflators Used in the Historical Tables: 1940–2011. To convert 2002 dollars to 2005 dollars the FAA multiplied by 1.072949 to obtain $61,817. The FAA applied a fringe benefit factor of 23.45% as discussed in ''Economic Analysis of Investment and Regulatory Decisions—Revised Guide'', FAA–APO–98–4, January 1998. The FAA multiplied $61,817 by 1.2345 to obtain an annual cost of $76,313 for the mechanic's time and divided by 2080 to obtain an hourly cost of $36.69 for a mechanic.

[2] The cost to complete and mail each form is derived by multiplying the mechanics hourly rate of $36.69 by 20/60, because the mechanic needs 20 minutes to fill out each form, to obtain $12.23 and adding $0.39 because the mechanic must mail the form to the FSDO.

[3] The hourly basic wage rate from the 2005 General Schedule Salary Table 2004–DCB (for the locality pay area of Rest of the United States), GS–11, Step 5 is $27.45. The FAA applied a fringe benefit factor of 32.45% as discussed in ''Economic Analysis of Investment and Regulatory Decisions—Revised Guide'', FAA–APO–98–4, January 1998. The FAA multiplied $27.45 by 1.3245 to obtain an hourly wage rate of $36.36 for a GS11 employee processing the application.

[4] This cost was derived by multiplying the hourly rate of $36.36 by (10/60) because the FAA needs 10 minutes per application to obtain $6.06 and adding the cost of postage for 2 mailings ($0.78) to obtain $6.83.

INDUSTRY COST SAVINGS—Continued

Year	Number renewing without rule	Cost per application	Total cost without the rule	Number renewing with rule	Total Cost with the rule	Net cost savings of the rule	Discount Rate	Net present value of cost savings
2016	12,000	12.62	151,440	0	0	151,440	0.5083	76,984
Total			1,609,050		813,990	795,060		545,863

GOVERNMENT COST SAVINGS

Year	Number renewing without rule	Cost per application	Total cost without the rule	Number renewing with rule	Total Cost with the rule	Net cost savings of the rule	Discount Rate	Net present value of cost savings
2007	15,000	$6.84	$102,600	$15,000	$102,600	$0	$0.9346	$0
2008	14,250	6.84	97,470	0	0	97,470	0.8734	85,134
2009	13,500	6.84	92,340	13,500	92,340	0	0.8163	0
2010	12,750	6.84	87,210	0	0	87,210	0.7629	66,532
2011	12,000	6.84	82,080	12,000	82,080	0	0.7130	0
2012	12,000	6.84	82,080	0	0	82,080	0.6663	54,693
2013	12,000	6.84	82,080	12,000	82,080	0	0.6227	0
2014	12,000	6.84	82,080	0	0	82,080	0.5820	47,771
2015	12,000	6.84	82,080	12,000	82,080	0	0.5439	0
2016	12,000	6.84	82,080	0	0	82,080	0.5083	41,725
Total			872,100		441,180	430,920		295,856

Based on the projected cost savings, the FAA has determined that this direct final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 (Public Law 96–354) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' 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 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 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. This direct final rule will result in some minor cost savings (about $12 per employee every other year) to certain individuals and will not impose any additional costs.

Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) 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 direct final rule and has determined that it will have only a domestic impact and therefore no affect on international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) 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 with the base year 1995) 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.

This direct final rule does not contain such a mandate.

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. Therefore, we determined that this final rule does not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

• Are the requirements in the regulations clearly stated?

• Do the regulations contain technical language or jargon that interferes with their clarity?

• Would the regulations be easier to understand if they were divided into more (but shorter) sections?

• Is the description in the preamble helpful in understanding this action?

Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 307s 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 (66 FR 28355, May 18, 2001). We have determined that 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.

List of Subjects in 14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Alcohol abuse, Aviation safety, Drug abuse, Reporting and recordkeeping requirements, Security measures.

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends part 65 of the Federal Aviation Regulations (14 CFR part 65) as follows:

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

■ 1. The authority citation for part 65 is revised to read as follows:

Authority: 49 U.S.C. 106(g). 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 2. Revise § 65.92(a) to read as follows.

§ 65.92 Inspection authorization: Duration.

(a) Each inspection authorization expires on March 31 of each odd-numbered year. However, the holder may exercise the privileges of that authorization only while he holds a currently effective mechanic certificate with both a currently effective airframe rating and a currently effective powerplant rating.

* * * * *

■ 3. Revise § 65.93 to read as follows.

§ 65.93 Inspection authorization: Renewal.

(a) To be eligible for renewal of an inspection authorization for a 2-year period an applicant must present evidence during the month of March of each odd-numbered year, at an FAA Flight Standards District Office or an International Field Office, that the applicant still meets the requirements of § 65.91(c) (1) through (4). In addition, during the time the applicant held the inspection authorization, the applicant must show completion of one of the activities in § 65.93(a) (1) through (5) below by March 31 of the first year of the 2-year inspection authorization period, and completion of one of the five activities during the second year of the 2-year period:

(1) Performed at least one annual inspection for each 90 days that the applicant held the current authority; or

(2) Performed at least two major repairs or major alterations for each 90 days that the applicant held the current authority; or

(3) Performed or supervised and approved at least one progressive inspection in accordance with standards prescribed by the Administrator; or

(4) Attended and successfully completed a refresher course, acceptable to the Administrator, of not less than 8 hours of instruction; or

(5) Passed an oral test by an FAA inspector to determine that the applicant's knowledge of applicable regulations and standards is current.

(b) The holder of an inspection authorization that has been in effect:

(1) for less than 90 days before the expiration date need not comply with paragraphs (a)(1) through (5) of this section.

(2) for less than 90 days before March 31 of an even-numbered year need not comply with paragraphs (a)(1) through (5) of this section for the first year of the 2-year inspection authorization period.

(c) An inspection authorization holder who does not complete one of the activities set forth in § 65.93(a) (1) through (5) of this section by March 31 of the first year of the 2-year inspection authorization period may not exercise inspection authorization privileges after March 31 of the first year. The inspection authorization holder may resume exercising inspection authorization privileges after passing an oral test from an FAA inspector to determine that the applicant's knowledge of the applicable regulations and standards is current. An inspection authorization holder who passes this oral test is deemed to have completed the requirements of § 65.93(a) (1) through (5) by March 31 of the first year.

Issued in Washington, DC on January 23, 2007.

Marion C. Blakey,

Administrator.

[FR Doc. 07–412 Filed 1–26–07; 8:48 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
January 30, 2007

Part V

The President

Proclamation 8102—Fifth Anniversary of USA Freedom Corps, 2007

Executive Order 13424—Further Amendment to Executive Order 13285, Relating to the President's Council on Service and Civic Participation

Federal Register
Vol. 72, No. 19
Tuesday, January 30, 2007

Presidential Documents

Title 3—

The President

Proclamation 8102 of January 25, 2007

Fifth Anniversary of USA Freedom Corps, 2007

By the President of the United States of America

A Proclamation

The great strength of our Nation is found in the heroic kindness, courage, and self-sacrifice of the American people. Every day, individuals show the good heart of our country by volunteering to help make someone's life better. Since 2002, the USA Freedom Corps has provided access to volunteer opportunities for millions of Americans. On the fifth anniversary of the USA Freedom Corps, we honor volunteers who give their time and talents to make a difference in the lives of others, and we recognize that helping those in need makes America a more hopeful country.

The USA Freedom Corps was created to encourage Americans to answer the call to serve a cause greater than themselves. By matching willing volunteers with opportunities in their communities, the USA Freedom Corps brings Americans together to mentor children, assist the elderly, clean up neighborhoods, and perform countless acts of generosity. The USA Freedom Corps has helped support national service programs such as AmeriCorps, Citizen Corps, Peace Corps, and Senior Corps. Through programs like these, volunteers all across the country bring comfort and kindness to people at home and abroad.

Through the USA Freedom Corps website at volunteer.gov, all Americans can find ways to serve in our country's armies of compassion. By answering the universal call to help a neighbor, individual Americans can transform towns and cities into more caring communities and neighborhoods and make America a better place.

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 29, 2007, as the Fifth Anniversary of the USA Freedom Corps. I call upon the citizens of this great country to find ways to volunteer and help their fellow Americans. I commend the efforts of the USA Freedom Corps and all those who have already answered the call to serve, and I encourage all Americans to give of their time, energy, and talents to make America even stronger.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth 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. 07–418
Filed 1–29–07; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13424 of January 26, 2007

Further Amendment to Executive Order 13285, Relating to the President's Council on Service and Civic Participation

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to extend the President's Council on Service and Civic Participation, it is hereby ordered that Executive Order 13285 of January 29, 2003, as amended, is further amended by revising section 4(b) to read as follows: ''(b) Unless further extended by the President, this order shall expire on November 30, 2008.''

THE WHITE HOUSE,
January 26, 2007.

[FR Doc. 07–419
Filed 1–29–07; 8:45 am]
Billing code 3195–01–P

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LIST OF PUBLIC LAWS

This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 159/P.L. 110–1

To redesignate the White Rocks National Recreation Area in the State of Vermont as the ''Robert T. Stafford White Rocks National Recreation Area''. (Jan. 17, 2007; 121 Stat. 3)

A cumulative list of Public Laws for the second session of the 109th Congress will be published in the **Federal Register** on January 31, 2007.

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