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RESERVATIONS: (202) 741–6008

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

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209–AA14

Post-Employment Conflict of Interest Restrictions; Exemption of Positions and Revision of Departmental Component Designations

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule, amendments.

SUMMARY: The Office of Government Ethics is issuing this rule to provide notice of the exemption of certain senior employees' positions from the one-year post-employment restriction of 18 U.S.C. 207(c), to revoke certain existing department component designations, and to designate an additional component for purposes of that provision.

DATES: The amendment to appendix A to part 2641 (as set forth in amendatory paragraph 2), is effective March 8, 2007.

The amendments to appendix B to part 2641 (as set forth in amendatory paragraph 3) are effective March 8, 2007.

Finally, the removal of the entire listing for the Department of Homeland Security in appendix B to part 2641 (as set forth in amendatory paragraph 4) is effective June 6, 2007.

FOR FURTHER INFORMATION CONTACT: Shelley K. Finlayson, Attorney-Advisor/Congressional Liaison Officer, or William E. Gressman, Senior Associate General Counsel, Office of General Counsel and Legal Policy, Office of Government Ethics, Telephone: 202–482–9300; *TDD:* 202–482–9293; *FAX:* 202–482–9237.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

Exemption of Positions

18 U.S.C. 207(c) prohibits a former ''senior employee'' for a period of one year from knowingly making, with the intent to influence, any communication to or appearance before an employee of the department or agency in which he served in any capacity during the one-year period prior to termination from senior service, if that communication or appearance is made on behalf of any other person, except the United States. For purposes of 18 U.S.C. 207, a ''senior employee'' is any employee (other than an individual covered by the ''very senior employee'' one-year restriction in 18 U.S.C. 207(d)) who was employed in a position for which the rate of pay is specified in or fixed according to the Executive Schedule, in a position for which the rate of basic pay is equal to or greater than 86.5 percent of the rate of basic pay payable for level II of the Executive Schedule, or in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade is O–7 or above. The term includes those individuals appointed by the President to a position under 3 U.S.C. 105(a)(2)(B) or by the Vice President to a position under 3 U.S.C. 106(a)(1)(B). The term also includes any person who was assigned from a private sector organization to an agency under the Information Technology Exchange Program, 5 U.S.C. chapter 37. An individual is subject to section 207(c) as a result of service as a special Government employee only if the individual served 60 or more days as a special Government employee during the one-year period before terminating service as a senior employee.

The representational bar of 18 U.S.C. 207(c) usually applies to all senior positions. However, 18 U.S.C. 207(c)(2)(C) provides that whenever the Director of OGE determines, after a review requested by the department or agency concerned, that the imposition of the restrictions with respect to a particular position or positions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions, and granting the waiver would not create the potential for use of undue influence or unfair advantage, the position or category of positions is exempted from the one-year representational prohibition.

Any senior employee position is eligible for exemption except persons: Employed at a rate of pay specified in or fixed according to subchapter II of 5 U.S.C. chapter 53 (the Executive Schedule); in positions whose occupants are appointed by the President pursuant to 3 U.S.C. 105(a)(2)(B); in positions whose occupants are appointed by the Vice President pursuant to 3 U.S.C. 106(a)(1)(B); or assigned by a private sector organization to an agency under the Information Technology Exchange Program. Positions exempted from 18 U.S.C. 207(c) are listed in appendix A to 5 CFR part 2641, OGE's regulation governing the executive branch post-employment conflict of interest restrictions.

The Director of OGE regularly reviews the position exemptions and, in consultation with the department or agency concerned, makes such additions and deletions as are necessary. As specified in 5 CFR 2641.201(d)(3)(iii), the Director shall respond to each initial exemption request from agency ethics officials and annually publish a compilation of all exempted positions or categories of positions. Section 2641.201(d)(5) further provides that, before exempting a position or positions from 18 U.S.C. 207(c), the Director must find: (1) That granting the exemption would not create the potential for use by former senior employees of undue influence or unfair advantage based on past Government service; and (2) that the imposition of the restriction would create an undue hardship on the particular department or agency in obtaining qualified personnel to fill such positions. Relevant factors for the second finding may include the payment of a special rate of pay to the incumbent of the position pursuant to specific statutory authority or a requirement that the incumbent of the position have outstanding qualifications in a scientific, technological, or other technical discipline.

Pursuant to the procedures prescribed in 5 CFR 2641.201(d), one agency forwarded two written requests in 2003 to OGE requesting that its listing in appendix A be amended.

Securities and Exchange Commission

In 2003, the Securities and Exchange Commission (SEC) requested that the Director of OGE exempt various new positions (termed ''SK'' positions) from 18 U.S.C. 207(c). These positions previously had been classified at GS–15 and below. However, when the SEC implemented ''pay parity'' authority under Pub. L. 107–123 to improve recruitment and retention, these positions then exceeded the pay threshold of 18 U.S.C. 207(c)(2)(A)(2) despite no increase in duties or responsibilities. Also included in one of the SEC requests was the position of Deputy Chief Litigation Counsel, Division of Enforcement, a position which itself is supervised by a position that was already exempted by OGE effective on October 29, 1991.

After carefully reviewing the changes requested by the SEC in light of the criteria in 18 U.S.C. 207(c)(2)(C) as implemented in 5 CFR 2641.201(d)(5), the then-Director of OGE granted these requests by letters dated November 10, 2003 and December 4, 2003. OGE is now amending appendix A to part 2641 to include these additional exempted SEC positions, retroactively effective to those respective dates (as parenthetically indicated in the amended appendix listing for the SEC positions concerned). An exemption ''shall be effective as of the effective date of the Director's written response to the designated agency ethics official indicating that the request for exemption has been granted.'' 5 CFR 2641.201(d)(4). Once granted, the exemptions inured to the benefit of the individuals who held the positions when the exemptions took effect and their successors, but were not effective as to employees who terminated senior service from such positions prior to the effective date of the exemptions.

Revocation and Addition of Departmental Components

The representational bar of 18 U.S.C. 207(c) also usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, 18 U.S.C. 207(h) provides that whenever the Director of OGE determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate component of that department or agency. As a result, a former senior employee who served in a ''parent'' department or agency is not barred by 18 U.S.C. 207(c) from making communications to or appearances before any employees of any designated component of that parent, but is barred as to employees of that parent or of other components that have not been separately designated. Moreover, a former senior employee who served in a designated component of a parent department or agency is barred from communicating to or making an appearance before any employee of that component, but is not barred as to any employee of the parent or of any other component.

Under 18 U.S.C 207(h)(2), component designations do not apply to persons employed at a rate of pay specified in or fixed according to subchapter II of 5 U.S.C. chapter 53 (the Executive Schedule). Component designations are listed in appendix B to 5 CFR part 2641.

The Director of OGE regularly reviews the component designations and determinations and, in consultation with the department or agency concerned, makes such additions and deletions as are necessary. Specifically, the Director ''shall by rule make or revoke a component designation after considering the recommendation of the designated agency ethics official.'' 5 CFR 2641.201(e)(3)(iii). Before designating an agency component as distinct and separate for purposes of 18 U.S.C. 207(c), the Director must find that there exists no potential for use by former senior employees of undue influence or unfair advantage based on past Government service, and that the component is an agency or bureau within a department or agency that exercises functions which are distinct and separate from the functions of the parent department or agency and from the functions of other components of that parent. 5 CFR 2641.201(e)(6).

Pursuant to the procedures prescribed in 5 CFR 2641.201(e), two departments have forwarded written requests to OGE to amend their respective listings in appendix B. After carefully reviewing the requested changes in light of the criteria in 18 U.S.C. 207(h) as implemented in 5 CFR 2641.201(e)(6), the Director of OGE has determined to grant these requests and amend appendix B to 5 CFR part 2641 as explained below.

Department of Homeland Security

The Department of Homeland Security (DHS) has requested that OGE remove all separate components from the DHS listing as designated at 69 FR 68053–68056 (November 23, 2004). The Department has determined that a single, undifferentiated organization for purposes of 18 U.S.C. 207(c) is in the best interest of DHS, the Government, and the public as DHS strives to establish a single, unified workforce.

Accordingly, because the former components no longer exercise functions which are distinct and separate, the OGE Director is granting the request of DHS and is amending appendix B to part 2641 to remove the entire listing for DHS, including all of the DHS components.

As 5 CFR 2641.201(e)(4) provides, a component designation ''shall be effective as of the effective date of the rule that creates the designation, but shall not be effective as to employees who terminated senior service prior to that date.'' Initial component designations were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B to part 2641, November 23, 2004 in the case of DHS components as noted above.

A revocation is effective 90 days after the effective date of the rule that revokes the designation. Accordingly, the component designation revocations made in this rulemaking will take effect June 6, 2007. Revocations are not effective as to any individual terminating senior service prior to the expiration of the 90-day period.

Department of Justice

The Department of Justice has requested that OGE designate the Office on Violence Against Women (OVW) as a distinct and separate component of the Department of Justice (DOJ) except as to the Office of Justice Programs (OJP) for purposes of 18 U.S.C. 207(c). Legislation passed in 2002 established OVW as a separate and distinct office within DOJ. Pub. L. 107–273, codified at 42 U.S.C. 3796gg–0(b). However, because OVW continues to work closely with OJP on a number of initiatives, DOJ has not requested that OVW be considered separate from OJP, but only from other designated DOJ components.

Accordingly, the Director is granting the request of DOJ and therefore is amending the DOJ listing in appendix B to part 2641 to designate OVW as a new component as discussed.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, as the Director of the Office of Government Ethics, I find that good cause exists for

waiving the general requirements for notice of proposed rulemaking, opportunity for public comment, and, except as to the component designation revocations (see the preamble discussion above), a 30-day delayed effective date. It is important and in the public interest that the codification of OGE's previous designations of additional exempted positions as well as the designation revocations and new designation herein by OGE of the specified separate departmental components, which reflect the current organization of the concerned departments, be published in the **Federal Register** and take effect as promptly as possible.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal departments and agencies and current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), the final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this rulemaking involves a non-major rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**.

Executive Order 12866

In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This rule has not been reviewed by the Office of Management and Budget under that Executive order since it deals with agency organization, management, and personnel matters and is not ''significant'' under the order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: March 1, 2007.

Robert I. Cusick,

Director, Office of Government Ethics.

■ Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2641 as follows:

PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

■ 1. The authority citation for part 2641 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Effective March 8, 2007, appendix A to part 2641 is amended by revising the listing for the Securities and Exchange Commission to read as follows:

Appendix A to Part 2641—Positions Exempted From 18 U.S.C. 207(c)

* * * * *

Agency: Securities and Exchange Commission

Positions:

Solicitor, Office of General Counsel (effective October 29, 1991).

Chief Litigation Counsel, Division of Enforcement (effective October 29, 1991).

Deputy Chief Litigation Counsel, Division of Enforcement (effective November 10, 2003).

SK–17 positions (effective November 10, 2003).

SK–16 and lower-graded SK positions supervised by employees in SK–17 positions (effective November 10, 2003).

SK–16 and lower-graded SK positions not supervised by employees in SK–17 positions (effective December 4, 2003).

■ 3. Effective March 8, 2007, appendix B to part 2641 is amended by revising the listings for the Department of Homeland Security and the Department of Justice to read as follows:

Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

* * * * *

Parent: Department of Homeland Security

Components:

Directorate of Emergency Preparedness and Response (effective November 23, 2004; expiring June 6, 2007).

Directorate of Information Analysis and Infrastructure Protection (effective November 23, 2004; expiring June 6, 2007).

Directorate of Science and Technology (effective November 23, 2004; expiring June 6, 2007).

Federal Law Enforcement Training Center (effective November 23, 2004; expiring June 6, 2007).

Transportation Security Administration (effective November 23, 2004; expiring June 6, 2007).

United States Secret Service (effective November 23, 2004; expiring June 6, 2007).

United States Coast Guard (effective November 23, 2004; expiring June 6, 2007).

* * * * *

Parent: Department of Justice

Components:

Antitrust Division.

Bureau of Alcohol, Tobacco, Firearms and Explosives (effective November 23, 2004).

Bureau of Prisons (including Federal Prison Industries, Inc.).

Civil Division.

Civil Rights Division.

Community Relations Service.

Criminal Division.

Drug Enforcement Administration.

Environment and Natural Resources Division.

Executive Office for United States Attorneys [2] (effective January 28, 1992).

Executive Office for United States Trustees [3] (effective January 28, 1992).

Federal Bureau of Investigation.

Foreign Claims Settlement Commission.

[2] The Executive Office for United States Attorneys shall not be considered separate from any Office of the United States Attorney for a judicial district, but only from other designated components of the Department of Justice.

[3] The Executive Office for United States Trustees shall not be considered separate from any Office of the United States Trustee for a region, but only from other designated components of the Department of Justice.

Independent Counsel appointed by the Attorney General.

Office of Justice Programs.

Office of the Pardon Attorney (effective January 28, 1992).

Offices of the United States Attorney (94).[4]

Offices of the United States Trustee (21).[5]

Office on Violence Against Women[6] (effective March 8, 2007).

Tax Division.

United States Marshals Service (effective May 16, 1997).

United States Parole Commission.

* * * * *

■ Effective June 6, 2007, appendix B to part 2641 is further amended by removing the listing for the Department of Homeland Security (and all of the components thereunder).

[FR Doc. E7–4167 Filed 3–7–07; 8:45 am]

BILLING CODE 6345–02–P

[4] Each Office of the United States Attorney for a judicial district shall be considered a separate component from each other such office.

[5] Each Office of the United States Trustee for a region shall be considered a separate component from each other such office.

[6] The Office on Violence Against Women shall not be considered separate from the Office of Justice Programs, but only from other designated components of the Department of Justice.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26233; Directorate Identifier 2006–CE–63–AD; Amendment 39–14979; AD 2007–05–18]

RIN 2120–AA64

Airworthiness Directives; EADS SOCATA Model TBM 700 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the finding of an improper geometry of some pulley brackets, which can offset the cable in the sheave. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 12, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 12, 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.

FOR FURTHER INFORMATION CONTACT: Albert J. Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 7, 2006 (71 FR 70908). That NPRM proposed to require a detailed inspection of the aileron control cable pulleys and brackets, and apply corrective actions as necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received.

EADS SOCATA believes the FAA should reference the changes in the NPRM of the compliance time from 10 hours time-in-service (TIS) in the MCAI and service bulletin to 50 hours TIS in the NPRM in the ''FAA AD Differences'' section.

The FAA sometimes needs to change compliance times for enforceability reasons. We normally do not include that as an FAA AD Difference in an AD action, unless it affects the actions being done. However, since this compliance time change was significant, we will note it as a difference. The difference will state that the MCAI and service bulletin requires the action at 10 hours TIS. Typically, this short of a compliance time would indicate an unsafe condition requiring urgent action. However, we did not consider this unsafe condition to be an urgent safety of flight condition and issued this action through the normal notice of proposed rulemaking (NPRM) AD process. The time of 50 hours TIS is an adequate compliance for this AD action and met the FAA requirements of an NPRM followed by a final rule.

EADS SOCATA comments that EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–134, dated July 2005, is not an Alert.

The FAA agrees and changes the reference to the service information in the final rule.

EADS SOCATA states that the costs of the required parts is about $450 per product and not the $8,600 per product that is in the Costs of Compliance section of the NPRM. EADS SOCATA also estimates that it would take 2.5 work-hours to inspect and 8.5 work-hours to replace the nonconforming parts, if necessary. This total of 11 work-hours is less than the 12 work-hours that the FAA estimates in the NPRM.

The FAA agrees and has changed the Costs of Compliance section in the final rule to reflect the above costs.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable in a U.S. court of law. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements, if any, take precedence over the actions copied from the MCAI.

Costs of Compliance

We estimate that this AD will affect 55 products of U.S. registry. We also estimate that it will take about 11 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $450 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $73,150, or $1,330 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 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.

Examining the AD Docket

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

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 FAA amends § 39.13 by adding the following new AD:

2007–05–18 EADS SOCATA: Amendment 39–14979; Docket No. FAA–2006–26233; Directorate Identifier 2006–CE–63–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 12, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model TBM 700 airplanes, serial numbers 261 through 268 and 270 through 323, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states the finding of an improper geometry of some pulley brackets, which can offset the cable in the sheave. If not corrected, this could reduce the ability to control the roll of the aircraft.

Actions and Compliance

(e) Unless already done, within the next 50 hours time-in-service after April 12, 2007 (the effective date of this AD), accomplish a detailed inspection of the aileron control cable pulleys and brackets, and apply corrective actions as necessary, following EADS SOCATA Mandatory Service Bulletin SB 70–134, dated July 2005.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The MCAI and service bulletin require the action at 10 hours TIS. We consider 10 hours TIS as an urgent safety of flight compliance time, and we do not consider this unsafe condition to be an urgent safety of flight condition. Because we do not consider this unsafe condition to be an urgent safety of flight condition, we issued this action through the normal notice of proposed rulemaking (NPRM) AD process. The time of 50 hours TIS is an adequate compliance for this AD action and met the FAA requirements of an NPRM followed by a final rule.

Other FAA AD Provisions

(f) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, *ATTN:* Albert J. Mercado, Aerospace Safety Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(g) Refer to Direction générale de l'aviation civile (DGAC) Airworthiness Directive No. F–2005–133, dated August 3, 2005, for related information.

Material Incorporated by Reference

(h) You must use EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–134, dated July 2005, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact EADS SOCATA, Direction des Services, 65921 Tarbes Cedex 9, France; *telephone:* 33 (0)5 62 41 73 00; *fax:* 33 (0)5 62 41 76 54; or SOCATA AIRCRAFT, INC., North Perry Airport, 7501 South Airport Rd.,

Pembroke Pines, FL 33023; *telephone:* (954) 893–1400; *fax:* (954) 964–4141.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on March 1, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–3990 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25000; Directorate Identifier 2006–NM–096–AD; Amendment 39–14955; AD 2005–24–03 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, and –800 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is revising an existing airworthiness directive (AD) that applies to certain Boeing Model 737–600, –700, –700C, and –800 series airplanes. That AD currently requires inspecting/measuring the length of the attachment fasteners between the nacelle support fittings and the lower wing skin panels, and related investigative/corrective actions if necessary. That AD resulted from a report from the manufacturer that in production, during the installation of certain attachment fasteners for the nacelle support fittings, only one washer was installed instead of two. This new AD corrects errors found in the existing AD. We are issuing this AD to prevent inadequate fastener clamp-up, which could result in cracking of the fastener holes, cracking along the lower wing skin panels, fuel leaking from the wing fuel tanks onto the engines, and possible fire.

DATES: The effective date of this AD is April 12, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 12, 2007.

On December 28, 2005 (70 FR 70713, November 23, 2005), the Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 737–57–1275, Revision 1, dated August 18, 2005.

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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an airworthiness directive (AD) to revise AD 2005–24–03, amendment 39–14383 (70 FR 70713, November 23, 2005). The existing AD applies to certain Boeing Model 737–600, –700, –700C, and –800 series airplanes. The proposed AD was published in the **Federal Register** on June 13, 2006 (71 FR 34026). That action proposed to continue to require inspecting/measuring the length of the attachment fasteners between the nacelle support fittings and the lower wing skin panels, and related investigative/corrective actions if necessary. That action also proposed to correct errors found in the existing AD.

Comment

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

Request To Cite Revised Service Information

Boeing states that, subsequent to the drafting of the subject AD, Boeing Service Bulletin 737–57–1275, Revision 2, dated July 12, 2006, was issued. Boeing notes that Revision 2 will aid operators in completing the required tasks by more effectively and efficiently performing the inspections, while reducing the likelihood of introducing damage reported during completion of the previous revisions. Boeing recommends that Boeing Service Bulletin 737–57–1275, Revision 3, dated October 17, 2006, be incorporated into the NPRM, which further improves ease in completing the required tasks. (Revision 3 was not yet issued when the comment was submitted, but has since been issued.)

We agree with this request. We have reviewed Revision 3 of the referenced service bulletin which specifies that no more work is necessary on airplanes changed as shown in the original issue, dated September 4, 2003; Revision 1, dated August 18, 2005; and Revision 2, dated July 12, 2006. (We referred to Revision 1 in the NPRM as the appropriate source of service information for accomplishing the required actions.) We have determined that Revision 3 shows changes of operators in the effectivity and clarifies the oversize limits for replacement fasteners, but does not add any further actions or increase the economic burden on operators. Therefore, we have changed the AD to add Boeing Service Bulletin 737–57–1275, Revision 3, dated October 17, 2006, as the appropriate source of service information for accomplishing the requirements in paragraph (f) of this AD after the effective date of this AD.

Conclusion

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

There are about 751 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD. The requirements that were previously required by AD 2005–24–03 are retained in this AD; this AD adds no additional economic burden on U.S. operators. The current costs are repeated for the convenience of affected operators, as follows:

Estimated Costs

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection/Measurement	12	$65	Nominal	$780	302	$235,560

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 removing amendment 39–14383 (70 FR 70713, November 23, 2005) and adding the following new airworthiness directive (AD):

2005–24–03 R1 Boeing: Amendment 39–14955. Docket No. FAA–2006–25000; Directorate Identifier 2006–NM–096–AD.

Effective Date

(a) The effective date of this AD is April 12, 2007.

Affected ADs

(b) This AD revises AD 2005–24–03.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, and –800 series airplanes; line numbers 1 through 761 inclusive, except for line numbers 596, 683, 742, 749, 750, 751, 754, 755, 759, and 760; certificated in any category.

Unsafe Condition

(d) This AD results from a determination that errors were inadvertently included in the existing AD. We are issuing this AD to prevent inadequate fastener clamp-up, which could result in cracking of the fastener holes, cracking along the lower wing skin panels, fuel leaking from the wing fuel tanks onto the engines, and possible fire.

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.

Inspection/Measurement and Related Investigative and Corrective Actions

(f) At the applicable time specified in paragraph (f)(1) or (f)(2) of this AD: Inspect/measure the length of certain attachment fasteners between the lower wing skin panels and the nacelle support fittings. Do the inspection/measurement, and all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–57–1275, Revision 1, dated August 18, 2005. After the effective date of this AD only Boeing Service Bulletin 737–57–1275, Revision 3, dated October 17, 2006; shall be used.

(1) For Model 737–700 series airplanes modified by Supplemental Type Certificate (STC) ST00830SE as of December 28, 2005 (the effective date of AD 2005–24–03): Accomplish the actions at the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(i) Prior to the accumulation of 25,000 total flight hours or 25,000 total flight cycles, whichever is first.

(ii) Within 12 months after December 28, 2005.

(2) For all other airplanes: Accomplish the actions at the later of the times specified in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD.

(i) Prior to the accumulation of 30,000 total flight hours or 30,000 total flight cycles, whichever is first.

(ii) Within 12 months after December 28, 2005.

(g) If accomplishing a corrective action as required by paragraph (f) of this AD, and the service bulletin specifies to contact Boeing for repair information: Before further flight, do the repair using a method approved in accordance with paragraph (i) of this AD.

Actions Accomplished According to Previous Issue of Service Bulletin

(h) Actions accomplished before December 28, 2005, in accordance with Boeing Service Bulletin 737–57–1275, dated September 4, 2003; are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) AMOCs approved previously in accordance with AD 2005–24–03, are approved as AMOCs for the corresponding provisions of this AD.

(3) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(4) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(j) You must use the service information identified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1.—ALL MATERIAL INCORPORATED BY REFERENCE

Boeing Service Bulletin	Revision level	Date
737–57–1275 ..	1	August 18, 2005.
737–57–1275 ..	3	October 17, 2006.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 737–57–1275, Revision 3, dated October 17, 2006; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On December 28, 2005 (70 FR 70713, November 23, 2005), the Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 737–57–1275, Revision 1, dated August 18, 2005.

(3) Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on February 12, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–3006 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24709; Directorate Identifier 2006–CE–28–AD; Amendment 39–14980; AD 2007–05–19]

RIN 2120–AA64

Airworthiness Directives; Glasflugel Models H 301 ''Libelle,'' H 301B ''Libelle,'' Standard ''Libelle,'' and Standard Libelle-201B Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all Glasflugel Models H 301 ''Libelle,'' H 301B ''Libelle,'' Standard ''Libelle,'' and Standard Libelle-201B sailplanes. This AD requires you to replace the rudder actuator arm (manufactured according to drawing No. 301–45–10) with an improved design rudder actuator arm (manufactured following drawing No. 301–45–13). This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to detect and correct damage to the rudder actuator arm, which could result in failure of the rudder actuator arm. This failure could result in reduced or loss of rudder control.

DATES: This AD becomes effective on April 12, 2007.

As of April 12, 2007, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Glasflugel, Glasfaser-Flugzeug-Service GmbH, Hansjory Steifeneder, Hofener Weg, 72582 Grabenstetten, Federal Republic of Germany; telephone: 011 49 7382 1032.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2006–24709; Directorate Identifier 2006–CE–28–AD.

FOR FURTHER INFORMATION CONTACT: Gregory Davison, Glider Project Officer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

On August 4, 2006, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Glasflugel Models H 301 ''Libelle,'' H 301B ''Libelle,'' Standard ''Libelle,'' and Standard Libelle-201B sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 11, 2006 (71 FR 46128). The NPRM proposed to require you to replace the rudder actuator arm (manufactured according to drawing No. 301–45–10) with an improved design rudder actuator arm (manufactured following drawing No. 301–45–13).

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal and FAA's response to the comment:

Comment Issue: Service Documents and Parts Manufacturer Approval

Jack Buster of the Modification and Replacement Parts Association (MARPA) requests the following be incorporated into the regulatory action:

1. Service documents deemed essential to the accomplishment of this proposed action be incorporated by reference and published in the Docket Management System (DMS); and

2. The issue of parts manufacturer approval (PMA) be addressed in the proposed action and that all Directorates within the FAA treat the issue the same per Section 1, paragraph (b)(10) of Executive Order 12866.

We agree that the service documents are essential and should be incorporated by reference. However, we do not incorporate by reference any document in a proposed AD action; instead we incorporate by reference the document in the final rule. Since we are issuing the proposal as a final rule AD action, the service information referenced in this action will be incorporated by reference.

We are currently reviewing issues surrounding the posting of service bulletins in the Department of Transportation's DMS as part of the 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.

On the PMA issue, Mr. Buster's comments are timely in that the FAA is currently reviewing this issue as it applies to all products: Transport airplanes, commuter airplanes, general aviation airplanes, engines and propellers, rotorcraft, and appliances. The FAA acknowledges that there are different ways of addressing this issue to ensure that unsafe PMA parts are identified and addressed. Once we have thoroughly examined all aspects of this issue including input from industry and have made a final determination, we will consider developing a standardized approach and standardized language on how to address PMA parts in airworthiness directives.

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

Conclusion

We have carefully reviewed the available data and determined that air

safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these are minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 160 airplanes in the U.S. registry.

We estimate the following costs to do the replacement of the rudder actuator arm (manufactured according to drawing No. 301–45–10):

Labor Cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 work-hours × $80 per hour = $240	$150	$390	$62,400

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 AD.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–24709; Directorate Identifier 2006–CE–28–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2007–05–19 Glasflugel: Amendment 39–14980; Docket No. FAA–2006–24709; Directorate Identifier 2006–CE–28–AD.

Effective Date

(a) This AD becomes effective on April 12, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD affects Models H 301 ''Libelle,'' H 301B ''Libelle,'' Standard ''Libelle,'' and Standard Libelle-201B sailplanes, all serial numbers, that are certificated in any category.

Unsafe Condition

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to detect and correct damage to the rudder actuator arm, which could result in failure of the rudder actuator arm. This failure could result in reduced or loss of rudder control.

Compliance

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Replace the rudder actuator arm (manufactured according to drawing No. 301–45–10) with an improved design actuator arm (manufactured following drawing No. 301–45–13).	Within the next 30 days after April 12, 2007 (the effective date of this AD), unless already done.	Follow Glasfaser-Flugzeug-Service GmbH Hansjörg Streifeneder Technical Note No. 201–35 and No. 301–39, dated March 1, 2005.
(2) Do not install any rudder actuator arm (manufactured according to drawing No. 301–45–10).	As of April 12, 2007 (the effective date of this AD).	Not applicable.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Standards Office, Small Airplane Directorate, FAA, ATTN: Gregory Davison, Glider Project Officer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) German AD Number D–2005–118, dated April 4, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(h) You must use Glasfaser-Flugzeug-Service GmbH Hansjörg Streifeneder Technical Note No. 201–35 and No. 301–39, dated March 1, 2005, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Glasflugel, Glasfaser-Flugzeug-Service GmbH, Hansjory Steifeneder, Hofener Weg, 72582 Grabenstetten, Federal Republic of Germany; telephone: 011 49 7382 1032.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Kansas City, Missouri, on March 1, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–3989 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26706; Directorate Identifier 2006–NM–216–AD; Amendment 39–14974; AD 2007–05–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 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 A319, A320, and A321 airplanes. This AD requires installing spacer assemblies at the attachment points of the YZ-latches of the cargo loading system in the forward and aft cargo compartments, as applicable. This AD results from tests that have shown that the attachment points of the YZ-latches of the cargo loading system fail under maximum loads. We are issuing this AD to prevent failure of the attachment points of the YZ-latches, which could result in unrestrained cargo causing damage to the fire protection system, hydraulic system, electrical wiring, or other equipment located in the forward and aft cargo compartments. This damage could adversely affect the continued safe flight of the airplane.

DATES: This AD becomes effective April 12, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 12, 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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 A319, A320, and A321 airplanes. That NPRM was published in the **Federal Register** on December 28, 2006 (71 FR 78105). That NPRM proposed to require installing spacer assemblies at the attachment points of the YZ-latches of the cargo loading system in the forward and aft cargo compartments, as applicable.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the one comment received. The commenter, Airbus, the manufacturer, supports the NPRM.

New Revision of Service Bulletin

Since we issued the NPRM, we have received Revision 02 of Airbus Service Bulletin A320–25–1294, dated September 5, 2006. Revision 02 was issued to update the effectivity and kit information. We have updated the service bulletin reference in paragraph (f) of the AD to be Revision 02, and added Revision 01 of the service bulletin to paragraph (g) of the AD, ''Credit for Actions Done According to Previous Issues of Service Bulletin.''

Conclusion

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

Costs of Compliance

This AD affects about 1 airplane of U.S. registry. The required actions take about 4 work hours per airplane, at an average labor rate of $80 per work hour. Required parts cost about $2,049 per airplane. Based on these figures, the estimated cost of this AD for the U.S. operator is $2,369.

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):

2007–05–13 Airbus: Amendment 39–14974. Docket No. FAA–2006–26706; Directorate Identifier 2006–NM–216–AD.

Effective Date

(a) This AD becomes effective April 12, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A319, A320, and A321 airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category. This AD excludes Airbus Model A319, A320, and A321 airplanes identified in paragraph (c)(3) of this AD, certificated in any category.

(1) Including airplanes on which one of the following has been incorporated in production: Airbus Modification 20065, 20040, 24495, 24848, 24496, 21895, 21896, 25905, 25907, 22601, 22602, 27187, 28319, 28322, 28330, 28335, or 31797.

(2) Including airplanes on which one of the following has been incorporated in service: Airbus Service Bulletin A320–25–1132, A320–25–1133, A320–25–1145, A320–25–1175, A320–25–1177, A320–25–1276, A320–25–1278, A320–28–1134, or A320–28–1141.

(3) Excluding airplanes on which both Airbus Modifications 32244 and 32245, or both Airbus Modifications 32316 and 32317, have been incorporated in production.

Unsafe Condition

(d) This AD results from tests that have shown that the attachment points of the YZ-latches of the cargo loading system fail under maximum loads. We are issuing this AD to prevent failure of the attachment points of the YZ-latches, which could result in unrestrained cargo causing damage to the fire protection system, hydraulic system, electrical wiring, or other equipment located in the forward and aft cargo compartments. This damage could adversely affect the continued safe flight 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.

Installation

(f) Within 36 months after the effective date of this AD, install spacer assemblies at the attachment points of the YZ-latches of the cargo loading system in the forward and aft cargo compartments, as applicable, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–25–1294, Revision 02, dated September 5, 2006.

Credit for Actions Done According to Previous Issues of Service Bulletin

(g) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A320–25–1294, dated March 14, 2003; and Revision 01, dated March 27, 2006; are acceptable for compliance with the corresponding requirements of 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) European Aviation Safety Agency (EASA) airworthiness directive 2006–0184, dated July 3, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus Service Bulletin A320–25–1294, Revision 02, dated September 5, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on February 22, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–3840 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26285; Directorate Identifier 2006–CE–69–AD; Amendment 39–14932; AD 2007–04–01]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Corporation Ltd Model 750XL Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2007–04–01, which was published in the **Federal Register** on February 14, 2007 (72 FR 6931), and applies to certain Pacific Aerospace Corporation Ltd Model 750XL airplanes. AD 2007–04–01 requires that you inspect the rivets in the fuselage roof at STN 180.85, BL 19.67, WL 86.2, and replace undersize rivets. Current language in § 39.13 [Amended] of AD 2007–04–01 references ''* * *'' instead of ''2007–04–01.'' This document corrects that paragraph by changing the reference from ''* * *'' to ''2007–04–01.''

DATES: The effective date of this AD (2007–04–01) remains March 21, 2007.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

On February 5, 2007, the FAA issued AD 2007–04–01, Amendment 39–14932 (72 FR 6931, February 14, 2007), which applies to certain Pacific Aerospace

Corporation Ltd Model 750XL airplanes. AD 2007–04–01 requires you to inspect the rivets in the fuselage roof at STN 180.85, BL 19.67, WL 86.2, and replace undersize rivets. Current language in § 39.13 [Amended] of AD 2007–04–01 references ''* * *'' instead of ''2007–04–01.''

Need for the Correction

This correction is needed to specify the correct AD number (2007–04–01) for AD 2007–04–01.

Correction of Publication

■ Accordingly, the publication of February 14, 2007 (72 FR 6931), of Amendment 39–14932; AD 2007–04–01, which was the subject of FR Doc. E7–2318, is corrected as follows:

Section 39.13 [Corrected]

■ On page 6932, in the second column, in § 39.13 [Amended], in the third line, remove ''* * *'' and add ''2007–04–01'' in its place.

■ Action is taken herein to correct this reference in AD 2007–04–01 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains March 21, 2007.

Issued in Kansas City, Missouri, on March 2, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–4130 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27023; Directorate Identifier 98–ANE–47–AD; Amendment 39–14978; AD 2007–05–17]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Pratt & Whitney (PW) JT9D series turbofan engines. That AD currently requires revisions to the Airworthiness Limitations Section (ALS) of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required enhanced inspection of selected critical life-limited parts at each piece-part opportunity. This AD modifies the JT9D series engines ALS sections of the manufacturer's manuals and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. This AD results from the need to require enhanced inspection of selected critical life-limited parts of JT9D series turbofan engines. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective April 12, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7758, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to PW JT9D series turbofan engines. We published the proposed AD in the **Federal Register** on November 2, 2005 (70 FR 66300). That action proposed to modify the JT9D series engines ALS sections of the manufacturer's manuals and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. PW has added mandatory eddy current inspections (ECIs) for the web cooling holes in high pressure turbine (HPT) stage 1 disks installed in engine models JT9D–7R4D, –7R4D1, –7R4E, and –7R4E1, and for web tie-rod holes in HPT stage 2 disks installed in JT9D–3A, –7, –7A, –7H, –7AH, –7F, –7J, –20, and –20J engines. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures.

Examining the AD Docket

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

Comments

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

Request To Delete ECIs for JT9D–59A, –70A, –7Q, and –7Q3 Engines

One commenter, Japan Airlines, requests that we delete the ECIs for JT9D–59A, –70A, –7Q, and –7Q3 engines from the table in the proposed AD compliance section. The commenter points out that the proposed AD preamble paragraph entitled ''FAA's Determination and Requirements of the Proposed AD'' does not include ECIs for JT9D–59A, –70A, –7Q, and –7Q3 engines.

We do not agree. We inadvertently omitted listing the requirement of ECI of the HPT stage 1 disk web cooling holes on JT9D–59A, –70A, –7Q, and –7Q3 engines, under the proposed AD preamble paragraph entitled ''FAA's Determination and Requirements of the Proposed AD''. The proposed AD compliance section and the compliance section in this AD, correctly list those engine models. We did not change the AD.

Request To Wait To Issue the AD

Japan Airlines requests that we wait to issue the AD until Pratt & Whitney provides the ECI procedure to the operators. The commenter states that the JT9D–7 Engine Manual Section 72–51–02, Inspection 05, has not been published yet.

We do not agree. Although the ECI procedure was not published in the JT9D–7 Engine Manual as of December 26, 2005 when the comment was sent, it was incorporated into the JT9D–7 Engine Manual on February 15, 2006. We do not need to wait to issue the AD.

Request To Revise Engine Manual

Japan Airlines requests that we recommend to Pratt & Whitney to revise the JT9D engine manual to remove the specific manufacturer's name of the ECI equipment required to perform ECIs, and to only list the technical specifications required to perform the ECIs. The commenter states that operators may not own the ECI equipment specified in the Pratt & Whitney JT9D engine manual, but may have similar equipment capable of performing the inspections.

We partially agree. This AD requires operators to revise the Airworthiness Limitations Section of the engine manual to include a mandatory opportunistic inspection. We do not intend for the AD to specify only one vendor's inspection equipment to accomplish the inspection. Nor do we intend that this AD change the way operators seek approval for alternative methods of inspections. We did not change the AD.

JT9D–3A Model Added to the Compliance Table

Upon review of the proposed AD, we discovered that the JT9D–3A model was inadvertently left out of the compliance table. We added the JT9D–3A model to the compliance table in the AD.

Update to the Costs of Compliance

Since we published the proposed AD on November 2, 2005, the number of engines affected and the hourly labor rate have changed. We updated this information in this AD preamble.

Correction to Compliance Table

Upon review of the proposed AD, we discovered that the compliance table needs correcting in the section for the –3A/7/7A/7AH/7F/7H/7J/20/20J engine models. ''All HPT Stage 2 Disk Web Cooling Holes 71–51–02 Inspection-05'' is corrected to read ''All HPT Stage 2 Disk Web Tie-rod Holes 72–51–02 Inspection-05''.

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 changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that 504 JT9D series turbofan engines are installed on U.S.-registered airplanes and will be affected by this AD. We also estimate that 87 engines will require this inspection per year and about one work-hour per engine is needed to perform the actions, and that the average labor rate is $80 per work-hour. Since this is an added inspection requirement that will be part of the normal maintenance cycle, no additional parts costs are involved. Based on these figures, we estimate the total annual cost of the AD to U.S. operators to be $6,960.

Docket Number Change

We are transferring the docket for this AD to the Docket Management System as part of our on-going docket management consolidation efforts. The new Docket No. is FAA–2007–27023. The old Docket No. became the Directorate Identifier, which is 98–ANE–47–AD. This AD might get logged into the DMS docket, ahead of the previously collected documents from the old docket file, as we are in the process of sending those items to the DMS.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–12719 (67 FR 19663, April 23, 2002), and by adding a new airworthiness directive, Amendment 39–14978, to read as follows:

2007–05–17 Pratt & Whitney: Amendment 39–14978. Docket No. FAA–2007–27023; Directorate Identifier 98–ANE–47–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 12, 2007.

Affected ADs

(b) This AD supersedes AD 2002–08–11, Amendment 39–12719.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7H, –7AH, –7F, –7J, –20J, –59A, –70A, –7Q, –7Q3, –7R4D, –7R4D1, –7R4E, –7R4E1, –7R4E4, –7R4G2, and –7R4H1 series turbofan engines. These engines are installed on, but not limited to, Boeing 747 and 767 series, McDonnell Douglas DC–10 series, and Airbus Industrie A300 and A310 series airplanes.

Unsafe Condition

(d) This AD results from the need to require enhanced inspection of selected critical life-limited parts of JT9D series turbofan engines. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

Compliance

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

(f) Within the next 180 days after the effective date of this AD, revise the manufacturer's Instructions for Continued Airworthiness Limitations Section (ALS), and for air carrier operations revise the approved continuous airworthiness maintenance program by adding the following:

Mandatory Inspections

(1) Perform inspections of the following parts at each piece-part opportunity in

accordance with the instructions provided in the applicable manual provisions:

Engine model	Engine manual part number (P/N)	Part nomenclature	Inspect per manual section	Inspection/check
3A/7/7A/7AH/7F/7H/7J/20/20J.	*646028 (or the equivalent customized versions, 770407 and 770408).	All Fan Hubs	72–31–04	Inspection-02.
		All HPC Stage 5–15 Disks and Rear Compressor Drive Turbine Shafts.	72–35–00	Inspection-03.
		All HPT Stage 1–2 Disks and Hubs	72–51–00	Inspection-03.
		All HPT Stage 2 Disk Web Tie-rod Holes	72–51–02	Inspection-05.
		All LPT Stage 3–6 Disks and Hubs	72–52–00	Inspection-03.
59A/70A	754459	All Fan Hubs	72–31–00	Check-00.
		All HPC Stage 5–15 Disks and Rear Compressor Drive Turbine Shafts.	72–35–00	Check-00.
		All HPT Stage 1–2 Disks and Hubs	72–51–00	Check-03.
		All HPT Stage 1 Disk Web Cooling Holes	72–51–02	Check-03.
		All LPT Stage 3–6 Disks and Hubs	72–52–00	Check-03.
7Q/7Q3	777210	All Fan Hubs	72–31–00	Inspection-03.
		All HPC Stage 5–15 Disks and Rear Compressor Drive Turbine Shafts.	72–35–00	Inspection-03.
		All HPT Stage 1–2 Disks and Hubs	72–51–00	Inspection-03.
		All HPT Stage 1 Disk Web Cooling Holes	72–51–06	Inspection-03.
		All LPT Stage 3–6 Disks and Hubs	72–52–00	Inspection-03.
7R4 ALL	785058, 785059, and 789328.	All Fan Hubs	72–31–00	Inspection/Check-03.
		All HPC Stage 5–15 Disks and Rear Compressor Drive Turbine Shafts.	72–35–00	Inspection/Check 03.
		All HPT Stage 1–2 Disks and Hubs	72–51–00	Inspection/Check 03.
		All LPT Stage 3–6 Disks and Hubs	72–52–00	Inspection/Check 03.
7R4D/D1/E/E1	785058 and 785059	All HPT Stage 1 Disk Web Cooling Holes	72–51–06	Inspection/Check-02.

* P/N 770407 and 770408 are customized versions of P/N 646028 engine manual.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when done in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles-in-service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

Alternative Methods of Compliance

(g) You must perform these mandatory inspections using the ALS of the Instructions for Continued Airworthiness and the applicable Engine Manual unless you receive approval to use an alternative method of compliance under paragraph (h) of this AD. Section 43.16 of the Federal Aviation Regulations (14 CFR 43.16) may not be used to approve alternative methods of compliance or adjustments to the times in which these inspections must be performed.

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

Maintaining Records of the Mandatory Inspections

(i) You have met the requirements of this AD when you change the manufacturer's Instructions for Continued Airworthiness ALS specified in paragraph (f) of this AD. For air carriers operating under part 121 of the Federal Aviation Regulations (14 CFR part 121), you have met the requirements of this AD when you modify your continuous airworthiness maintenance plan to reflect those changes. You do not need to record each piece-part inspection as compliance to this AD but you must maintain records of those inspections according to the regulations governing your operation. For air carriers operating under part 121, you may use either the system established to comply with section 121.369 or an alternative accepted by your principal maintenance inspector if that alternative:

(1) Includes a method for preserving and retrieving the records of the inspections resulting from this AD; and

(2) Meets the requirements of section 121.369(c); and

(3) Maintains the records either indefinitely or until the work is repeated.

(j) These record keeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the ALS of the Instructions for Continued Airworthiness as specified in paragraph (f) of this AD. These record keeping requirements do not alter or amend the record keeping requirements for any other AD or regulatory requirement.

Related Information

(k) Contact Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7758, fax (781) 238–7199; e-mail: *mark.riley@faa.gov* for more information about this AD.

Issued in Burlington, Massachusetts, on March 1, 2007.

Peter A. White,

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

[FR Doc. E7–4139 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24813; Airspace Docket No. 06–AAL–16]

RIN 2120–AA66

Modification of Legal Description of Class D and E Airspace; Fairbanks, Fort Wainwright Army Airfield, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment corrects a final rule published in the **Federal Register** on July 17, 2006 (71 FR 40394), Docket No. FAA–2006–24813, Airspace Docket No. 06–AAL–16. In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. Also, the corresponding dates that refer to the Order should state ''* * * September 1, 2006, and effective September 15, 2006 * * *'' instead of ''* * * September 1, 2005, and effective September 15, 2005''. This technical amendment corrects those errors.

DATES: *Effective Date:* 0901 UTC, March 8, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On July 17, 2006, a final rule was published in the **Federal Register**, Docket No. FAA–2006–24813, Airspace Docket No. 06–AAL–16, that amended Title 14 Code of Federal Regulations part 71 by modifying the legal description of Class D and E airspace; Fairbanks, Fort Wainwright Army Airfield, AK (71 FR 40394). In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. In addition, the corresponding dates that refer to the Order are incorrect. Instead of ''* * * September 1, 2005, and effective September 15, 2005'', the dates should read ''* * * September 1, 2006, and effective September 15, 2006 * * *''.

Amendment to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for Docket No. FAA–2006–24813, Airspace Docket No. 06–AAL–16, as published in the **Federal Register** on July 17, 2006 (71 FR 40394), is corrected as follows:

■ On page 40394, column 1, lines 52 and 55, column 2, lines 43, 45 and 46; page 40395, column 1, line 68, column 2, lines 29, 31, and 32, amend the language to read:

§ 71.1 [Amended]

* * * * *

''* * * FAA Order 7400.9P * * *'' instead of ''FAA Order 7400.9N * * *''.

''* * * September 1, 2006, and effective September 15, 2006 * * *'' instead of ''* * * September 1, 2005, and effective September 15, 2005 * * *''.

* * * * *

Issued in Washington, DC, February 20, 2007.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E7–3920 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24003; Airspace Docket No. 06–AAL–12]

RIN 2120–AA66

Revision of Class E Airspace; Adak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment corrects a final rule published in the **Federal Register** on August 1, 2006 (71 FR 43357), Docket No. FAA–2006–24003, Airspace Docket No. 06–AAL–12. In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. Also, the corresponding dates that refer to the Order should state ''* * * September 1, 2006, and effective September 15, 2006 * * *'' instead of ''* * * September 1, 2005, and effective September 15, 2005''. This technical amendment corrects those errors.

DATES: *Effective Date:* 0901 UTC, March 8, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On August 1, 2006, a final rule was published in the **Federal Register**, Docket No. FAA–2006–24003, Airspace Docket No. 06–AAL–12, that amended Title 14 Code of Federal Regulations part 71 by revising Class E Airspace; Adak, AK (71 FR 43357). In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9N. The correct reference is FAA Order 7400.9P. In addition, the corresponding dates that refer to the Order are incorrect. Instead of ''* * * September 1, 2005, and effective September 15, 2005'', the dates should read ''* * * September 1, 2006, and effective September 15, 2006 * * *''.

Amendment to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for Docket No. FAA–2006–24003, Airspace Docket No. 06–AAL–12, as published in the **Federal Register** on August 1, 2006 (71 FR 43357), is corrected as follows:

■ On page 43358, column 1, lines 4, 6 and 7 and column 2, lines 29, 31 and 32, amend the language to read:

§ 71.1 [Amended]

* * * * *

''* * * FAA Order 7400.9P'' instead of ''FAA Order 7400.9N * * *''.

''* * * September 1, 2006, and effective September 15, 2006 * * *'' instead of ''* * * September 1, 2005, and effective September 15, 2005 * * *''.

* * * * *

Issued in Washington, DC, February 20, 2007.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E7–3922 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–225010; Airspace Docket No. 06–AAL–17]

RIN 2120–AA66

Revocation of Low Altitude Reporting Point; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment corrects a final rule published in the **Federal Register** on June 30, 2006 (71 FR 37492), Docket No. FAA–2005–225010, Airspace Docket No. 06–AAL–17. In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9O. The correct reference is FAA Order 7400.9P. This technical amendment corrects those errors.

DATES: *Effective Date:* 0901 UTC, March 8, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On June 30, 2006, a final rule was published in the **Federal Register**, Docket No. FAA–2005–225010, Airspace Docket No. 06–AAL–17 that amended Title 14 Code of Federal Regulations part 71 by revoking a low altitude reporting point, AK (71 FR 37492). In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9O. The correct reference is FAA Order 7400.9P.

Amendment to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for Airspace Docket No. FAA–2005–225010, Airspace Docket No. 06–AAL–17, as published in the **Federal Register** on June 30, 2006 (71 FR 37492), is corrected as follows:

■ On page 37492, column 2, line 15, column 3, line 8, amend the language to read:

§ 71.1 [Amended]

* * * * *

''FAA Order 7400.9P'' instead of ''FAA Order 7400.9O''.

* * * * *

Issued in Washington, DC, February 20, 2007.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E7–3921 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23926; Airspace Docket No. 06–AAL–10]

RIN 2120–AA66

Modification of the Norton Sound Low Offshore Airspace Area; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment corrects a final rule published in the **Federal Register** on July 24, 2006 (71 FR 41728), Docket No. FAA–2006–23926, Airspace Docket No. 06–AAL–10. In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9O. The correct reference is FAA Order 7400.9P. Also, the corresponding effective date that refers to the Order should state '' * * * September 15, 2006'', instead of '' * * * September 16, 2006''. This technical amendment corrects those errors.

DATES: *Effective Date:* 0901 UTC, March 8, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Tameka Bentley, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On July 24, 2006, a final rule was published in the **Federal Register**, Docket No. FAA–2006–23926, Airspace Docket No. 06–AAL–10 that amended Title 14 Code of Federal Regulations part 71 by modifying Norton Sound Low Offshore Airspace Area, AK (71 FR 41728). In that rule, the reference to FAA Order 7400.9 was published as FAA Order 7400.9O. The correct reference is FAA Order 7400.9P. In addition, the corresponding effective date that refers to the Order is incorrect. Instead of ''* * * September 16, 2006'', the date should read ''* * * September 15, 2006''.

Amendment to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for Airspace Docket No. FAA–2006–23926, Airspace Docket No. 06–AAL–10, as published in the **Federal Register** on July 24, 2006 (71 FR 41728), is corrected as follows:

■ On page 41729, column 1, line 50, and column 3, lines 48, and 51, amend the language to read:

§ 71.1 [Amended]

* * * * *

''FAA Order 7400.9P'' instead of ''FAA Order 7400.9O''

''September 15, 2006'' instead of ''September 16, 2006''

* * * * *

Issued in Washington, DC, February 20, 2007.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E7–3924 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30539 Amdt. No. 3208]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and/or Weather Takeoff Minimums for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient

use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 8, 2007. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of March 8, 2007.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs and Weather Takeoff Minimums mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5 and 8260–15A. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs and/or Weather Takeoff Minimums, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs and/or Weather Takeoff Minimums but refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP and/or Weather Takeoff Minimums contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs and/or Weather Takeoff Minimums. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided.

Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff Minimums effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on February 23, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 12 APRIL 2007

Pompano Beach, FL, Pompano Beach Airpark, RNAV (GPS) RWY 6, Orig-A

Effective 10 MAY 2007

Cullman, AL, Folsom Field, NDB RWY 20, Amdt 2A, CANCELLED
Fort Collins, CO, Fort Collins Downtown, VOR/DME OR GPS–B, Amdt 1A, CANCELLED
Fort Collins, CO, Fort Collins Downtown, Takeoff Minimums and Textual DP, Amdt 1, CANCELLED
Holyoke, CO, Holyoke, NDB RWY 32, Orig, CANCELLED
Holyoke, CO, Holyoke, NDB RWY 14, Orig, CANCELLED
Sarasota (Bradenton), FL, Sarasota/Bradenton Intl, RADAR–1, Amdt 6, CANCELLED
St. Petersburg, FL, Albert Whitted, RADAR–1, Orig, CANCELLED
Tampa, FL, Peter O Knight, RADAR–1, Amdt 4A, CANCELLED
Alma, GA, Bacon County, RNAV (GPS) RWY 15, Orig
Alma, GA, Bacon County, RNAV (GPS) RWY 33, Orig
Alma, GA, Bacon County, VOR OR GPS RWY 33, Amdt 7, CANCELLED
Alma, GA, Bacon County, Takeoff Minimums and Textual DP, Orig
Litchfield, IL, Litchfield Muni, RNAV (GPS) RWY 18, Orig
Litchfield, IL, Litchfield Muni, RNAV (GPS) RWY 36, Orig
Lafayette, IN, Purdue University, RNAV (GPS) RWY 10, Amdt 1
Lafayette, IN, Purdue University, RNAV (GPS) RWY 28, Amdt 1
Lafayette, IN, Purdue University, Takeoff Minimums and Textual DP, Amdt 1
Greensboro, NC, Piedmont Triad Intl, RADAR–1, Amdt 9C, CANCELLED
Louisburg, NC, Franklin County, RNAV (GPS) RWY 5, Orig-C
Saratoga, WY, Shively Field, NDB–A, Amdt 1
Saratoga, WY, Shively Field, RNAV (GPS)–B, Orig

[FR Doc. E7–3680 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 71, 73, 74, 170, 171, 172, 180, and 184

[Docket No. 2006N–0391]

Food and Color Additives and Generally Recognized As Safe Substances; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations that address food and color additives and generally recognized as safe (GRAS) substances. The purpose of the amendments is to update the name of an FDA office, to correct minor errors in the Code of Federal Regulations (CFR), and to delete obsolete information. The technical amendments made by this final rule are editorial in nature and are intended to provide accuracy and clarity to the agency's regulations.

DATES: This rule is effective March 8, 2007.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1256.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations for parts 71, 73, 74, 170, 171, 172, 180 and 184 (21 CFR parts 71, 73, 74, 170, 171, 172, 180 and 184). Specifically, as a result of an FDA reorganization, the Office of Premarket Approval was renamed the Office of Food Additive Safety. Therefore, this rule updates the name and contact information for this office in §§ 71.1 and 171.1. In addition, FDA discovered that minor errors were inadvertently published in the CFR affecting its regulations that address food and color additives (parts 71, 73, 74, 170, 171, 172, and 180) and GRAS substances (part 184). This document makes the needed corrections.

The final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required. The changes addressed in this document are as follows:

1. In §§ 71.1 *Petitions* and 171.1 *Petitions* the agency is updating contact information. In § 71.1 *Petitions*, the regulations currently identify the Office of Premarket Approval as the FDA office responsible for receiving petitions. The new name for the Office of Premarket Approval is the Office of Food Additive Safety. In § 171.1 *Petitions*, the regulations currently identify the Petitions Control Branch, Food and Drug Administration, Department of Health and Human Services, Washington, DC 20204 as the FDA office responsible for receiving petitions. The correct name and contact information is the Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740.

2. Section 73.1128 *Mica-based pearlescent pigments* is redesignated as § 73.1350.

3. In § 73.2396 *Lead acetate*, the regulatory section citation for the labeling requirements for color additives (other than hair dye) is currently erroneously written as § 170.25 and is corrected to read § 70.25.

4. In § 74.2052 *D&C Black No. 2*, the agency is correcting a typographical error in the spelling of the chemical nomenclature. ''Benzo[*e*]pyrene'' is being corrected to read ''Benzo[*a*]pyrene.''

5. In §§ 170.45 *Fluorine-containing compounds* and 184.1769a *Sodium metasilicate*, the agency is updating references to a regulatory section citation which has been recodified. Section 103.35 has been recodified as § 165.110. Accordingly, in § 170.45, reference to ''§ 103.35(d)'' is corrected to read ''§ 165.110(d)'' and in § 184.1769a, reference to ''§ 103.35'' is corrected to read ''§ 165.110''.

6. The agency is also updating § 170.45 *Fluorine-containing compounds* to correct a reference to a section of the agency's regulations which has been removed from the CFR. In § 170.45 the reference to ''§ 250.203'' is removed.

7. In § 172.510 *Natural flavoring substances and natural substances used in conjunction with flavors*, the agency is correcting a typographical error. The incorrect nomenclature ''concretes'' is being corrected to read ''concentrates''.

8. In § 180.37 *Saccharin, ammonium saccharin, calcium saccharin and sodium saccharin*, the agency is correcting references to a regulatory section citation which has been removed from the CFR. In § 180.37, reference to ''§ 100.130'' is removed.

Publication of this document constitutes final action of these changes under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because these amendments are merely correcting nonsubstantive errors. FDA therefore, for good cause, finds under 5 U.S.C. 553(b)(3)(B) and (d)(3) that notice and public comment are unnecessary.

List of Subjects

21 CFR Part 71

Administrative practice and procedure, Color additives, Confidential business information, Cosmetics, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 74

Color additives, Cosmetics, Drugs.

21 CFR Part 170

Administrative practice and procedure, Food additives, Reporting and recordkeeping requirements.

21 CFR Part 171

Administrative practice and procedure, Food additives.

21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

21 CFR Part 180

Food additives.

21 CFR Part 184

Food additives.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 71, 73, 74, 170, 171, 172, 180, and 184 are amended as follows:

PART 71—COLOR ADDITIVE PETITIONS

■ 1. The authority citation for 21 CFR part 71 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 351, 355, 360, 360b–360f, 360h–360j, 361, 371, 379e, 381; 42 U.S.C. 216, 262.

§ 71.1 [Amended]

■ 2. Section 71.1 is amended in paragraph (c) by removing ''Office of Premarket Approval (HFS–200),'' and by adding in its place ''Office of Food Additive Safety (HFS–200),''.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

■ 3. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

§ 73.1128 [Redesignated]

■ 4. Section 73.1128 is redesignated as § 73.1350.

§ 73.2396 [Amended]

■ 5. Section 73.2396 is amended in paragraph (d)(1) by removing ''170.25'' and by adding in its place ''§ 70.25''.

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

■ 6. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

§ 74.2052 [Amended]

■ 7. Section 74.2052 is amended in paragraph (b)(9) by removing ''Benzo[*e*]pyrene'' and by adding in its place ''Benzo[*a*]pyrene''.

PART 170—FOOD ADDITIVES

■ 8. The authority citation for 21 CFR part 170 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 346a, 348, 371.

§ 170.45 [Amended]

■ 9. Section 170.45 is amended by removing the phrase ''as stated in § 250.203 of this chapter'' and by removing ''§ 103.35(d)'' and adding in its place ''§ 165.110(d)''.

PART 171—FOOD ADDITIVE PETITIONS

■ 10. The authority citation for 21 CFR part 171 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

§ 171.1 [Amended]

■ 11. Section 171.1 is amended in paragraph (c) by removing

''Petitions Control Branch
Food and Drug Administration
Department of Health and Human Services, Washington, DC 20204.''

and by adding in its place

''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740.''

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

■ 12. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

§ 172.510 [Amended]

■ 13. Section 172.510 is amended in paragraph (b) by removing ''concretes'' and adding in its place ''concentrates''.

PART 180—FOOD ADDITIVES PERMITTED IN FOOD OR IN CONTACT WITH FOOD ON AN INTERIM BASIS PENDING ADDITIONAL STUDY

■ 14. The authority citation for 21 CFR part 180 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 371; 42 U.S.C. 241.

§ 180.37 [Amended]

■ 15. Section 180.37 is amended in paragraph (f)(2)(iii) by removing ''or § 100.130''.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

■ 16. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

§ 184.1769a [Amended]

■ 17. Section 184.1769a is amended in paragraph (c)(2) by removing ''§ 103.35'' and adding in its place ''§ 165.110''.

Dated: February 28, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–4104 Filed 3–7–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Melengestrol, Ractopamine, and Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Ivy Laboratories, Division of Ivy Animal Health, Inc. The ANADA provides for use of single-ingredient Type A medicated articles containing melengestrol, ractopamine, and monensin to make three-way combination drug Type C medicated feeds for heifers fed in confinement for slaughter.

DATES: This rule is effective March 8, 2007.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0169, e-mail: *john.harshman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Ivy Laboratories, Division of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed ANADA 200–448 for use of HEIFERMAX 500 (melengestrol acetate) Liquid Premix, OPTAFLEXX (ractopamine hydrochloride), and RUMENSIN (monensin sodium) single-ingredient Type A medicated article to make dry and liquid, three-way combination drug Type C medicated feeds for heifers fed

in confinement for slaughter. Ivy Laboratories' ANADA 200–448 is approved as a generic copy of Elanco Animal Health's NADA 141–234 for combination feed use of MGA 500, OPTAFLEXX, and RUMENSIN. The application is approved as of January 29, 2007, and the regulations are amended in 21 CFR 558.500 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.500 [Amended]

■ 2. In the table in paragraph (e)(2)(viii) of § 558.500, in the ''Limitations'' column remove ''No. 000009'' and add in its place ''Nos. 000009 or 021641'', and in the ''Sponsor'' column add in numerical sequence ''021641''.

Dated: February 20, 2007.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. E7–4100 Filed 3–7–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–07–014]

Drawbridge Operation Regulations; Connecticut River, East Haddam, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Route 82 Bridge across the Connecticut River, mile 16.8, at East Haddam, Connecticut. Under this temporary deviation, the bridge may remain in the closed position for two nights from 8:30 p.m. to 4:30 a.m. between March 19, 2007 and March 23, 2007. The exact two closure dates will be determined based upon favorable weather necessary to perform the scheduled repairs. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from March 19, 2007 through March 23, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Route 82 Bridge, across the Connecticut River, mile 16.8, at East Haddam, Connecticut, has a vertical clearance in the closed position of 22 feet at mean high water and 25 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.205(c).

The owner of the bridge, Connecticut Department of Transportation, requested a temporary deviation to facilitate scheduled bridge maintenance, drive gear repairs. The bridge will not be able to open while the bridge maintenance is underway.

Under this temporary deviation the Route 82 Bridge may remain in the closed position between 8:30 p.m. and 4:30 a.m., for two nights, between March 19, 2007 and March 23, 2007. The exact two closure dates will be selected depending upon favorable weather necessary to perform the required repairs.

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

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 26, 2007.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E7–4112 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–07–002]

RIN 1625–AA00

Safety Zones; Annual Fireworks Events in the Captain of the Port Milwaukee Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Manitowoc St. Patrick's Day Fireworks safety zone on the Manitowoc River on March 17, 2007 from 5:30 p.m. through 7 p.m. This action is necessary to protect the public from the hazards associated with fireworks displays. During the enforcement period no person or vessel may enter the safety zone without the permission of the Captain of the Port or his designated representative.

DATES: Effective from 5:30 p.m. (local) through 7 p.m. (local) on March 17, 2007.

FOR FURTHER INFORMATION CONTACT: CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, WI at (414) 747–7154.

SUPPLEMENTARY INFORMATION: We are publishing this document to provide notice that under the provisions of 33 CFR 165.909(a)(11), the St. Patrick's Day Fireworks safety zone on the Manitowoc River will be enforced on March 17, 2007 from 5:30 p.m. through 7 p.m. The safety zone consists of all waters and adjacent shoreline across from the

World War II U.S. Cobia submarine, Manitowoc River encompassed by the arc of a circle with a 70-foot radius with its center in approximate position 44°05.30′ N, 087°39.15′ W (NAD 1983).

In order to ensure the safety of spectators and transiting vessels, this safety zone will be in effect for the duration of the event. In the event that this safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Lake Michigan to transit through the safety zone.

Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Sector Lake Michigan on channel 16, VHF–FM. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

Dated: February 27, 2007.

B.C. Jones,

Captain, U.S. Coast Guard, Captain of the Port Sector Lake Michigan.

[FR Doc. E7–4109 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–07–011]

RIN 1625–AA00

Safety Zone; Upper Chesapeake Bay and Its Tributaries and the C & D Canal, Maryland, Virginia, and Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; correcting amendment.

SUMMARY: This document contains a correction to the section establishing a temporary safety zone in all navigable waters of the Captain of the Port Baltimore zone published on February 23, 2007, in the **Federal Register** (72 FR 8112).

DATES: This correction is effective March 8, 2007 until April 16, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–07–011 and are available for inspection or copying at Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on viewing the docket, call Mr. Ronald L. Houck, Coast Guard Sector Baltimore, at (410) 576–2674.

SUPPLEMENTARY INFORMATION: On February 23, 2007, the Coast Guard published a temporary final rule (72 FR 8112) to establish a temporary safety zone in all navigable waters of the Captain of the Port Baltimore Zone. The temporary safety zone restricts vessels from transiting the zone during ice season. Due to a drafting error in the temporary final rule the Captain of the Port's requirements associated with different levels of ice conditions were unclear. This correction document makes corrections to the temporary final rule to provide clarification.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ Accordingly, 33 CFR part 165 is corrected by making the following correcting amendments:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise temporary § 165.T05–011 to read as follows:

§ 165.T05–011 Safety zone; Upper Chesapeake Bay and its tributaries and the C & D Canal, MD, VA and Washington, DC

(a) *Purpose.* The purpose of this regulation is to promote maritime safety, and to protect the environment and mariners transiting the area from the potential hazards due to ice conditions that become a threat to navigation.

(b) *Location.* The following area is a temporary safety zone: All inland, navigable waters of the Captain of the Port, Baltimore Zone (see 33 CFR 3.25–15).

(c) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) When an ice condition is set by the Captain of the Port (COTP), all vessel traffic is prohibited in the safety zone unless they meet the requirements set forth by the COTP by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22A (157.1 MHZ). Requirements are as follows: (i) Ice Condition One: Convoys are required and restrictions to shaft horsepower and vessel transit are imposed.

(ii) Ice Condition Two: The COTP Baltimore may impose restrictions, including but not limited to, shaft horsepower and hull type restrictions.

(iii) Ice Condition Three: No limitations on vessel traffic, hull type or shaft horsepower.

(2) Persons desiring to transit in the safety zone not meeting the requirements of the Ice Condition established by the COTP must contact the COTP at telephone number (410) 576–2693 or on VHF channel 13 or 16 to seek permission prior to transiting the area. If permission is granted, all persons and vessels shall comply with the instructions of the COTP Baltimore, MD or designated representative.

(3) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16. The COTP can be contacted at telephone number (410) 576–2693.

(4) The COTP will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22A (157.1 MHZ).

(5) Mariners granted permission to transit the safety zone must maintain the minimum safe speed necessary to maintain navigation as per 33 CFR Chapter I, Subchapters D and E.

(d) *Definitions as used in this section.*

(1) Captain of the Port means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) Ice Condition One means the emergency condition in which ice has largely covered the Upper Chesapeake Bay and its tributaries, and the C & D Canal.

(3) Ice Condition Two means the alert condition in which at least 2 inches of ice begins to form in the Upper Chesapeake Bay and its tributaries, and the C & D Canal.

(4) Ice Condition Three means the readiness condition in which weather conditions are favorable for the formation of ice in the navigable waters of the Upper Chesapeake Bay and its tributaries, including the C & D Canal. Daily reports for the Coast Guard Stations and commercial vessels are monitored.

(5) All vessel traffic means those vessels seeking to enter the safety zone as well as those vessels already located within the zone who wish to exit, and excludes those vessels that are moored

or anchored in the zone and intend to remain so.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zones by Federal, State and local agencies.

(f) Enforcement period. This section will be enforced from February 5, 2007 until April 15, 2007.

Dated: February 28, 2007.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law United States Coast Guard.

[FR Doc. E7–3957 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–07–012]

RIN 1625–AA00

Safety Zone; South Portland, ME, Gulf Blasting Project

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around a blasting and dredging project near the Gulf Oil Terminal Berth in South Portland, Maine and around the M/V RELIANCE, while transporting blasting material to the work site. These safety zones are needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this blasting and dredging project, which is being undertaken to increase the water depth of the Gulf Oil Terminal berth to 41 feet. Entry into this safety zone is prohibited unless authorized by the Captain of the Port, Northern New England.

DATES: This rule is effective from 7 a.m. Eastern Standard Time (EST), February 20, 2007 until 4 p.m. Eastern Daylight Time (EDT), March 31, 2007.

ADDRESSES: Comments received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket CGD01–07–012 and are available for inspection or copying at U.S. Coast Guard Sector Northern New England, 259 High Street, South Portland, ME 04106 between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Jarrett Bleacher, at (207) 741–5421.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The details of this project were not provided to the Coast Guard until January 25, 2007 making it impossible to publish a NPRM or a final rule 30 days in advance.

Similarly, Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the handling, detonation, and transportation of explosives.

Background and Purpose

The explosives loading and blasting operations will occur at various times during the period between February 20, 2007 and March 31, 2007. The blasting plan calls for the drilling, blasting, and dredging of various areas within the berthing area of the Gulf Oil Terminal in South Portland, Maine. The explosives loading will occur at East End Beach at the Eastern Promenade, Portland, Maine, or at the municipal boat ramp at Bug Light Park, South Portland, Maine. The explosives will be transported via truck and M/V RELIANCE to the Gulf Oil Terminal in South Portland where the blasting and dredging project will be conducted. This regulation establishes a moving safety zone in all waters of the Fore River and Casco Bay in a 100 yard radius around the M/V RELIANCE as it transits from the East End Beach or Bug Light Park to the Gulf Facility and from the Gulf Facility back to the East End Beach or Bug Light Park. It also establishes a 100 yard safety zone around the perimeter of the affected portion of the berthing area of the Gulf Oil Terminal while blasting operations are being conducted. This area is defined as all of the waters enclosed by a line starting from a point located at the western side of the Gulf Oil Terminal Dock at latitude 43°39′12.537″ N, longitude 70°14′25.923″ W; thence to latitude 43°39′10.082″ N, longitude 70°14′26.287″ W; thence to latitude 43°39′10.209″ N, longitude 70°14′27.910″ W; thence to latitude 43°39′12.664″ N, longitude 70°14′27.546″ W; thence to the point of beginning.(DATUM:NAD 83). These safety zones are required to protect the maritime community from the hazards associated with the loading, detonation, and transportation of explosives. Entry into this zone will be prohibited unless authorized by the Captain of the Port.

Discussion of Rule

This rule is effective from 7 a.m. EST on February 20, 2007 until 4 p.m. EDT on March 31, 2007. This safety zone is needed to safeguard mariners from the hazards associated with blasting operations on the designated waters in the Fore River. During the effective period of the safety zone, vessel traffic will be restricted in various portions of the Fore River and Casco Bay while the M/V RELIANCE is in transit and around the perimeter of the affected portion of the Gulf Oil Terminal when blasting operations are taking place. Although the safety zone will be in effect for seven weeks, it will only be enforced during actual transit and blasting times. Entry into those zones by any vessel is prohibited unless specifically authorized by the Captain of the Port, Northern New England.

The Captain of the Port anticipates negligible negative impact on vessel traffic from this temporary safety zone as it will be in effect only during transit and blasting operations. Blasting operations are anticipated to occur only two to three times per week between the hours of 7 a.m. and 4 p.m. The moving safety zone around the M/V RELIANCE will be enforced only during the transit of explosives to the site and from the site back to shore with unused explosives. The zone around the perimeter of the work site extends only minimally into the channel and will not effect vessels transiting in or out of the port. The zone around the worksite will be enforced only during the actual blasting times. The enhanced safety to life and property provided by this rule greatly outweighs any potential negative impacts. Public notifications will be made during the entire effective period of this safety zone via marine information broadcasts.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The effect of this rule will not be significant for the following

reasons: the safety zone will be enforced only during the transit of the M/V RELIANCE and during blasting operations. There is adequate room in the channel for vessels to transit during the blasting operations. Vessels will be permitted to transit and navigate in the effected waters when no blasting is taking place, minimizing any adverse impact. Additionally, extensive maritime advisories will be broadcast during the duration of the effective period.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit in the safety zone during this demolition event. However, this rule will not have a significant economic impact on a substantial number of small entities due to the minimal time that vessels will be restricted from the area, the ample space available for vessels to maneuver and navigate around the zone, and advance notifications will be made to the local community by marine information broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule will affect your small business, organization or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Jarrett Bleacher at (207)741–5421, Sector Northern New England, Waterways Management Division.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any police or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA)(15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section

2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it establishes a safety zone. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01–012 to read as follows:

§ 165.T01–012 Safety Zone; Gulf Oil Terminal Dredging Project, South Portland, ME.

(a) *Location.* The following area is a safety zone: All waters of the Fore River and Casco Bay in a 100 yard radius around the M/V RELIANCE as it transits from the East End Beach or Bug Light Park to the Gulf Oil Terminal Facility and from the Gulf Oil Terminal Facility back to the East End Beach or Bug Light Park, while transporting explosives; and, all waters in a 100 yard radius around the perimeter of the berthing area of the Gulf Oil Terminal while blasting operations are being conducted. This area is defined as: All of the waters enclosed by a line starting from a point located at the western side of the Gulf Oil Terminal Dock at latitude 43°39′12.537″ N, longitude 70°14′25.923″ W; thence to latitude 43°39′10.082″ N, longitude 70°14′26.287″ W; thence to latitude 43°39′10.209″ N, longitude 70°14′27.910″ W; thence to latitude 43°39′12.664″ N, longitude 70°14′27.546″ W; thence to the point of beginning. (DATUM: NAD 83). All vessels are restricted from entering this area.

(b) *Effective Date.* This section is effective from 7 a.m. EST on February 20, 2007 until 4 p.m. EDT on March 31, 2007.

(c) *Definitions.* (1) *Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP).

(2) [*Reserved*]

(d) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into or movement within this zone by any person or vessel is prohibited unless authorized by the COTP, Northern New England or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone may contact the COTP or the COTP's designated representative at telephone number 207–767–0303 or on VHF Channel 13 (156.7 MHz) or VHF channel 16 (156.8 MHz) to seek permission to do so. If permission is granted, all persons and vessels must comply with the instructions given to them by the COTP or the COTP's designated representative.

Dated: February 16, 2007.

Stephen P. Garrity,

Captain, U.S. Coast Guard, Captain of the Port, Northern New England.

[FR Doc. E7–4115 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900–AM36

Traumatic Injury Protection Rider to Servicemembers' Group Life Insurance

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts with changes a Department of Veterans Affairs (VA) interim final rule that implemented section 1032 of Public Law 109–13, the ''Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005.'' Section 1032 of Public Law 109–13 established an automatic traumatic injury protection rider to Servicemembers' Group Life Insurance (SGLI) for any SGLI insured who sustains a serious traumatic injury that results in certain losses as prescribed by the Secretary of Veterans Affairs in collaboration with the Secretary of Defense. Section 1032(a) is codified at 38 U.S.C. 1980A. Section 1032(c)(1) of Public Law 109–13 also authorized the payment of this traumatic injury benefit (TSGLI) to members of the uniformed services who incurred a qualifying loss between October 7, 2001, and the effective date of section 1032 of Public Law 109–13, *i.e.*, December 1, 2005, provided the loss was a direct result of injuries incurred in Operation Enduring Freedom (OEF) or Operation Iraqi Freedom (OIF). This document modifies § 9.20 of the interim rule to provide that a service member must suffer a scheduled loss within 2 years after a traumatic injury, rather than one year as provided in current § 9.20(d)(4). This document also amends § 9.20(d)(1) to clarify that a service member does not have to be insured under SGLI in order to be eligible for TSGLI based upon incurrence of a traumatic injury between October 7, 2001, and December 1, 2005, if the member's loss was a direct result of injuries incurred in OEF or OIF.

DATES: *Effective Date:* March 8, 2007.

Applicability Date: VA will apply the final rule to injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom on or after October 7, 2001, through and including November 30, 2005, and to all injuries incurred on or after December 1, 2005.

FOR FURTHER INFORMATION CONTACT: Gregory Hosmer, Senior Insurance Specialist/Attorney, Department of Veterans Affairs Regional Office and Insurance Center, P.O. Box 13399, Philadelphia, Pennsylvania 19101, (215) 842–2000 ext. 4280.

SUPPLEMENTARY INFORMATION: On December 22, 2005, VA published an interim final rule in the **Federal Register** (70 FR 75940) to implement section 1032 of Public Law 109–13.

We provided a 30-day comment period on the interim final rule, which ended on January 23, 2006. We received comments from only one organization, the Wounded Warrior Project (WWP). WWP stated that it was pleased with the regulation as a whole and with the decision to implement it immediately as an interim final rule, but raised issues WWP believed should be addressed in future versions of the regulation. WWP expressed concern that the definition of ''incurred in Operation Enduring Freedom'' in § 9.20(b)(2)(i) and ''incurred in Operation Iraqi Freedom'' in § 9.20(b)(2)(ii) would allow TSGLI benefits for injuries incurred prior to December 1, 2005, only if the service member was deployed outside the

United States on orders in support of OEF or OIF. WWP states that TSGLI benefits should be paid to all members of the uniformed services who suffered a loss as a result of a traumatic injury prior to December 1, 2005, irrespective of the service member's location or orders at the time of the injury. This suggested change to § 9.20 would require a statutory amendment. Section 9.20(b)(2)(i) and (ii) implement section 1032(c)(1) of Public Law 109–13, which limited TSGLI benefits for injuries incurred prior to December 1, 2005, to members injured in OEF and OIF. To the extent that this comment suggests that VA could define the terms ''Operation Enduring Freedom'' and ''Operation Iraqi Freedom'' to encompass service in any location occurring at the same time as OEF and OIF, such a definition would be inconsistent with the plain meaning of section 1032(c) of Public Law 109–13 because it would deprive those statutory terms of any meaning or effect.

WWP also commented that the interim final rule should be amended to increase the period after a traumatic injury within which a scheduled loss must occur, from the current 365 days to 2 years. We concur with WWP's comment. In adopting the 365-day period in § 9.20(d)(4) of the interim rule, we acknowledged the Department of Defense's (DoD) advice that physicians and service members go to great lengths to preserve a member's injured limb and that amputation of a limb frequently occurs only after a significant period of time passes after a traumatic injury. 70 FR 75942. WWP informed us in its comments that there are several cases in which severely injured service members are still attempting to save their injured limbs more than a year after the traumatic injury because of sophisticated medical treatment currently available. Based on the new information, we believe that it is entirely reasonable to amend § 9.20(d)(4) to increase the period of time following a traumatic injury in which a scheduled loss must occur from 365 days to 2 years for all scheduled losses. When we issued the interim final rule, section 1032(a)(2) of Public Law 109–13, which this rule implements, specifically provided that a member must suffer a scheduled loss before the end of the period prescribed by the Secretary of Veterans Affairs, ''except, if the loss is quadriplegia, paraplegia, or hemiplegia, the member suffers the loss not later than 365 days after sustaining the traumatic injury.'' However, on June 16, 2006, Congress enacted the Veterans' Housing Opportunity and Benefits Improvement Act of 2006, Public Law 109–233, section 501(a)(3) of which eliminated the requirement that a scheduled loss due to quadriplegia, paraplegia, or hemiplegia occur within 365 days after a traumatic injury. Accordingly, extending the time period to 2 years for all scheduled losses is consistent with current statutory requirements.

Congress did not specify whether the change made by section 501(a)(3) would apply to claims filed or injuries suffered prior to the date of that change in law. Under established rules of statutory construction, a new statute is presumed not to operate retroactively unless its language requires that result. *See Landgraf* v. *USI Film Prods.,* 511 U.S. 244 (1994). However, a statute does not operate retroactively merely because it is applied to a claim filed before the statute was enacted. *Id.* at 269. Rather, a statute would have a disfavored retroactive effect only if it impairs previously established rights, imposes new duties with respect to transactions already completed, or imposes some similar alteration with respect to past events. *Id.* at 280. Determining whether application of a new statute would have retroactive effect requires consideration of the nature and degree of the change in law, the degree of connection between the new law and a relevant past event, and notions of fair notice and reasonable reliance. *Princess Cruises, Inc.* v. *United States,* 397 F.3d 1358, 1362–63 (Fed. Cir. 2005). Under this analysis, we conclude that applying the change made by section 501(a)(3) of Public Law 107–103 to previously filed claims or previously incurred injuries would not have a disfavored retroactive effect.

In establishing the TSGLI program, Congress made clear its intent to authorize payment for some injuries and losses incurred before that program took effect. The change made by section 501(a)(3) would work a relatively minor change in the TSGLI eligibility criteria and applying that change to prior claims or injuries would appear to be consistent with the objectives of the TSGLI provisions authorizing payments based on injuries preceding the program's creation. Further, because TSGLI is intended to provide a source of income for expenses during periods of disablement and convalescence following a loss due to traumatic injury, we believe the application of the new law is more directly connected to those persistent circumstances than to the past date on which an injury or loss was incurred or a claim was filed. We also note that the change in law would not have affected conduct prior to the date of its enactment, nor would it upset any settled expectations in any meaningful way. The service member's traumatic injury, the scheduled loss due to the injury, and the resulting economic burdens on the service member were not within any party's control and obviously actions were not taken in reliance on prior law. Although application of the new law would increase the government's economic burden, we believe the additional burden is relatively small and is countered in this instance by the other considerations discussed above. Accordingly, we conclude that section 501(a)(3) of Public Law 109–233 may be applied to claims that were filed before the date that statute was enacted and which remained pending on that date.

Finally, WWP expressed concern that the DoD points of contact in each branch of service are unable to certify service member claims for retroactive payment in which the member's scheduled loss is based upon the inability to perform activities of daily living (ADL) because the ''service member medical records do not adequately reflect the amount of time the claimant was unable to perform the requisite ADL.'' WWP urges DoD and VA to give the benefit of the doubt to members in this situation due to the difficulty in substantiating a scheduled loss when medical records do not contain the necessary ADL documentation. For purposes of deciding a case before the Secretary of Veterans Affairs, a statute provides that, when there is an ''approximate balance of positive and negative evidence'' concerning an issue, the Secretary must give the benefit of the doubt to the claimant (38 U.S.C. 5107(b)). If there is no evidence on a particular issue or if the evidence is not deemed to be in approximate balance, the benefit-of-the-doubt standard under the statute does not apply. *See Ortiz* v. *Principi,* 274 F.3d 1361, 1365 (Fed. Cir. 2001). Decisions about entitlement to TSGLI, unlike decisions regarding entitlement to VA compensation and pension, are made by each uniformed service. 38 CFR 9.20(f). It would therefore be inappropriate for VA to promulgate a benefit-of-the-doubt rule in this rulemaking to be applied by DoD in making decisions about TSGLI entitlement.

WWP also states that DoD should be more cognizant of the need to document a member's inability to conduct ADL in future cases. We agree that verification of a service member's inability to perform ADL has in some instances been difficult. We have taken steps to address the need for complete

documentation in future cases. DoD service branch points of contacts, physicians, and other medical care providers have been given detailed, clarifying guidance on the definition of the term ''inability to carry out activities of daily living'' in § 9.1(k). They have also been instructed by the branches of military service on where and how to request supporting documentation regarding a member's ability to perform ADL. We therefore do not believe that any amendment to § 9.1(k) is required at this time.

The interim final rule stated, in § 9.20(d)(1), that a servicemember must be insured under SGLI to be eligible for TSGLI. We neglected to explain that this requirement does not apply to payments of retroactive TSGLI based on traumatic injuries occurring on or after October 7, 2001, though and including November 30, 2005. Section 1032(c)(1) of Public Law 109–13 provided that ''[a]ny member'' who experienced a traumatic injury between October 7, 2001, and December 1, 2005, is eligible for TSGLI if the qualifying loss is a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom. The term ''member'' is defined in 38 U.S.C. 1965(5), for purposes of subchapter III of chapter 19, title 38, United States Code, and whether a person is insured under SGLI is not one of the criteria of the definition. We are therefore amending § 9.20(d)(1) to clarify that, if a member had a traumatic injury on or after October 7, 2001, through and including November 30, 2005, and if the qualifying loss is a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom, the member is eligible for TSGLI even if he or she was not insured under SGLI.

Also, former 38 U.S.C. 1980A(h) provided that ''[c]overage for loss resulting from traumatic injury * * * shall cease at midnight on the date of the member's separation from the uniformed service.'' Section 501(a)(8) of Public Law 109–233 amended 38 U.S.C. 1980A(h) to provide that TSGLI coverage terminates at midnight on the date of the ''termination of the member's duty status in the uniformed services that established eligibility for Servicemembers' Group Life Insurance,'' notwithstanding the extension of SGLI coverage provided under 38 U.S.C. 1968(a). This statutory amendment clarifies when TSGLI coverage terminates. We are amending the parenthetical at the end of § 9.20(d)(1) to conform to the clarifying change made by section 501(a)(8) of Public Law 109–233.

We have also revised § 9.20(f) to conform to section 501(a)(6) of Public Law 109–233, which amended 38 U.S.C. 1980A(f) to explain in more detail the nature of the uniformed services' certification. This amendment relates to non-substantive, procedural matters.

Finally, we note that section 501(c)(2) of Public Law 109–233 repealed section 1032(c) of Public Law 109–13 pertaining to TSGLI eligibility for service members who suffered scheduled losses as a result of injuries incurred in OEF or OIF between October 7, 2001, and December 1, 2005, and instead provides TSGLI to service members who suffered scheduled losses as a direct result of a traumatic injury incurred in the theater of operations for OEF or OIF beginning on October 7, 2001, and ending at the close of November 30, 2005. That change may implicate matters beyond the scope of the interim final rule and the public comments received to date. Accordingly, we will publish a rule implementing section 501(c)(3) of Public Law 109–233 in the future.

To the extent an intervening statutory change may apply to a particular claim, VA must follow statutory requirements even if it has not yet revised its regulations. We are therefore adding § 9.20(j) to explain that the TSGLI program will be administered in accordance with the provisions of § 9.20, except to the extent that any provision in the rule is inconsistent with subsequently enacted applicable law.

For the reasons stated above and in the interim final rule notice, VA will adopt the interim final rule as final, with the changes to § 9.20(d)(1) and (4) and addition of § 9.20(j) discussed above. We are also adding information to the end of § 9.20 regarding the Office of Management and Budget information collection control number for this rule.

Administrative Procedure Act

In the December 22, 2005, **Federal Register** notice, we determined that there was a basis under the Administrative Procedure Act for issuing the interim final rule with immediate effect. We invited and received public comment on the final rule. This document affirms the interim final rule as a final rule with the changes to § 9.20(d)(1) and (4) and (f) and the addition of § 9.20(j). The amendment to § 9.20(d)(1) is interpretative and clarifies the eligibility criteria for TSGLI. The amendment to the parenthetical at the end of § 9.20(d)(1) makes the regulation consistent with a clarifying amendment to 38 U.S.C. 1980A(h) made by section 501(a)(8). The amendment to § 9.20(d)(4) in this rule is liberalizing and will make more injured service members eligible for TSGLI. Section 1032 of Public Law 109–13 went into effect on December 5, 2005, and the final rule is necessary to implement the TSGLI program. The purpose of TSGLI is to ensure that payment is made to severely injured service members as soon as possible following a traumatic injury in order to reduce the financial burden resulting from a severe loss. The amendment to § 9.20(f) relates to non-substantive, procedural matters and makes the regulation consistent with 38 U.S.C. 1980A(f) as amended by section 501(a)(6) of Public Law 109–233. The amendment to § 9.20(j) is interpretative and is intended only to explain that applicable law will be applied to decide TSGLI claims. Accordingly, we have concluded under 5 U.S.C. 553 that there is good cause for dispensing with prior notice and comment regarding the amendments to § 9.20(d), (f), and (j) because such a procedure is impracticable, unnecessary and contrary to the public interest.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an 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 given year. This rule would have no effect on State, local, or tribal governments or the private sector.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA examined the economic, legal, and policy implications of this final rule and stated in the December 22, 2005, **Federal Register**

notice that it is a significant regulatory action because it exceeds the $100 million threshold.

Paperwork Reduction Act

The collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521) referenced in this final rule has been approved under OMB control number 2900–0671.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). Only service members and their beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the final regulatory flexibility analysis requirements of 5 U.S.C. 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Program number for this regulation is 64.103, Life Insurance for Veterans.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Approved: November 30, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, the interim final rule amending 38 CFR part 9, which was published at 70 FR 75940 on December 22, 2005, is adopted as a final rule with the following changes:

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

■ 1. The authority citation for part 9 is revised to read as follows:

Authority: 38 U.S.C. 501, 1965–1980A.

■ 2. Section 9.20 is amended by:
■ a. Revising paragraph (d)(1).
■ b. Revising paragraph (d)(4).
■ c. Revising paragraph (f)
■ d. Adding paragraph (j).
■ e. Adding an information collection approval parenthetical number immediately following the authority citation.

The revisions and additions read as follows:

§ 9.20 Traumatic injury protection.

* * * * *

(d) * * *

(1) You must be a member of the uniformed services who is insured by Servicemembers' Group Life Insurance under section 1967(a)(1)(A)(i), (B) or (C)(i) of title 38, United States Code, on the date you sustained a traumatic injury, except if you are a member who experienced a traumatic injury on or after October 7, 2001, through and including December 1, 2005, and your scheduled loss was a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom. (For this purpose, you will be considered a member of the uniformed services until midnight on the date of termination of your duty status in the uniformed services that established your eligibility for Servicemembers' Group Life Insurance, notwithstanding an extension of your Servicemembers' Group Life Insurance coverage under section 1968(a) of title 38, United States Code.)

* * * * *

(4) You must suffer a scheduled loss under paragraph (e)(7) of this section within two years of the traumatic injury.

* * * * *

(f) *Who will determine eligibility for traumatic injury protection benefits?* Each uniformed service will certify its own members for traumatic injury protection benefits based upon section 1032 of Public Law 109–13, section 501 of Public Law 109–233, and this section. The uniformed service will certify whether you were at the time of the traumatic injury insured under Servicemembers' Group Life Insurance and whether you have sustained a qualifying loss.

* * * * *

(j) The Traumatic Servicemembers' Group Life Insurance program will be administered in accordance with this rule, except to the extent that any regulatory provision is inconsistent with subsequently enacted applicable law.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0671.)

[FR Doc. E7–4141 Filed 3–7–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AM21

Medical: Informed Consent—Designate Health Care Professionals To Obtain Informed Consent

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends U.S. Department of Veterans Affairs (VA) medical regulations on informed consent. The final rule authorizes VA to designate additional categories of health care professionals to obtain the informed consent of patients or their surrogates for clinical treatment and procedures and to sign the consent form.

DATES: *Effective Date:* April 9, 2007.

FOR FURTHER INFORMATION CONTACT: Ruth Cecire, PhD, Policy Analyst, National Center for Ethics in Health Care (10E), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; 202–501–2012 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on February 1, 2006 (71 FR 5204), VA proposed to amend 38 CFR 17.32 to authorize the designation of additional categories of health care professionals to obtain the informed consent of patients or their surrogates and to sign the consent form. The comment period for this proposed rule ended April 3, 2006. We received one comment and now issue this final rule.

This rule amends VA medical regulations on informed consent and brings VA practice in line with current professional standards of care. Specifically, it allows VA to designate appropriately trained health care professionals (*e.g.*, advanced practice nurses and physician assistants), who have primary responsibility for the patient or who will perform a particular procedure or provide a treatment, to conduct the informed consent discussion and sign the consent form. These changes and the specific requirements that define ''appropriately trained health care professionals'' will be documented in a revision to VHA Handbook 1004.1, Informed Consent for Clinical Treatments and Procedures.

The current definition of practitioner encompasses any health care professional who has been granted specific clinical privileges to perform the treatment or procedure. It also includes medical and dental residents who may not be clinically privileged but who, under the current regulation, may obtain the informed consent and sign the consent form. This rule extends the exception regarding clinical privileging to other appropriately trained health care professionals, which will be clearly defined in national VA policy.

This change is required because clinical privileges are not granted to all health care professionals in VA who provide treatments and procedures.

Some health care professionals work under specific ''scope of practice'' agreements or other formal delineations of job responsibility that specify which treatments and procedures the individual can provide based on his or her training, certification, knowledge, skills, and/or licensure. These agreements are developed and signed at the local facility level based on national policy requirements. Under the current regulatory definition of practitioner, physician assistants, advanced practice nurses and other appropriately trained health care professionals who are not clinically privileged but are performing procedures or providing treatments, as approved by their facility and supported by the standards of their respective professions, may not obtain informed consent from the patient. This rule would allow these treating practitioners to obtain informed consent from the patient and sign the consent form. This scope of practice will be limited to those specific individuals who meet detailed requirements set by VA national policy and who also gain approval from their local facility to carry out these duties.

No change is made to the general requirements for informed consent in this rule. The practitioner, who has primary responsibility for the patient or who will perform the particular procedure or provide the treatment, must obtain consent from the patient as described in the regulation.

VA received one comment asking that we omit reference to designated ''health care professionals'' and expand the definition of ''practitioner'' to include advanced practice nurses and physician assistants only. The commenter suggested that other health care professionals may lack the qualifications necessary to obtain patients' informed consent. VA recognizes that many health care professionals may lack appropriate qualifications to obtain informed consent. Indeed, some advanced practice nurses and physician assistants may not be qualified to do so. However, the commenters' proposed change neither ensures quality nor allows VA to remedy the problem that non-privileged providers are currently prohibited from obtaining consent from the patients they treat. We believe that promoting direct communication between the treating practitioner and the patient improves informed consent and improves patient care. Ensuring that providers are appropriately qualified to conduct informed consent discussions with patients will be addressed through establishing national requirements in VA policy and holding local VHA facilities accountable for making certain that each individual provider assigned those duties is competent to perform them. In our view, the rule's proviso, that designation is authorized only for other appropriately trained health care professionals, when combined with the regulation's requirement that consent be obtained by the health care professional who has primary responsibility for the patient or who will perform the particular procedure or provide the treatment, allows VA a necessary level of control over quality through the specification in policy and certification in practice of ''appropriately trained health care professionals.'' Accordingly, we made no change based on this comment.

We are also making nonsubstantive changes to make the terminology used in the regulation consistent with current Department practice. These include changing ''health-care'' to ''health care'' and ''medical record'' to ''health record'' throughout the section.

Based on the rationale set forth in the proposed rule and those contained in this document, we are adopting the provisions of the proposed rule as a final rule without change.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an 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 given year. This rule would have no such effect on State, local, and tribal governments, or the private sector.

Paperwork Reduction Act of 1995

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). The existing information collections associated with the informed consent process have been approved by OMB under control number 2900–0583.

Executive Order 12866—Regulatory Planning and Review

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: having an annual affect on the economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this final rule and has concluded that it is a significant regulatory action because it raises novel policy issues.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The rule will affect only individuals and will not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles are 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; and 64.011, Veterans Dental Care.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: October 24, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, and as stated in specific sections.

■ 2. Section 17.32 is amended by:

■ a. Removing ''health-care'' each time it appears and adding in its place ''health care''.

■ b. Removing ''medical record'' each time it appears and adding in its place ''health record''.

■ c. In the list of definitions in paragraph (a), revising the definition of ''Practitioner''.

The revision reads as follows:

§ 17.32 Informed consent and advance care planning.

(a) * * *

Practitioner. Any physician, dentist, or health care professional who has been granted specific clinical privileges to perform the treatment or procedure. For the purpose of obtaining informed consent for medical treatment, the term practitioner includes medical and dental residents and other appropriately trained health care professionals designated by VA regardless of whether they have been granted clinical privileges.

* * * * *

[FR Doc. E7–4142 Filed 3–7–07; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2001–0004; FRL–8283–9]

RIN 2060–AM59

Nonattainment New Source Review (NSR)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing revisions to the regulations governing the nonattainment new source review (NSR) program mandated by section 110(a)(2)(C) of the Clean Air Act (CAA or Act). These revisions implement changes to the preconstruction review requirements for major stationary sources in nonattainment areas in interim periods between designation of new nonattainment areas and adoption of a revised State Implementation Plan (SIP). The revisions conform the nonattainment permitting rules that apply during the SIP development period following nonattainment designations before SIP approval to the Federal permitting rules applicable to SIP-approved programs. The changes are intended to provide a consistent national program for permitting major stationary sources in nonattainment areas under section 110(a)(2)(C) and part D of title I of the Act. In particular, these changes conform the regulations to the NSR reform provisions that EPA promulgated by notice dated December 31, 2002, except that these changes do not include the NSR reform provisions for ''clean units'' or ''pollution control projects,'' which the U.S. Court of Appeals for the D.C. Circuit vacated in *New York* v. *EPA*, 413 F.3d 3 (DC Cir. 2005). In addition, these changes include an interim interpretation of the NSR reform provision for a ''reasonable possibility'' standard for recordkeeping and reporting requirements, in accordance with that court decision. This interim interpretation to the ''reasonable possibility'' standard applies for appendix S purposes, pending the completion of rulemaking to develop a more complete interpretation.

DATES: This final rule is effective on May 7, 2007.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2001–0004. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, e.g., 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 *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Sutton, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–3450; *fax number:* (919) 541–5509; *e-mail address: sutton.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities affected by this rule include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups:

Industry Group	SIC [a]	NAICS [b]
Electric Services	491	221111, 221112, 221113, 221119, 221121, 221122.
Petroleum Refining	291	324110.
Industrial Inorganic Chemicals	281	325181, 325120, 325131, 325182, 211112, 325998, 331311, 325188.
Industrial Organic Chemicals	286	325110, 325132, 325192, 325188, 325193, 325120, 325199.
Miscellaneous Chemical Products	289	325520, 325920, 325910, 325182, 325510.
Natural Gas Liquids	132	211112.
Natural Gas Transport	492	486210, 221210.
Pulp and Paper Mills	261	322110, 322121, 322122, 322130.
Paper Mills	262	322121, 322122.
Automobile Manufacturing	371	336111, 336112, 336211, 336992, 336322, 336312, 336330, 336340, 336350, 336399, 336212, 336213.
Pharmaceuticals	283	325411, 325412, 325413, 325414.

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

Entities affected by the rule also include States, local permitting authorities, and Indian tribes whose lands contain new and modified major stationary sources.

B. Where Can I Obtain Additional Information?

In addition to being available in the docket, an electronic copy of this final

rule is also available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted on the EPA's NSR Web site, under Regulations & Standards, at *http://www.epa.gov/nsr.*

C. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

I. General Information
A. Does This Action Apply to Me?
B. Where Can I Obtain Additional Information?
C. How Is This Preamble Organized?
II. Overview of This Final Action
III. Background
A. The Major NSR Program
B. What We Proposed
IV. Description of This Final Action and Legal Basis
A. Final Changes to Appendix S
B. Legal Basis for Changes to Appendix S
C. Approach for ''Reasonable Possibility'' Standard
V. Summary of Major Comments and Responses
VI. Effective Date for Requirements
VII. Statutory and Executive Order Reviews
A. Executive Order 12866—Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act
E. Executive Order 13132—Federalism
F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
VIII. Judicial Review
IX. Statutory Authority

II. Overview of This Final Action

In this action, we are finalizing previously proposed changes to the regulations that govern NSR permitting of major stationary sources in nonattainment areas in appendix S of 40 CFR part 51. Appendix S contains the permitting program for major stationary sources that are located either in nonattainment areas or in the Ozone Transport Region (OTR), in transition periods before EPA approves a SIP to implement the NSR requirements in part D of title I. These final rules revise appendix S to generally conform it to regulations at 40 CFR 51.165 for SIP programs for nonattainment major NSR, as those regulations were revised to implement NSR reform. 67 FR 80816 (December 31, 2002) (2002 NSR reform rules). However, the U.S. Court of Appeals for the D.C. Circuit, in *New York* v. *EPA,* 413 F.3d 3 (DC Cir. 2005) (*New York*), vacated the Clean Unit provision and the Pollution Control Project (PCP) exemption in the 2002 NSR reform rules. Therefore, these final rules do not conform appendix S to the 2002 rules with respect to Clean Units or PCPs. The *New York* case also remanded the ''reasonable possibility'' recordkeeping and reporting provision of the 2002 NSR reform rules for the EPA either to provide an acceptable explanation or to devise an appropriately supported alternative. In a separate **Federal Register** notice published on this date, we are proposing clarification of the ''reasonable possibility'' standard to address under which circumstances records must be kept for projects that do not trigger NSR. In the interim, the ''reasonable possibility'' standard remains in effect in our major NSR regulations and we provide an interpretation that indicates one set of circumstances under which the ''reasonable possibility'' standard is met. States may provide different recordkeeping requirements provided that the recordkeeping requirements address the concerns noted in the Court's remand.

III. Background

A. The Major NSR Program

The major NSR program contained in parts C and D of title I of the Act is a preconstruction review and permitting program applicable to new and modified major stationary sources of air pollutants regulated under the Act. In areas not meeting health-based national ambient air quality standards (NAAQS) and in ozone transport regions, the program is implemented under the requirements of section 110(a)(2)(C) and part D of title I of the Act. We call this program the ''nonattainment'' NSR program. Subpart 1 of part D of title I contains general requirements for nonattainment areas for any pollutant for which there is a NAAQS.

In areas meeting the NAAQS (''attainment'' areas) or for which there is insufficient information to determine whether they meet the NAAQS (''unclassifiable'' areas), the NSR requirements under part C of title I of the Act apply. This program is called the Prevention of Significant Deterioration (PSD) program. Collectively, we also commonly refer to the attainment and nonattainment programs as the major NSR program. Regulations comprising the major NSR program are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, appendix S. Of these, the nonattainment area regulations are contained in 40 CFR 51.165, 52.24, and part 51, appendix S.

The NSR provisions of the Act are implemented primarily through State preconstruction permitting programs. As provided in section 172(c)(4) of the Act, the SIP must require permits for the construction and operation of new or modified major stationary sources in accordance with section 173 of the Act. The permitting requirements for SIPs for major stationary sources locating in nonattainment areas are found in 40 CFR 51.165. 40 CFR 52.24(k) specifies that appendix S governs permits to construct and operate when such permits were applied for during the period between the date of designation as nonattainment and the date we approve the part D major NSR plan. Appendix S states that it is an interpretation of 40 CFR subpart I (including § 51.165), and it has historically reflected substantially the same requirements as the part D NSR requirements. This includes the requirement to comply with the lowest achievable emission rate (LAER) and obtain offsetting emission reductions, with a limited exemption in section VI of the appendix that applies to sources that will not interfere with an area's attainment deadline and that will meet applicable SIP emissions limitations. Thus, consistent with section 110(a)(2)(C) of the Act, permitting of new and modified stationary sources in the area will be regulated as necessary to ensure that they do not interfere with attaining the NAAQS.

As we describe further in section III.B of this preamble, these final regulations generally conform the regulatory language of appendix S to the major NSR program as revised on December 31, 2002, except for the provisions of that program vacated by the *New York* case. For a summary of the regulatory development process and stakeholder development for that rulemaking, see 67 FR 80188.

B. What We Proposed

On July 23, 1996, we proposed changes to the major NSR program, including the regulations contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51 appendix S (61 FR 38250). The 1996 proposal concerned, in part, five major changes to the NSR program-baseline emissions, actual-to-projected-actual methodology, Clean Units, Plantwide Applicability Limitations (PALs), and PCPs.

On December 31, 2002 (67 FR 80187), we promulgated final changes concerning baseline emissions, actual-to-projected-actual methodology, Clean Units, PALs, and PCPs. We promulgated these changes in the regulations at 40 CFR 51.165, 51.166, and 52.21, and at the same time stated our intention to later conform the regulatory language in appendix S (and 40 CFR 52.24) to the final regulations.

Today's actions finalize these changes to the regulations for both the approval and promulgation of implementation plans and requirements for preparation, adoption, and submittal of implementation plans governing the NSR programs mandated by parts C and D of title I of the Act. We also proposed conforming changes to 40 CFR (Code of Federal Regulations) part 51, appendix S, and part 52.24. Today we have not included the final regulatory language for these regulations. It is our intention to include regulatory changes that conform appendix S and 40 CFR 52.24 to today's final rules in any final regulations that set forth an interim implementation strategy for the 8-hour ozone standard. We intend to finalize changes to these sections precisely as we have finalized requirements for other parts of the program. Because these are conforming changes and the public has had an opportunity for review and comment, we will not be soliciting additional comments before we finalize them.

We published final rules addressing implementation of the 8-hour ozone NAAQS, on April 30, 2004 (69 FR 23951) and November 29, 2005 (70 FR 71612). In the November 2005 final rule, in part, we revised appendix S to incorporate the major stationary source thresholds, significant emission rates, and offset ratios for sources of ozone precursors pursuant to part D, subpart 1 and subpart 2 of title I of the 1990 CAA Amendments, but we did not at that time include the regulatory changes we had proposed to conform appendix S language to that of the NSR reform rules.

IV. Description of This Final Action and Legal Basis

A. Final Changes to Appendix S

In this final action, we have revised appendix S as proposed to generally conform the regulatory language in appendix S to that of the NSR reform rules. Specifically, the changes proposed in 1996 concerning baseline emission determinations, actual-to-projected-actual methodology, and PALs have been incorporated in sections II and IV of appendix S. As indicated at 67 FR 80187, it was our intent to finalize the changes to appendix S precisely as we have finalized requirements for other parts of the program. However, subsequently, the *New York* case vacated the Clean Unit provision and the PCP exemption in the 2002 NSR reform rules. Therefore, these final rules do not conform appendix S to the 2002 rule revisions relating to Clean Units and PCPs. In addition, as discussed later, these final rules conform appendix S to the ''reasonable possibility'' standard in the NSR reform rules. In a separate **Federal Register** notice published on this date, we are proposing clarification of the ''reasonable possibility'' standard to address under which circumstances records must be kept for projects that do not trigger NSR. We provide, in this preamble, an interim interpretation which addresses the issues raised by the Court in its remand. Table 1 shows where to find the changes being made to appendix S.

TABLE 1.—PROPOSED CHANGES TO APPENDIX S

For the following provision * * *	Added to § 51.165 in December 2002 at * * *	Analogous provisions have been added to appendix S at paragraph
Offsets	(a)(3)(ii) (H) through (J)	IV.C.7 through 8.
Applicability test	(a)(2)(ii)	IV.I.1.
Projected actual emissions (including ''reasonable possibility'' standard).	(a)(6)	IV.J.
Clean Unit provisions for emissions units subject to LAER.	(c)	
Clean Unit provisions for emissions units achieving emission limitation comparable to LAER.	(d)	
PCP exclusion	(e)	
Actuals PALs	(f)	IV.K.
Severability	(g)	IV.L.

B. Legal Basis for Changes to Appendix S

Appendix S provides on its face that it is an interpretation of the NSR permitting rules in subpart I, including (51.165. Therefore, it is necessary to have appendix S reflect substantially the same requirements as are in § 51.165.[1] Thus, we proposed to amend appendix S in this manner in the 1996 NSR proposal.

The legal basis for these changes is the same as that set forth in the preamble to the December 31, 2002, final rule providing NSR reforms for the other major NSR regulations. Additionally, we believe it is necessary to have appendix S reflect substantially the same requirements as codified at 40 CFR 51.165 because appendix S is an interpretation of the NSR permitting rules at 40 CFR part 51 subpart I, including § 51.165, as discussed earlier. As explained in section IV.A of this preamble, we are not amending appendix S to adopt the Clean Unit provision and PCP exemption that are in § 51.165, because the D.C. Circuit Court of Appeals vacated those provisions in the *New York* decision.

Section 110(a)(2)(C) of the Act does not define specific requirements States must follow for issuing major source permits during the interim period between nonattainment designation and EPA approval of a nonattainment NSR SIP. However, we have historically recognized that the SIP development period provided for in section 172(b) of the Act leaves a gap in part D major NSR permitting and have determined that this gap is to be filled with an interim major NSR program that is substantially similar to the requirements of part D, including the LAER and offset requirements from part D, subject to a limited exemption where the attainment deadline will be met (57 FR at 18070, 18076). This interim NSR program has been implemented to date through

[1] Thus, EPA has typically conformed appendix S to the part D nonattainment NSR permitting provisions governing SIPs at 40 CFR 51.165 (originally codified at § 51.18) whenever those regulations were revised. See, for example, 45 FR 52676 (Aug. 7, 1980); 47 FR 27554 (June 25, 1982); 49 FR 43210 (Oct. 26, 1984); 54 FR 27274 (June 28, 1989); 57 FR 3941 (Feb. 3, 1992).

appendix S.[2] Our regulations at 40 CFR 52.24(k) require States to follow appendix S during the time period between the date of designation as nonattainment and the date the part D major NSR plan is approved. Additionally, in the 1977 CAA Amendments, Congress indicated its intent that major NSR permitting apply during the SIP development period. [See Pub. L. No. 95–95, § 129(a), 91 Stat. 685 (1977).] Specifically, in 1977, when Congress enacted a moratorium on construction in any area lacking an approved part D NSR SIP, with a delayed effective date of July 1, 1979, Congress provided that appendix S govern permitting of sources constructing in such areas prior to that date, subject to a limited waiver by the Administrator. *Id.* 108(b), 129(a). We subsequently codified the use of appendix S as the interim major NSR program in 40 CFR 52.24(k), reasoning (in the context of implementing a delay in the construction ban for then-recently designated nonattainment areas) that Congress had provided that appendix S would remain in effect to protect air quality while State plans were being designed (45 FR 91604). When Congress removed the construction ban (except as provided in section 110(n)(3) of the Act), it left in place 40 CFR 52.24(k), implementing the interim major NSR program under appendix S.

The continued application of appendix S through § 52.24(k) is also supported by the purpose of the CAA, specifically, section 101(b)(1), ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.'' This provision was the basis for the original judicial finding that the Act imposed an obligation to prevent significant deterioration in areas that meet the NAAQS, prior to Congress' enactment of the PSD program at part C of the Act.[3] This policy of non-degradation and promoting productive capacity applies with even greater force in areas that fail to meet the NAAQS. Thus, we believe that an interim major NSR program for the SIP development period—as codified at appendix S—is supported by section 110(a)(2)(C), section 101(b)(1), Congressional intent, and our gapfilling authority under section 301(a) of the Act.

C. Approach for ''Reasonable Possibility'' Standard

These appendix S rules include the ''reasonable possibility'' standard of the 2002 NSR reform rules. In response to the remand of that standard handed down by the D.C. Circuit in the *New York* case, EPA provides an interim interpretation of ''reasonable possibility'' that is consistent with the Court's decision. We note that in a separate **Federal Register** notice published on this date, we are proposing clarification of the ''reasonable possibility'' standard to address under which circumstances a source that does not trigger NSR may nonetheless still be required to keep records.

A major stationary source in a nonattainment area (or in the OTR) triggers the application of NSR when it makes a ''modification,'' which is defined as ''any physical change * * * or change in the method of operation * * * which increases the amount of any air pollutant emitted'' for which an area is in nonattainment or results in the emission of any such air pollutant not previously emitted by the source. CAA sections 172(c)(5), 171(4), 111(a)(4). The amount of the increase must be significant, and EPA, through rulemaking, has determined significance levels for various pollutants where the Act does not independently specify a significance threshold. See 40 CFR 51.165(a)(1)(x), 51.166(b)(23)(i), paragraph II.A.10 of appendix S to Part 51, and 52.21(b)(23)(i).

To determine the amount of increase from the change, the NSR rules prior to revision by the 2002 NSR reform rules generally required a source other than an electric utility steam generating unit (EUSGU) to compare the amount of the source's actual emissions during a baseline period to the amount the source would emit after the change based on the source's potential to emit (PTE) to determine if a ''significant net emissions increase'' has occurred. The 2002 NSR reform rules provided non-EUSGU sources a choice in how to determine the post-change amount: these sources could continue to use the PTE amount (the actuals-to-potentials test), or they could use the amount of actual emissions the sources projected to occur (the actuals-to-projected-actuals test). The preamble to the NSR reform rules contains a more detailed discussion, 67 FR at 80,187.

For a source that elects the actuals-to-projected-actuals test and calculates that the amount of any increase would not exceed the significance levels and therefore does not trigger NSR, the NSR reform rules provide requirements to maintain records of the calculations and post-change emissions if the source determines that there is ''a reasonable possibility that [the change] may result in a significant emissions increase * * *.'' 40 CFR 52.21(r)(6).

In the *New York* case, the DC Circuit remanded this provision, stating:

> Because EPA has failed to explain how it can ensure NSR compliance without the relevant data, we will remand for it either to provide an acceptable explanation for its ''reasonable possibility'' standard or to devise an appropriately supported alternative.

413 F.3d at 35–36.

In a separate **Federal Register** notice published on this date, we are proposing clarification of the ''reasonable possibility'' standard to identify when a source must keep records despite the fact that a physical or operational change does not trigger NSR. The EPA intends, as part of that rulemaking, to revise appendix S to the extent necessary to conform to the results of that rulemaking.

In the interim, until EPA completes the rulemaking, EPA announces that it interprets the standard so that a source may conclude there is no ''reasonable possibility'' that the change will result in a significant increase in emissions only if the change's projected actual emissions increase is below 50 percent of the applicable NSR significance level for any pollutant. This test may be termed the ''percentage increase trigger.'' We base our conclusion on an assumption that the magnitude of projected actual emissions correlates positively to the likelihood of a significant emissions increase. The EPA believes that this interpretation addresses the issues identified by the Court in the *New York* case.

[2] Appendix S was originally promulgated in 1976 to address whether, and to what extent, new and modified sources would be allowed to construct in nonattainment areas whose attainment deadlines had already passed, in light of the regulatory requirement that new or modified sources be disapproved where the source would interfere with attainment of the NAAQS. 41 FR 55524 (Dec. 21, 1976). It required, *inter alia,* compliance with the LAER and with offsetting emission reductions in excess of the new source's emissions. At that time, part D NSR was not part of the CAA.

When the part D NSR provisions were added in the 1977 Amendments to the CAA, Congress added the requirement that SIPs contain nonattainment NSR provisions as set forth in section 173, including LAER and the requirement to either offset the increase in new source emissions or ensure that emissions fell within a growth allowance. (The growth allowance provision was repealed in 1990.) Additionally, Congress provided that appendix S would govern preconstruction permitting in areas lacking approved part D SIPs before a construction ban went into effect, as discussed in more detail earlier.

[3] See *Alabama Power Co.* v. *Costle,* 636 F.3d 323, 346–047 (DC Cir. 1980) (discussing *Sierra Club* v. *Ruckelshaus,* 344 F. Supp. 253 (D.D.C. 1972), aff'd per curiam 4 ERC 1815 (DC Cir. 1972), aff'd by an equally divided court, sub nom *Fri* v. *Sierra Club,* 412 U.S. 541 (1973).

V. Summary of Major Comments and Responses

As we noted in section III.B of this preamble, we proposed changes to appendix S and the other major NSR regulations in 1996. Thus, the comments and responses concerning the final regulations on December 31, 2002 also apply to these final changes to appendix S. You will find the major comments and responses at 67 FR 80186. For a complete summary of the comments and responses, please see our Technical Support Document for the December 31, 2002 final rules, which is posted on the World Wide Web, on the EPA's New Source Review Web site, at *http://www.epa.gov/nsr/documents/nsr-tsd_11–22–02.pdf.*

VI. Effective Date for Requirements

These final changes to appendix S of 40 CFR part 51 will take effect in the NSR permitting programs for nonattainment areas on May 7, 2007. This means that appendix S as amended in this final action will apply on May 7, 2007 in any nonattainment area without an approved part D NSR SIP that applies to major sources in the nonattainment area for the nonattainment pollutant.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The OMB has previously approved the information collection requirements contained in the existing regulations (40 CFR parts 51 and 52) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0003, EPA ICR number 1230.17. A copy of the OMB-approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We are imposing no new requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As this final rule generally incorporates the December 31, 2002 final rules into appendix S, we believe these rule changes will actually reduce the regulatory burden associated with the major NSR program by improving the operational flexibility of owners or operators and clarifying the requirements. Additionally, States are not required to revise their SIPs with respect to appendix S. The EPA will act as the reviewing authority where the State lacks authority to issue permits that meet the conditions of appendix S. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Because we have not required any new Federal mandates, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include

regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. Nevertheless, as described in section III.B of this preamble, in developing this rule, we consulted with affected parties and interested stakeholders, including State and local authorities, to enable them to provide timely input in the development of this rule. The rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The revisions to appendix S do not have substantial direct effects on State and local agencies because State and local agencies are not required to revise their programs with respect to appendix S. The EPA will act as the reviewing authority where the State lacks authority to issue permits that meet the conditions of appendix S. Moreover, this revision provides sources permitted by States under appendix S greater certainty in application of the program, which should in turn reduce the overall burden of the program on State and local authorities. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply.

The purpose of this final rule, like that for the December 31, 2002 rules, is to add greater flexibility to the existing major NSR regulations. These changes have been incorporated into appendix S. Appendix S affects sources located in Indian country but has no direct effect on Indian tribes. Although major stationary sources affected by this final rule could be located in or near Indian country and/or be owned or operated by tribal governments, such sources would not incur additional costs or compliance burdens as a result of this rule. Instead, the only effect on such sources should be the benefit of the added certainty and flexibility provided by the rule.

Although Executive Order 13175 does not apply to this rule, EPA afforded Tribal officials the opportunity to comment on the December 31, 2002 final rules, which were developed largely prior to issuance of Executive Order 13175. Two tribes submitted comments on that action. We recognize the importance of including tribal consultation as part of the rulemaking process. We will continue to consult with tribes on future rulemaking to assess and address tribal implications, and will work with tribes interested in seeking TIP approval to implement the NSR program to ensure consistency of tribal plans with this rule.

G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) As ''economically significant'' as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Based on our Supplemental Analysis, we believe that the December 31, 2002 rules that have been incorporated into this final action will result in equal or better environmental protection than provided by the prior regulations, and do so in a more streamlined and effective manner.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355; May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This final rule improves the ability of sources to undertake pollution prevention or energy efficiency projects, switch to less polluting fuels or raw materials, maintain the reliability of production facilities, and effectively utilize and improve existing capacity. The rule also includes a number of provisions to streamline administrative and permitting processes so that facilities can quickly accommodate changes in supply and demand. The regulations provide several alternatives that are specifically designed to reduce administrative burden for sources that use pollution prevention or energy efficient projects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), P.L. 104–113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Although this rule does involve the use of technical standards, it does not preclude the State, local, and tribal reviewing agencies from using voluntary consensus standards. This final rule is an improvement of the existing NSR permitting program. As such, it only ensures that promulgated technical standards are considered and appropriate controls are installed, prior to the construction of major sources of air emissions. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high

and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. Based on our Supplemental Analysis, we believe that the December 31, 2002 rules that have been incorporated into this final action will result in equal or better environmental protection than provided by the prior regulations, and do so in a more streamlined and effective manner.

K. Congressional Review Act

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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective May 7, 2007.

VIII. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 7, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

Pursuant to section 307(d)(1)(U) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(U) provides that the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.'' This action finalizes elements of previous proposed actions that were determined to be subject to section 307(d)—the NSR rules published on December 31, 2002 (67 FR at 80244). Therefore, the procedural requirements of section 307(d) have been complied with for purposes of this action.

IX. Statutory Authority

The statutory authority for this action is provided by sections 101, 112, 114, 116, and 301 of the Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601). This rulemaking is also subject to section 307(d) of the Act (42 U.S.C. 7407(d)).

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List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

Dated: February 28, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Appendix S to Part 51—[Amended]

■ 2. Appendix S to Part 51 is amended as follows:

■ a. By revising paragraph II.A.1.

■ b. By revising paragraphs II.A.5(i) and (ii).

■ c. By adding paragraph II.A.5(vi).

■ d. By revising paragraph II.A.6(i).

■ e. By revising paragraph II.A.6(iii).

■ f. By revising paragraph II.A.6(v)(*b*) through (*d*).

■ g. By adding paragraph II.A.6(vii).

■ h. By revising paragraph II.A.7.

■ i. By revising paragraph II.A.13.

■ j. By revising paragraph II.A.14.

■ k. By revising the introductory text in paragraph II.A.18.

■ l. By adding paragraphs II.A.21 through 36.

■ m. By adding paragraphs IV. I through L.

The revisions and additions read as follows:

Appendix S to Part 51—Emission Offset Interpretative Ruling

* * * * *

II. * * *

A. * * *

1. *Stationary source* means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

* * * * *

5. (i) *Major modification* means any physical change in or change in the method of operation of a major stationary source that would result in:

(*a*) A significant emissions increase of a regulated NSR pollutant (as defined in paragraph II.A.31 of this Ruling); and

(*b*) A significant net emissions increase of that pollutant from the major stationary source.

(ii) Any significant emissions increase (as defined in paragraph II.A.23 of this Ruling) from any emissions units or net emissions increase (as defined in paragraph II.A.6 of this Ruling) at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

* * * * *

(vi) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph IV.K of this ruling for a PAL for that pollutant. Instead, the definition at paragraph IV.K.2(viii) of this Ruling shall apply.

6.(i) *Net emissions increase* means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(*a*) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to paragraph IV.J of this Ruling; and

(*b*) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph II.A.6(i)(*b*) shall be determined as provided in paragraph II.A.30 of this Ruling, except that paragraphs II.A.30(i)(*c*) and II.A.30(ii)(*d*) of this Ruling shall not apply.

* * * * *

(iii) An increase or decrease in actual emissions is creditable only if the reviewing authority has not relied on it in issuing a permit for the source under this Ruling, which permit is in effect when the increase in actual emissions from the particular change occurs.

* * * * *

(v) * * *

(*b*) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(*c*) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR 51.165; and

(*d*) It has approximately the same qualitative significance for public health and

welfare as that attributed to the increase from the particular change.

* * * * *

(vii) Paragraph II.A.13(ii) of this Ruling shall not apply for determining creditable increases and decreases or after a change.

7. *Emissions unit* means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in paragraph II.A.21 of this Ruling. For purposes of this Ruling, there are two types of emissions units as described in paragraphs II.A.7(i) and (ii) of this Ruling.

(i) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than 2 years from the date such emissions unit first operated.

(ii) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph II.A.7(i) of this Ruling.

* * * * *

13. (i) *Actual emissions* means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs II.A.13(ii) through (iv) of this Ruling, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph IV.K of this Ruling. Instead, paragraphs II.A.24 and 30 of this Ruling shall apply for those purposes.

(ii) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(iii) The reviewing authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(iv) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

14. *Construction* means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

* * * * *

18. *Lowest achievable emission rate (LAER)* means, for any source, the more stringent rate of emissions based on the following: * * *

* * * * *

21. *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

22. *Pollution prevention* means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain ''in-process recycling'' practices), energy recovery, treatment, or disposal.

23. *Significant emissions increase* means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph II.A.10 of this Ruling) for that pollutant.

24. (i) *Projected actual emissions* means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(ii) In determining the projected actual emissions under paragraph II.A.24(i) of this Ruling before beginning actual construction, the owner or operator of the major stationary source:

(*a*) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved plan; and

(*b*) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

(*c*) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under paragraph II.A.30 of this Ruling and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(*d*) In lieu of using the method set out in paragraphs II.A.24(ii)(*a*) through (*c*) of this Ruling, may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph II.A.3 of this Ruling.

25. *Nonattainment major new source review (NSR) program* means a major source preconstruction permit program that implements Sections I through VI of this Ruling, or a program that has been approved by the Administrator and incorporated into the plan to implement the requirements of § 51.165 of this part. Any permit issued under such a program is a major NSR permit.

26. *Continuous emissions monitoring system (CEMS)* means all of the equipment that may be required to meet the data acquisition and availability requirements of this Ruling, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

27. *Predictive emissions monitoring system (PEMS)* means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

28. *Continuous parameter monitoring system (CPMS)* means all of the equipment necessary to meet the data acquisition and availability requirements of this Ruling, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

29. *Continuous emissions rate monitoring system (CERMS)* means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

30. *Baseline actual emissions* means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs II.A.30(i) through (iv) of this Ruling.

(i) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(*a*) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(*b*) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(*c*) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(*d*) The average rate shall not be based on any consecutive 24-month period for which

there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph II.A.30(i)(*b*) of this Ruling.

(ii) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the reviewing authority for a permit required either under this Ruling or under a plan approved by the Administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(*a*) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(*b*) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(*c*) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of this chapter, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan.

(*d*) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(*e*) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs II.A.30(ii)(*b*) and (*c*) of this Ruling.

(iii) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(iv) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph II.A.30(i) of this Ruling, for other existing emissions units in accordance with the procedures contained in paragraph II.A.30(ii) of this Ruling, and for a new emissions unit in accordance with the procedures contained in paragraph II.A.30(iii) of this Ruling.

31. *Regulated NSR pollutant,* for purposes of this Ruling, means the following:

(i) Nitrogen oxides or any volatile organic compounds;

(ii) Any pollutant for which a national ambient air quality standard has been promulgated; or

(iii) Any pollutant that is a constituent or precursor of a general pollutant listed under paragraphs II.A.31(i) or (ii) of this Ruling, provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant.

32. *Reviewing authority* means the State air pollution control agency, local agency, other State agency, Indian tribe, or other agency issuing permits under this Ruling or authorized by the Administrator to carry out a permit program under §§ 51.165 and 51.166 of this part, or the Administrator in the case of EPA-implemented permit programs under this Ruling or under § 52.21 of this chapter.

33. *Project* means a physical change in, or change in the method of operation of, an existing major stationary source.

34. *Best available control technology (BACT)* means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR part 60 or 61. If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

35. *Prevention of Significant Deterioration (PSD) permit* means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of § 51.166 of this chapter, or under the program in § 52.21 of this chapter.

36. *Federal Land Manager* means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

* * * * *

IV. * * *

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I. *Applicability procedures.*

1. To determine whether a project constitutes a major modification, the reviewing authority shall apply the principles set out in paragraphs IV.I.1(i) through (v) of this Ruling.

(i) Except as otherwise provided in paragraph IV.I.2 of this Ruling, and consistent with the definition of major modification contained in paragraph II.A.5 of this Ruling, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph II.A.23 of this Ruling), and a significant net emissions increase (as defined in paragraphs II.A.6 and 10 of this Ruling). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(ii) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs IV.I.1(iii) through (v) of this Ruling. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in paragraph II.A.6 of this Ruling. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(iii) *Actual-to-projected-actual applicability test for projects that only involve existing emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph II.A.24 of this Ruling) and the baseline actual emissions (as defined in paragraphs II.A.30(i) and (ii) of this Ruling, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph II.A.10 of this Ruling).

(iv) *Actual-to-potential test for projects that only involve construction of a new emissions unit(s).* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph II.A.3 of this Ruling) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph II.A.30(iii) of this Ruling) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph II.A.10 of this Ruling).

(v) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the

sum of the emissions increases for each emissions unit, using the method specified in paragraphs IV.I.1(iii) through (iv) of this Ruling as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph II.A.10 of this Ruling).

2. For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under paragraph IV.K of this Ruling.

J. *Provisions for projected actual emissions.* The provisions of this paragraph IV.J apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs II.A.24(ii)(*a*) through (*c*) of this Ruling for calculating projected actual emissions.

1. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph II.A.24(ii)(*c*) of this Ruling and an explanation for why such amount was excluded, and any netting calculations, if applicable.

2. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph IV.J.1 of this Ruling to the reviewing authority. Nothing in this paragraph IV.J.2 shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

3. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in paragraph IV.J.1(ii) of this Ruling; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

4. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority within 60 days after the end of each year, during which records must be generated under paragraph IV.J.3 of this Ruling setting out the unit's annual emissions during the year that preceded submission of the report.

5. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority if the annual emissions, in tons per year, from the project identified in paragraph IV.J.1 of this Ruling, exceed the baseline actual emissions (as documented and maintained pursuant to paragraph IV.J.1(iii) of this Ruling) by a significant amount (as defined in paragraph II.A.10 of this Ruling) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph IV.J.1(iii) of this Ruling. Such report shall be submitted to the reviewing authority within 60 days after the end of such year. The report shall contain the following:

(i) The name, address and telephone number of the major stationary source;

(ii) The annual emissions as calculated pursuant to paragraph IV.J.3 of this Ruling; and

(iii) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

6. [Reserved]

7. The owner or operator of the source shall make the information required to be documented and maintained pursuant to this paragraph IV.J of this Ruling available for review upon a request for inspection by the reviewing authority or the general public pursuant to the requirements contained in § 70.4(b)(3)(viii) of this chapter.

K. *Actuals PALs.* The provisions in paragraphs IV.K.1 through 15 of this Ruling govern actuals PALs.

1. Applicability.

(i) The reviewing authority may approve the use of an actuals PAL for any existing major stationary source (except as provided in paragraph IV.K.1(ii) of this Ruling) if the PAL meets the requirements in paragraphs IV.K.1 through 15 of this Ruling. The term ''PAL'' shall mean ''actuals PAL'' throughout paragraph IV.K of this Ruling.

(ii) The reviewing authority shall not allow an actuals PAL for VOC or NO_X for any major stationary source located in an extreme ozone nonattainment area.

(iii) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in paragraphs IV.K.1 through 15 of this Ruling, and complies with the PAL permit:

(*a*) Is not a major modification for the PAL pollutant;

(*b*) Does not have to be approved through a nonattainment major NSR program; and

(*c*) Is not subject to the provisions in paragraph IV.F of this Ruling (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of a nonattainment major NSR program).

(iv) Except as provided under paragraph IV.K.1(iii)(*c*) of this Ruling, a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

2. *Definitions.* For the purposes of this paragraph IV.K, the definitions in paragraphs IV.K.2(i) through (xi) of this Ruling apply. When a term is not defined in these paragraphs, it shall have the meaning given in paragraph II.A of this Ruling or in the Act.

(i) *Actuals PAL* for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph II.A.30 of this Ruling) of all emissions units (as defined in paragraph II.A.7 of this Ruling) at the source, that emit or have the potential to emit the PAL pollutant.

(ii) *Allowable emissions* means ''allowable emissions'' as defined in paragraph II.A.11 of this Ruling, except as this definition is modified according to paragraphs IV.K.2(ii)(*a*) through (*b*) of this Ruling.

(*a*) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(*b*) An emissions unit's potential to emit shall be determined using the definition in paragraph II.A.3 of this Ruling, except that the words ''enforceable as a practical matter'' should be added after ''federally enforceable.''

(iii) *Small emissions unit* means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph II.A.10 of this Ruling or in the Act, whichever is lower.

(iv) Major emissions unit means:

(*a*) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(*b*) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Act for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(v) *Plantwide applicability limitation (PAL)* means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs IV.K.1 through 15 of this Ruling.

(vi) *PAL effective date* generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(vii) *PAL effective period* means the period beginning with the PAL effective date and ending 10 years later.

(viii) *PAL major modification* means, notwithstanding paragraphs II.A.5 and 6 of this Ruling (the definitions for major

modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(ix) *PAL permit* means the permit issued under this Ruling, the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the plan, or the title V permit issued by the reviewing authority that establishes a PAL for a major stationary source.

(x) *PAL pollutant* means the pollutant for which a PAL is established at a major stationary source.

(xi) *Significant emissions unit* means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph II.A.10 of this Ruling or in the Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph IV.K.2(iv) of this Ruling.

3. *Permit application requirements.* As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the reviewing authority for approval:

(i) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations or work practices apply to each unit.

(ii) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown and malfunction.

(iii) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph IV.K.13(i) of this Ruling.

4. General requirements for establishing PALs.

(i) The reviewing authority is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs IV.K.4(i) (*a*) through (*g*) of this Ruling are met.

(*a*) The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(*b*) The PAL shall be established in a PAL permit that meets the public participation requirements in paragraph IV.K.5 of this Ruling.

(*c*) The PAL permit shall contain all the requirements of paragraph IV.K.7 of this Ruling.

(*d*) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(*e*) Each PAL shall regulate emissions of only one pollutant.

(*f*) Each PAL shall have a PAL effective period of 10 years.

(*g*) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs IV.K. 12 through 14 of this Ruling for each emissions unit under the PAL through the PAL effective period.

(ii) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under paragraph IV.C of this Ruling unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

5. *Public participation requirement for PALs.* PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with ((51.160 and 51.161 of this chapter. This includes the requirement that the reviewing authority provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The reviewing authority must address all material comments before taking final action on the permit.

6. *Setting the 10-year actuals PAL level.* The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph II.A.30 of this Ruling) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph II.A.10 of this Ruling or under the Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period must be added to the PAL level in an amount equal to the potential to emit of the units. The reviewing authority shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the reviewing authority is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

7. *Contents of the PAL permit.* The PAL permit contain, at a minimum, the information in paragraphs IV.K.7 (i) through (x) of this Ruling.

(i) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(ii) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(iii) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with paragraph IV.K.10 of this Ruling before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the reviewing authority.

(iv) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(v) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of paragraph IV.K.9 of this Ruling.

(vi) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph IV.K.13(i) of this Ruling.

(vii) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under paragraph IV.K.12 of this Ruling.

(viii) A requirement to retain the records required under paragraph IV.K.13 of this Ruling on site. Such records may be retained in an electronic format.

(ix) A requirement to submit the reports required under paragraph IV.K.14 of this Ruling by the required deadlines.

(x) Any other requirements that the reviewing authority deems necessary to implement and enforce the PAL.

8. *PAL effective period and reopening of the PAL permit.* The requirements in paragraphs IV.K.8(i) and (ii) of this Ruling apply to actuals PALs.

(i) *PAL effective period.* The reviewing authority shall specify a PAL effective period of 10 years.

(ii) Reopening of the PAL permit.

(*a*) During the PAL effective period, the reviewing authority must reopen the PAL permit to:

(*1*) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.

(*2*) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under paragraph IV.C of this Ruling.

(*3*) Revise the PAL to reflect an increase in the PAL as provided under paragraph IV.K.11 of this Ruling.

(*b*) The reviewing authority shall have discretion to reopen the PAL permit for the following:

(*1*) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date.

(*2*) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the plan.

(*3*) Reduce the PAL if the reviewing authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(*c*) Except for the permit reopening in paragraph IV.K.8(ii)(*a*)(*1*) of this Ruling for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph IV.K.5 of this Ruling.

9. *Expiration of a PAL.* Any PAL which is not renewed in accordance with the procedures in paragraph IV.K.10 of this Ruling shall expire at the end of the PAL effective period, and the requirements in paragraphs IV.K.9(i) through (v) of this Ruling shall apply.

(i) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs IV.K.9(i)(*a*) through (*b*) of this Ruling.

(*a*) Within the time frame specified for PAL renewals in paragraph IV.K.10(ii) of this Ruling, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the reviewing authority) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph IV.K.10(v) of this Ruling, such distribution shall be made as if the PAL had been adjusted.

(*b*) The reviewing authority shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the reviewing authority determines is appropriate.

(ii) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The reviewing authority may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(iii) Until the reviewing authority issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph IV.K.9(i)(*a*) of this Ruling, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(iv) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements if such change meets the definition of major modification in paragraph II.A.5 of this Ruling.

(v) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph IV.F of this Ruling, but were eliminated by the PAL in accordance with the provisions in paragraph IV.K.1(iii)(*c*) of this Ruling.

10. Renewal of a PAL.

(i) The reviewing authority shall follow the procedures specified in paragraph IV.K.5 of this Ruling in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the reviewing authority.

(ii) *Application deadline.* The major stationary source owner or operator shall submit a timely application to the reviewing authority to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(iii) *Application requirements.* The application to renew a PAL permit shall contain the information required in paragraphs IV.K.10(iii)(*a*) through (*d*) of this Ruling.

(*a*) The information required in paragraphs IV.K.3(i) through (iii) of this Ruling.

(*b*) A proposed PAL level.

(*c*) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(*d*) Any other information the owner or operator wishes the reviewing authority to consider in determining the appropriate level for renewing the PAL.

(iv) *PAL adjustment.* In determining whether and how to adjust the PAL, the reviewing authority shall consider the options outlined in paragraphs IV.K.10(iv)(*a*) and (*b*) of this Ruling. However, in no case may any such adjustment fail to comply with paragraph IV.K.10(iv)(*c*) of this Ruling.

(*a*) If the emissions level calculated in accordance with paragraph IV.K.6 of this Ruling is equal to or greater than 80 percent of the PAL level, the reviewing authority may renew the PAL at the same level without considering the factors set forth in paragraph IV.K.10(iv)(*b*) of this Ruling; or

(*b*) The reviewing authority may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the reviewing authority in its written rationale.

(*c*) Notwithstanding paragraphs IV.K.10(iv)(*a*) and (*b*) of this Ruling,

(*1*) If the potential to emit of the major stationary source is less than the PAL, the reviewing authority shall adjust the PAL to a level no greater than the potential to emit of the source; and

(*2*) The reviewing authority shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of paragraph IV.K.11 of this Ruling (increasing a PAL).

(v) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the reviewing authority has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

11. Increasing a PAL during the PAL effective period.

(i) The reviewing authority may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs IV.K.11(i)(*a*) through (*d*) of this Ruling.

(*a*) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(*b*) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(*c*) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in paragraph IV.K.11(i)(*a*) of this Ruling, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

(*d*) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(ii) The reviewing authority shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph IV.K.11(i)(*b*)), plus the sum of the baseline actual emissions of the small emissions units.

(iii) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of paragraph IV.K.5 of this Ruling.

12. Monitoring requirements for PALs.

(i) General Requirements.

(*a*) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(*b*) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs IV.K.12(ii)(*a*) through (*d*) of this Ruling and must be approved by the reviewing authority.

(*c*) Notwithstanding paragraph IV.K.12(i)(*b*) of this Ruling, you may also employ an alternative monitoring approach that meets paragraph IV.K.12(i)(*a*) of this Ruling if approved by the reviewing authority.

(*d*) Failure to use a monitoring system that meets the requirements of this Ruling renders the PAL invalid.

(ii) Minimum Performance Requirements for Approved Monitoring Approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs IV.K.12(iii) through (ix) of this Ruling:

(*a*) Mass balance calculations for activities using coatings or solvents;

(*b*) CEMS;

(*c*) CPMS or PEMS; and

(*d*) Emission Factors.

(iii) Mass Balance Calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(*a*) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(*b*) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(*c*) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the reviewing authority determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(iv) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(*a*) CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B; and

(*b*) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

(v) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(*a*) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(*b*) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the reviewing authority, while the emissions unit is operating.

(vi) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(*a*) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(*b*) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(*c*) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the reviewing authority determines that testing is not required.

(vii) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(viii) Notwithstanding the requirements in paragraphs IV.K.12(iii) through (vii) of this Ruling, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the reviewing authority shall, at the time of permit issuance:

(*a*) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(*b*) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(ix) Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the reviewing authority. Such testing must occur at least once every 5 years after issuance of the PAL.

13. Recordkeeping requirements.

(i) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph IV.K of this Ruling and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

(ii) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

(*a*) A copy of the PAL permit application and any applications for revisions to the PAL; and

(*b*) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

14. *Reporting and notification requirements.* The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the reviewing authority in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs IV.K.14(i) through (iii).

(i) Semi-Annual Report. The semi-annual report shall be submitted to the reviewing authority within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs IV.K.14(i)(*a*) through (*g*) of this Ruling.

(*a*) The identification of owner and operator and the permit number.

(*b*) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph IV.K.13(i) of this Ruling.

(*c*) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

(*d*) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

(*e*) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(*f*) A notification of a shutdown of any monitoring system, whether the shutdown

was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by paragraph IV.K.12(vii) of this Ruling.

(*g*) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(ii) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to § 70.6(a)(3)(iii)(B) of this chapter shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing § 70.6(a)(3)(iii)(B) of this chapter. The reports shall contain the following information:

(*a*) The identification of owner and operator and the permit number;

(*b*) The PAL requirement that experienced the deviation or that was exceeded;

(*c*) Emissions resulting from the deviation or the exceedance; and

(*d*) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(iii) Re-validation results. The owner or operator shall submit to the reviewing authority the results of any re-validation test or method within 3 months after completion of such test or method.

15. Transition requirements.

(i) No reviewing authority may issue a PAL that does not comply with the requirements in paragraphs IV.K.1 through 15 of this Ruling after the date that this Ruling becomes effective for the State in which the major stationary source is located.

(ii) The reviewing authority may supersede any PAL which was established prior to the date that this Ruling becomes effective for the State in which the major stationary source is located with a PAL that complies with the requirements of paragraphs IV.K.1 through 15 of this Ruling.

L. *Severability.* If any provision of this Ruling, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Ruling, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2006–1015; FRL–8285–1]

Approval and Promulgation of Implementation Plans; Iowa; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is revising the Iowa State Implementation Plan (SIP) for the purpose of approving the Iowa Department of Natural Resources' (IDNR) actions to address the ''good neighbor'' provisions of the Clean Air Act section 110(a)(2)(D)(i). These provisions require each state to submit a SIP that prohibits emissions that adversely affect another state's air quality through interstate transport. IDNR has adequately addressed the four distinct elements related to the impact of interstate transport of air pollutants. These include prohibiting significant contribution to downwind nonattainment of the National Ambient Air Quality Standards (NAAQS), interference with maintenance of the NAAQS, prevention of significant deterioration of air quality, and protection of visibility. The requirements for public notification were also met by IDNR.

DATES: This direct final rule will be effective May 7, 2007, without further notice, unless EPA receives adverse comment by April 9, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–1015, by one of the following methods:

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

2. *E-mail: Hamilton.heather@epa.gov.*

3. *Mail:* Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier.* Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2006–1015. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *Hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever

''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is being addressed in this document?
What action is EPA taking?

What is being addressed in this document?

EPA is making a revision to the SIP for the purpose of approving the IDNR's actions to address the requirements of the Clean Air Act (CAA) section 110(a)(2)(D)(i). This CAA section requires each state to submit a SIP that prohibits emissions that could adversely affect another state. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS in another state, (3) interfere with provisions to prevent significant deterioration of air quality, and (4) interfere with efforts to protect visibility.

EPA issued guidance on August 15, 2006, relating to SIP submissions to meet the requirements of section 110(a)(2)(D)(i). As discussed below, Iowa's analysis of its SIP with respect to the statutory requirements is consistent with the guidance.

The IDNR has addressed the first two of these elements by the adoption of the Clean Air Interstate Rule (CAIR) model rules that require Iowa sources to participate in the EPA-administered cap and trade program for nitrogen oxides (NO_X) and sulfur dioxide. Participation in this program will prohibit emissions from the state that will contribute significantly to nonattainment or interfere with the maintenance of the NAAQS in any downwind state. As previously determined by EPA, submittal of a SIP revision to satisfy CAIR also fulfills the state's obligations that pertain to ''significant contribution'' and ''interference with maintenance'' (70 FR 25162). It should be noted that EPA will act on Iowa's CAIR SIP in a separate rulemaking, and this action makes no conclusion with respect to approvability of that submittal.

The third element IDNR addressed was prevention of significant deterioration (PSD). For 8-hour ozone, the state has met the obligation by confirming that major sources in the state are currently subject to PSD programs that implement the 8-hour ozone standard and that the state is on track to meet the June 15, 2007, deadline for SIP submissions adopting any relevant requirements of the Phase II ozone implementation rule. For $PM_{2.5}$, the state has confirmed that the state's PSD program is being implemented in accordance with EPA's interim guidance calling for the use of PM_{10} as a surrogate for $PM_{2.5}$ for the purposes of PSD review. Controlling PM_{10} emissions and analyzing impacts on the environment serves as a surrogate approach for reducing $PM_{2.5}$ emissions and minimizing impacts to air quality. Once $PM_{2.5}$ guidance is finalized by EPA, IDNR commits to transitioning from use of the interim $PM_{2.5}$ guidance to the final $PM_{2.5}$ implementation guidance after approval of the $PM_{2.5}$ SIP revision (The submittal is due in April 2008).

It should be noted that Iowa is currently designated attainment/unclassifiable for both the 8-hour ozone and $PM_{2.5}$ NAAQS.

At this time, it is not possible for IDNR to accurately determine whether there is interference with measures in another state's SIP designed to protect visibility, which is the fourth element that was addressed. Technical projects relating to visibility degradation source-receptor relationships are under development. Iowa will be in a more advantageous position to address the visibility projection requirements once the initial regional haze SIP has been developed. IDNR intends to meet the December 17, 2007, submittal deadline for the regional haze SIP.

A public hearing with regard to this action was held by the state. No comments were received.

With this action, the non-regulatory text in 40 CFR 52.820(e) is revised to reflect that IDNR addressed the elements of the CAA section 110(a)(2)(D)(i) submittal.

What action is EPA taking?

EPA is approving this revision submitted by Iowa and is revising 40 CFR 52.820 to reflect that the IDNR has adequately addressed the required elements of the CAA section 110(a)(2)(D)(i) SIP. Please note that if EPA receives adverse comments on part of this rule, and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this action 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 action 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 action also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This action 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 approves a state rule implementing a Federal standard.

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

not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 7, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 27, 2007.

John B. Askew,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart Q—Iowa

■ 2. In § 52.820(e) the table is amended by adding an entry in numerical order to read as follows:

§ 52.820 Identification of plan.

* * * * *

(e) * * *

EPA–APPROVED IOWA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(36) CAA 110(a)(2)(D)(i) SIP—Interstate Transport.	Statewide	11/22/06	March 8, 2007 [insert FR page number where the document begins].	

[FR Doc. E7–4179 Filed 3–7–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

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

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

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

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are

made final, and for the contents in these buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and country	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Tuscaloosa, (FEMA Docket No.: B–7455).	City of Northport (04–04–B101P).	November 9, 2005; November 16, 2005; *Northport Gazette*.	The Honorable Harvey Fretwell, Mayor, City of Northport, City Hall, 3500 McFarland Boulevard, Northport, Alabama 35476.	February 15, 2006	010202
Arkansas:					
Craighead, (FEMA Docket No.: B–7455).	City of Jonesboro (05–06–1627P).	October 12, 2005; October 19, 2005; *Jonesboro Sun*.	The Honorable Doug Forman, Mayor, City of Jonesboro, City Hall, 515 West Washington Avenue, Jonesboro, Arkansas 72401.	January 18, 2006	050048
Washington, (FEMA Docket No.: B–7455).	City of Fayetteville (05–06–0478P).	July 21, 2005; July 28, 2005; *Arkansas Democrat Gazette*.	The Honorable Dan Coudy, Mayor, City of Fayetteville, 113 West Mountain Street, Fayetteville, Arkansas 72701.	October 27, 2005	050216
Arizona:					
Coconino, (FEMA Docket No.: B–7455).	City of Flagstaff (04–09–1242P).	June 9, 2005; June 16, 2005; *Arizona Daily Sun*.	The Honorable Joseph P. Donaldson, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	September 15, 2005	040020
Coconino, (FEMA Docket No.: B–7455).	City of Flagstaff (04–09–0997P).	October 12, 2005; October 19, 2005; *Arizona Daily Sun*.	The Honorable Joseph C. Donaldson, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	January 18, 2006	040020
Coconino, (FEMA Docket No.: B–7455).	Unincorporated areas of Coconino County (04–09–0997P).	October 12, 2005; October 19, 2005; *Arizona Daily Sun*.	The Honorable Elizabeth Archuleta, Chair, Coconino County Board of Supervisors, 219 East Cherry Avenue, Flagstaff, Arizona 86001.	January 18, 2006	040019
Maricopa, (FEMA Docket No.: B–7455).	City of Avondale (04–09–0933P).	May 26, 2005; June 2, 2005; *Arizona Business Gazette*.	The Honorable Ronald J. Drake, Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323.	May 17, 2005	040038
Maricopa, (FEMA Docket No.: B–7455).	City of Fountain Hills (03–09–1143P).	May 19, 2005; May 26, 2005; *The Tribune*.	The Honorable Wallace Nichols, Mayor, Town of Fountain Hills, P.O. Box 17958, Fountain Hills, Arizona 85269.	August 25, 2005	040135
Maricopa, (FEMA Docket No.: B–7455).	City of Peoria (05–09–1137P).	July 7, 2005; July 14, 2005; *Arizona Business Gazette*.	The Honorable John Keegan, Mayor, City of Peoria, City of Peoria Municipal Complex, 8401 West Monroe Street, Peoria, Arizona 85345.	October 12, 2005	040050
Maricopa, (FEMA Docket No.: B–7455).	City of Phoenix (04–09–0933P).	May 26, 2005; June 2, 2005; *Arizona Business Gazette*.	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	May 17, 2005	040051
Maricopa, (FEMA Docket No.: B–7455).	City of Phoenix (05–09–0164P).	September 22, 2005; September 29, 2005; *Arizona Business Gazette*.	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	December 29, 2005	040051
Maricopa, (FEMA Docket No.: B–7455).	City of Phoenix (05–09–0700P).	October 6, 2005; October 13, 2005; *Arizona Business Gazette*.	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	January 12, 2006	040051
Maricopa, (FEMA Docket No.: B–7455).	Unincorporated areas of Maricopa County (04–09–0933P).	May 26, 2005; June 2, 2005; *Arizona Business Gazette*.	The Honorable Max W. Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, Arizona 85003.	May 17, 2005	040037
Maricopa, (FEMA Docket No.: B–7455).	Unincorporated areas of Maricopa County (05–09–1137P).	July 7, 2005; July 14, 2005; *Arizona Business Gazette*.	The Honorable Max W. Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, Arizona 85003.	October 12, 2005	040037

State and country	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maricopa, (FEMA Docket No.: B–7455).	Unincorporated areas of Maricopa County (05–09–0236P).	August 4, 2005; August 11, 2005; *Arizona Business Gazette*.	The Honorable Max W. Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, Arizona 85003.	November 10, 2005	040037
Maricopa, (FEMA Docket No.: B–7455).	Unincorporated areas of Maricopa County (05–09–0159P).	October 6, 2005; October 13, 2005; *Arizona Business Gazette*.	The Honorable Max W. Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, Arizona 85003.	September 27, 2005	040037
Pima, (FEMA Docket No.: B–7455).	Town of Marana (05–09–0118P).	July 19, 2005; July 26, 2005; *The Daily Territorial*.	The Honorable Bobby Sutton, Mayor, Town of Marana, 13251 North Lon Adams Road, Marana, Arizona 85653.	October 25, 2005	040118
Pima, (FEMA Docket No.: B–7455).	Unincorporated areas of Pima County (05–09–0118P).	July 19, 2005; July 26, 2005; *The Daily Territorial*.	The Honorable Sharon Bronson, Chair, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, Arizona 85701.	October 25, 2005	040073
Santa Cruz, (FEMA Docket No.: B–7455).	City of Nogales (04–09–0303P).	May 10, 2005; May 17, 2005; *Nogales International*.	The Honorable Albert M. Kramer, Mayor, City of Nogales, City Hall, 777 North Grand Avenue, Nogales, Arizona 85621.	August 16, 2005	040091
California:					
Alameda, (FEMA Docket No.: B–7455).	City of Alameda (05–09–1010P).	September 21, 2005; September 28, 2005; *Alameda Times Star*.	The Honorable Beverly Johnson, Mayor, City of Alameda, 2263 Santa Clarita Avenue, Room 320, Alameda, California 94501.	December 28, 2005	060002
Amador, (FEMA Docket No.: B–7455).	City of Jackson (05–09–0292P).	June 17, 2005; June 24, 2005; *Amador Ledger Dispatch*.	The Honorable RosaLee Pryor, Mayor, City of Jackson, 33 Broadway, Jackson, California 95642–2301.	June 7, 2005	060448
San Diego, (FEMA Docket No.: B–7455).	Unincorporated areas of San Diego County (05–09–0948P).	August 11, 2005; August 18, 2005; *San Diego Daily Transcript*.	The Honorable Pam Slater-Price, Chairwoman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101.	November 17, 2005	060284
Solano, (FEMA Docket No.: B–7455).	City of Fairfield (03–09–1349P).	July 21, 2005; July 28, 2005; *Daily Republic*.	The Honorable Karin MacMillan, Mayor, City of Fairfield, c/o City Manager's Office, 1000 Webster Street, Fairfield, California 94533.	October 27, 2005	060370
Solano, (FEMA Docket No.: B–7455).	City of Rio Vista (04–09–1389P).	June 15, 2005; June 22, 2005; *River News-Herald*.	The Honorable James E. Woodruff, Mayor, City of Rio Vista, One Main Street, Rio Vista, California 94571.	June 7, 2005	060371
Colorado:					
Adams, (FEMA Docket No.: B–7455).	City of Thornton (05–08–0281P).	August 5, 2005; August 12, 2005; *Eastern Colorado News*.	The Honorable Noel Busck, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, Colorado 80229.	November 10, 2005	080007
Broomfield, (FEMA Docket No.: B–7455).	City of Broomfield (05–08–0261P).	June 15, 2005; June 22, 2005; *Broomfield Enterprise*.	The Honorable Karen Stuart, Mayor, City and County of Broomfield, One DesCombes Drive, Broomfield, Colorado 80020.	June 9, 2005	085073
El Paso, (FEMA Docket No.: B–7455).	City of Colorado Springs (05–08–0185P).	September 14, 2005; September 21, 2005; *El Paso County Advertiser and News*.	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.	August 30, 2005	080060
El Paso, (FEMA Docket No.: B–7455).	Unincorporated areas of El Paso County (05–08–0459P).	August 24, 2005; August 31, 2005; *El Paso County Advertiser and News*.	The Honorable Jim Bensberg, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903–2208.	November 30, 2005	080059
El Paso, (FEMA Docket No.: B–7455).	Unincorporated areas of El Paso County (04–08–0779P).	August 31, 2005; September 7, 2005; *El Paso County Advertiser and News*.	The Honorable Jim Bensberg, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903–2208.	December 7, 2005	080059
El Paso, (FEMA Docket No.: B–7455).	Unincorporated areas of El Paso County (05–08–0185P).	September 14, 2005; September 21, 2005; *El Paso County Advertiser and News*.	The Honorable Jim Bensberg, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903–2208.	August 30, 2005	080059
Gilpin, (FEMA Docket No.: B–7455).	City of Black Hawk (04–08–0678P).	June 24, 2005; July 1, 2005; *Weekly Register-Call*.	The Honorable Kathryn Eccker, Mayor, City of Black Hawk, P.O. Box 17, Black Hawk, Colorado 80422.	September 30, 2005	080076
Jefferson, (FEMA Docket No.: B–7455).	City of Lakewood (05–08–0227P).	October 6, 2005; October 13, 2005; *The Golden Transcript*.	The Honorable Steve Burkholder, Mayor, City of Lakewood, Lakewood Civic Center South, 480 South Allison Parkway, Lakewood, Colorado 80226.	January 12, 2006	085075
Larimer, (FEMA Docket No.: B–7455).	Unincorporated areas of Larimer County (04–08–0564P).	September 7, 2005; September 14, 2005; *Fort Collins Coloradoan*.	The Honorable Kathay Rennels, Chair, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, Colorado 80522–1190.	December 14, 2005	080101
Ouray, (FEMA Docket No.: B–7455).	City of Ouray (05–08–0297P).	September 2, 2005; September 9, 2005; *Telluride Watch*.	The Honorable Pam Larson, Mayor, City of Ouray, P.O. Box 468, Ouray, Colorado 81472.	December 9, 2005	080137
Pitkin, (FEMA Docket No.: B–7455).	Unincorporated areas of Pitkin County (05–08–0310P).	August 28, 2005; September 4, 2005; *Aspen Times Weekly*.	The Honorable Patti Kay-Clapper, Chair, Pitkin County Board of Commissioners, 530 East Main Street, Third Floor, Aspen, Colorado 81611.	August 15, 2005	080287

State and country	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
San Miguel, (FEMA Docket No.: B–7455).	Town of Telluride (05–08–0263P).	November 4, 2005; November 11, 2005; *Telluride Watch*.	The Honorable John Pryor, Mayor, Town of Telluride, P.O. Box 397, Telluride, Colorado 81435.	February 10, 2006	080168
San Miguel, (FEMA Docket No.: B–7455).	Unincorporated areas of San Miguel County (05–08–0263P).	November 4, 2005; November 11, 2005; *Telluride Watch*.	The Honorable Art Goodtimes, Chairman, San Miguel County Board of Commissioners, P.O. Box 1170, Telluride, Colorado 81435.	February 10, 2006	080166
Connecticut:					
Fairfield, (FEMA Docket No.: B–7455).	Town of Greenwich (05–01–0060P).	June 30, 2005; July 7, 2005; *Greenwich Times*.	The Honorable Jim Lash, First Selectman, Town of Greenwich, Town Hall, 101 Field Point Road, Greenwich, Connecticut 06830.	June 15, 2005	090008
Fairfield, (FEMA Docket No.: B–7455).	Town of Greenwich (05–01–0688P).	October 27, 2005; November 3, 2005; *Greenwich Times*.	The Honorable Jim Lash, First Selectman, Town of Greenwich, Town Hall, 101 Field Point Road, Greenwich, Connecticut 06830.	October 11, 2005	090008
New Haven, (FEMA Docket No.: B–7455).	Town of Guilford (05–01–0245P).	June 8, 2005; June 15, 2005; *The New Haven Register*.	The Honorable Charles ''Gene'' Bishop, First Selectman, Office of the Board of Selectmen, Town of Guilford, 31 Park Street, Guilford, Connecticut 06437.	May 23, 2005	090077
New Haven, (FEMA Docket No.: B–7455).	Town of Guilford (05–01–0578P).	November 3, 2005; November 10, 2005; *New Haven Register*.	The Honorable Charles ''Gene'' Bishop, First Selectman, Town of Guilford, 31 Park Street, Guilford, Connecticut 06437.	February 9, 2006	090077
Delaware: New Castle, (FEMA Docket No.: B–7455).	Unincorporated areas of New Castle County (04–03–A042P).	September 8, 2005; September 15, 2005; *News Journal*.	The Honorable Chris A. Coons, New Castle County Executive, New Castle County Government Center, 87 Reads Way, New Castle, Delaware 19720.	July 25, 2005	105085
Florida:					
Duval, (FEMA Docket No.: B–7455).	City of Jacksonville (05–04–3653P).	October 10, 2005; October 17, 2005; *Jacksonville Daily Record*.	The Honorable John Peyton, Mayor, City of Jacksonville, City Hall, Fourth Floor, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	January 17, 2006	120077
Polk, (FEMA Docket No.: B–7455).	Unincorporated areas of Polk County (05–04–0457P).	June 23, 2005; June 30, 2005; *Polk County Democrat*.	Mr. Michael Herr, County Manager, Polk County, P.O. Box 9005, Drawer BC01, Bartow, Florida 33831–9005.	June 13, 2005	120261
Miami-Dade, (FEMA Docket No.: B–7455).	City of Miami (05–04–1122P).	October 6, 2005; October 13, 2005; *Miami Herald*.	The Honorable Manuel A. Diaz, Mayor, City of Miami, 3500 Pan American Drive, Miami, Florida 33133.	July 22, 2005	120650
Georgia:					
Bartow, (FEMA Docket No.: B–7455).	City of Cartersville (05–04–0630P).	August 11, 2005; August 18, 2005; *Daily Tribune News*.	The Honorable Michael G. Fields, Mayor, City of Cartersville, P.O. Box 1390, Cartersville, Georgia 30120.	November 17, 2005	130209
Bartow, (FEMA Docket No.: B–7455).	Unincorporated areas of Bartow County (05–04–0630P).	August 11, 2005; August 18, 2005; *Daily Tribune News*.	The Honorable Clarence Brown, Bartow County Commissioner, 135 West Cherokee Avenue, Suite 251, Cartersville, Georgia 30120.	November 17, 2005	130463
Gwinnett, (FEMA Docket No.: B–7455).	City of Lawrenceville (05–04–1268P).	August 18, 2005; August 25, 2005; *Gwinnett Daily Post*.	The Honorable Bobby J. Sikes, Mayor, City of Lawrenceville, 70 South Clayton Street, Lawrenceville, Georgia 30045.	November 25, 2005	130099
Hawaii: Hawaii, (FEMA Docket No.: B–7455).	Unincorporated areas of Hawaii County (05–09–0238P).	August 25, 2005; September 1, 2005; *Hawaii Tribune-Herald*.	The Honorable Harry Kim, Mayor, Hawaii County, 25 Aupuni Street, Hilo, Hawaii 96720.	December 1, 2005	155166
Illinois:					
Cook, (FEMA Docket No.: B–7455).	Village of Inverness (05–05–0378P).	October 6, 2005; October 13, 2005; *Daily Herald*.	The Honorable John A. Tatooles, Village President, Village of Inverness, 1400 Baldwin Road, Inverness, Illinois 60067.	January 12, 2006	170111
Cook, (FEMA Docket No.: B–7455).	Village of South Barrington (05–05–0378P).	October 6, 2005; October 13, 2005; *Daily Herald*.	The Honorable Frank Munao, Jr., Village President Village of South Barrington, 30 South Barrington Road, South Barrington, Illinois 60010.	January 12, 2006	170161
Cook, (FEMA Docket No.: B–7455).	Unincorporated areas of Cook County (05–05–0378P).	October 6, 2005; October 13, 2005; *Daily Herald*.	The Honorable John H. Stroger, Jr., President, Cook County Board of Commissioners, 118 North Clark Street, Room 537, Chicago, Illinois 60602.	January 12, 2006	170054
DuPage, (FEMA Docket No.: B–7455).	Village of Glendale Heights (05–05–2658P).	June 16, 2005; June 23, 2005; *Daily Herald*.	The Honorable Linda Jackson, Village President, Village of Glendale Heights, 300 Civic Center Plaza, Glendale Heights, Illinois 60139.	June 1, 2005	170206
Kane, (FEMA Docket No.: B–7455).	Village of Pingree Grove (05–05–0119P).	July 21, 2005; July 28, 2005; *Elburn Herald*.	The Honorable Verne E. Wester, Village President, Village of Pingree Grove, 14 N 042 Reinking Road, Hampshire, Illinois 60140.	October 26, 2005	171078
Kane, (FEMA Docket No.: B–7455).	Unincorporated areas of Kane County (05–05–0119P).	July 21, 2005; July 28, 2005; *Elburn Herald*.	The Honorable Karen McConnaughay, County Board Chairman Kane County, 719 South Batavia Avenue, Building A, Geneva, Illinois 60134.	October 26, 2005	170896

State and country	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Will, (FEMA Docket No.: B–7455).	Village of Frankfort (05–05–0039P).	May 12, 2005; May 19, 2005; *Daily Southtown*.	The Honorable Jim Holland, Mayor, Village of Frankfort, 432 West Nebraska Street, Frankfort, Illinois 60423.	May 3, 2005	170701
Will, (FEMA Docket No.: B–7455).	Village of Frankfort (05–05–2646P).	August 11, 2005; August 18, 2005; *Daily Southtown*.	The Honorable Jim Holland, Mayor, Village of Frankfort, 432 West Nebraska Street, Frankfort, Illinois 60423.	July 18, 2005	170701
Will, (FEMA Docket No.: B–7455).	Village of Mokena (05–05–2180P).	June 16, 2005; June 23, 2005; *Daily Southtown*.	The Honorable Robert Chiszar, Mayor, Village of Moneka, Village Hall, 11004 Carpenter Street, Mokena, Illinois 60448.	June 3, 2005	170705
Will, (FEMA Docket No.: B–7455).	Village of University Park (05–05–1544P).	November 10, 2005; November 17, 2005; *Daily Southtown*.	The Honorable Alvin McCowan, Mayor, Village of University Park, Village Hall, 698 Burnham Drive, University Park, Illinois 60466.	October 28, 2005	170708
Will, (FEMA Docket No.: B–7455).	Unincorporated areas of Will County (05–05–3958P).	October 20, 2005; October 27, 2005; *Daily Southtown*.	The Honorable Lawrence M. Walsh, Will County Executive, Will County Office Building, 302 North Chicago Street, Joliet, Illinois 60432.	January 26, 2006	170695
Winnebago, (FEMA Docket No.: B–7455).	Unincorporated Areas of Winnebago County (05–05–4119P).	October 6, 2005; October 13, 2005; *Rockford Register Star*.	The Honorable Scott H. Christiansen, Chairman, Winnebago County Board, 404 Elm Street, Room 504, Rockford, Illinois 61101.	January 12, 2006	170720
Indiana:					
Elkhart, (FEMA Docket No.: B–7455).	City of Goshen (04–05–A119P).	November 3, 2005; November 10, 2005; *Goshen News*.	The Honorable Allan Kauffman, Mayor, City of Goshen, 202 South Fifth Street, Goshen, Indiana 46528.	November 18, 2005	180058
Elkhart, (FEMA Docket No.: B–7455).	Unincorporated areas of Elkhart County (04–05–A119P).	November 3, 2005; November 10, 2005; *Goshen News*.	The Honorable Phil Neff, President, Elkhart County, 117 North Second Street, Goshen, Indiana 46526.	November 18, 2005	180056
Hamilton, (FEMA Docket No.: B–7455).	Town of Fisher (05–05–0633P).	September 20, 2005; September 27, 2005; *Noblesville Ledger*.	The Honorable Scott A. Faultless Town of Council President, Town of Fishers, One Municipal Drive, Fishers, Indiana 46038.	September 9, 2005	180423
Kansas:					
Sedgwick, (FEMA Docket No.: B–7455).	City of Wichita (04–07–A643P).	September 8, 2005; September 15, 2005; *Wichita Eagle*.	The Honorable Carlos Mayans, Mayor, City of Wichita, City Hall, First Floor, 455 North Main, Wichita, Kansas 67202.	August 25, 2005	200328
Sedgwick, (FEMA Docket No.: B–7455).	Unincorporated areas of Sedgwick County (04–07–A643P).	September 8, 2005; September 15, 2005; *Wichita Eagle*.	The Honorable Dave Unruh, Chairman, Sedgwick County, Board of Commissioners, 525 North Main, Room 320, Wichita, Kansas 67203.	August 25, 2005	200321
Kentucky: Daviess, (FEMA Docket No.: B–7455).	City of Owensboro (05–04–2200P).	August 18, 2005; August 25, 2005; *Messenger-Inquirer*.	The Honorable Tom Watson, Mayor, City of Owensboro, P.O. Box 10003, Owensboro, Kentucky 42301.	July 27, 2005	210063
Maine:					
Cumberland, (FEMA Docket No.: B–7455).	Town of Harpswell (05–01–0539P).	September 22, 2005; September 29, 2005; *Portland Press Herald*.	The Honorable Gordon L. Weil, Chair, Board of Selectmen, Town of Harpswell, P.O. Box 39, Harpswell, Maine 04079.	September 9, 2005	230169
Cumberland, (FEMA Docket No.: B–7455).	City of Westbrook (05–01–0338P).	August 25, 2005; September 1, 2005; *Portland Press Herald*.	The Honorable Bruce Chuluda, Mayor, City of Westbrook, City Hall, Two York Street, Westbrook, Maine 04092.	December 1, 2005	230054
Maryland:					
Carroll, (FEMA Docket No.: B–7455).	Unincorporated areas of Carroll County (05–03–0001P).	June 23, 2005; June 30, 2005; *Carroll County Times*.	The Honorable Julia W. Gouge, President, Carroll County Board of Commissioners, 225 North Center Street, Westminster, Maryland 21157.	September 29, 2005	240015
Charles, (FEMA Docket No.: B–7455).	Unincorporated areas of Charles County (05–03–0093P).	October 5, 2005; October 12, 2005; *Maryland Independent*.	The Honorable Wayne Cooper, President, Charles County Commissioners, P.O. Box 2150, La Plata, Maryland 20646.	January 11, 2006	240089
Harford, (FEMA Docket No.: B–7455).	Unincorporated areas of Harford County (05–03–0153P).	August 31, 2005; September 7, 2005; *The Aegis*.	The Honorable David R. Craig, County Executive, Harford County, 220 South Main Street, Bel Air, Maryland 21014.	December 7, 2005	240040
Massachusetts:					
Barnstable, (FEMA Docket No.: B–7455).	Town of Falmouth (05–01–0294P).	August 25, 2005; September 1, 2005; *Cape Cod Times*.	The Honorable Kevin Murphy, Chairman, Board of Selectmen, Town of Falmouth, Town Hall, 59 Town Hall Square, Falmouth, Massachusetts 02540.	December 1, 2005	255211
Nantucket, (FEMA Docket No.: B–7455).	Town of Nantucket (05–01–0428P).	August 25, 2005; September 1, 2005; *Cape Cod Times*.	The Honorable Michael Glowacki, Chairman, Board of Selectmen, Town of Nantucket, Town Building, 16 Broad Street, First Floor, Nantucket, Massachusetts 02554.	December 1, 2005	250230
Michigan:					

State and country	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Macomb, (FEMA Docket No.: B–7455).	Charter Township of Clinton (04–05–A079P).	August 26, 2005; September 2, 2005; *Macomb County Legal News*.	The Honorable Robert J. Cannon, Supervisor, Charter Township of Clinton, 40700 Romeo Plank Road, Clinton Township, Michigan 48038.	December 2, 2005	260121
Macomb, (FEMA Docket No.: B–7455).	Township of Macomb (05–05–1849P).	July 15, 2005; July 22, 2005; *Macomb County Legal News*.	The Honorable John D. Brennan, Supervisor, Macomb Township, 54111 Broughton Road, Macomb, Michigan 48042.	July 5, 2005	260445
Macomb, (FEMA Docket No.: B–7455).	Township of Macomb (04–05–A079P).	August 26, 2005; September 2, 2005; *Macomb County Legal News*.	The Honorable John D. Brennan, Supervisor, Township of Macomb, 54111 Broughton Road, Macomb, Michigan 48042.	December 2, 2005	260445
Macomb, (FEMA Docket No.: B–7455).	Township of Washington (05–05–0637P).	June 1, 2005; June 8, 2005; *The Romeo Observer*.	The Honorable Gary Kirsh, Supervisor, Township of Washington, P.O. Box 94067, Washington, Michigan 48094–4067.	September 7, 2005	260447
Macomb, (FEMA Docket No.: B–7455).	Township of Washington (05–05–0277P).	July 15, 2005; July 22, 2005; *Macomb County Legal News*.	The Honorable Gary Kirsh, Supervisor, Township of Washington, P.O. Box 94067, Washington, Michigan 48094–4067.	July 29, 2005	260447
Oakland, (FEMA Docket No.: B–7455).	City of Troy (05–05–1312P).	November 3, 2005; November 10, 2005; *Observer & Eccentric*.	The Honorable Louise Schilling, Mayor, City of Troy, 500 West Big Beaver, Troy, Michigan 48084.	October 18, 2005	260180
Wayne, (FEMA Docket No.: B–7455).	Charter Township of Brownstown (05–05–2504P).	July 24, 2005; July 27, 2005; *News Herald*.	The Honorable Arthur F. Wright, Supervisor, Charter Township of Brownstown, 21313 Telegraph Road, Brownstown, Michigan 48183.	October 26, 2005	260218
Minnesota:					
Anoka, (FEMA Docket No.: B–7455).	City of Blaine (05–05–1909P).	October 14, 2005; October 21, 2005; *Blaine-Spring Lake Park Life*.	The Honorable Thomas Ryan, Mayor, City of Blaine, 10801 Town Square Drive Northeast, Blaine, Minnesota 55449.	October 4, 2005	270007
Olmsted, (FEMA Docket No.: B–7455).	City of Rochester (05–05–1180P).	June 16, 2005; June 23, 2005; *Post-Bulletin*.	The Honorable Ardell F. Brede, Mayor, City of Rochester, City Hall, 201 Fourth Street Southeast, Rochester, Minnesota 55904.	September 22, 2005	275246
Olmsted, (FEMA Docket No.: B–7455).	Unincorporated areas of Olmsted County (05–05–1180P).	June 16, 2005; June 23, 2005; *Post-Bulletin*.	Mr. Richard G. Devlin, County Administrator, Olmsted County 151 Fourth Street Southeast, Rochester, Minnesota 55904.	September 22, 2005	270626
Missouri:					
Boone, (FEMA Docket No.: B–7455).	City of Centralia (04–07–A458P).	September 22, 2005; September 29, 2005; *Columbia Missourian*.	The Honorable Jerry Parmeley, Mayor, City of Centralia, 114 South Rollins, Centralia, Missouri 65240.	March 13, 2006	290035
Boone, (FEMA Docket No.: B–7455).	Unincorporated areas of Boone County (04–07–A458P).	September 22, 2005; September 29, 2005; *Columbia Missourian*.	The Honorable Keith Schnarre, Presiding Commissioner, Boone County, 801 East Walnut, Room 245, Columbia, Missouri 65201–7732.	September 14, 2005	290034
Jefferson, (FEMA Docket No.: B–7455).	City of Byrnes Mill (04–07–A561P).	October 26, 2005; November 2, 2005; *Meramec Suburban Journal*.	The Honorable Timothy Checkett, Mayor, City of Byrnes Mill, 127 Osage Executive Circle, Byrnes Mill, Missouri 63051.	February 1, 2006	290891
St. Charles, (FEMA Docket No.: B–7455).	Town of Dardenne Prairie (04–07–A555P).	June 8, 2005; June 15, 2005; *St. Charles Journals*.	The Honorable Pam Fogarty, Mayor, Town of Dardenne Prairie, 2032 Hanley Road, Dardenne Prairie, Missouri 63366.	September 14, 2005	290899
St. Charles, (FEMA Docket No.: B–7455).	City of O'Fallon (04–07–A555P).	June 8, 2005; June 15, 2005; *St. Charles Journals*.	The Honorable Donna Morrow, Mayor, City of O'Fallon, 100 North Main Street, O'Fallon, Missouri 63366.	September 14, 2005	290316
St. Charles, (FEMA Docket No.: B–7455).	City of O'Fallon (05–07–0504P).	August 24, 2005; August 31, 2005; *St. Charles Journals*.	The Honorable Donna Morrow, Mayor, City of O'Fallon, 100 North Main Street, O'Fallon, Missouri 63366.	August 10, 2005	290316
St. Charles, (FEMA Docket No.: B–7455).	City of O'Fallon (04–07–A375P).	October 19, 2005; October 26, 2005; *St. Charles Journal*.	The Honorable Donna Morrow, Mayor, City of O'Fallon, 100 North Main Street, O'Fallon, Missouri 63366.	January 18, 2006	290316
St. Charles, (FEMA Docket No.: B–7455).	City of St. Peters (05–07–0504P).	August 24, 2005; August 31, 2005; *St. Charles Journals*.	The Honorable Shawn Brown, Mayor, City of St. Peters, P.O. Box 9, St. Peters, Missouri 63376.	August 10, 2005	290319
St. Charles, (FEMA Docket No.: B–7455).	Unincorporated areas of St. Charles County (04–07–A555P).	June 8, 2005; June 15, 2005; *St. Charles Journals*.	The Honorable Joe Ortwerth, County Executive, St. Charles County, 100 North Third Street, St. Charles, Missouri 63301.	September 14, 2005	290315
St. Charles, (FEMA Docket No.: B–7455).	Unincorporated areas of St. Charles County (05–07–0504P).	August 24, 2005; August 31, 2005; *St. Charles Journal*.	The Honorable Joe Ortwerth, County Executive, St. Charles County, 100 North Third Street, St. Charles, Missouri 63301.	August 10, 2005	290315

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St. Charles, (FEMA Docket No.: B–7455).	Unincorporated areas of St. Charles County (04–07–A375P).	October 19, 2005; October 26, 2005; *St. Charles Journal*.	The Honorable Joe Ortwerth, County Executive, St. Charles County, 100 North Third Street, St. Charles, Missouri 63301.	January 18, 2006	290315
St. Charles, (FEMA Docket No.: B–7455).	Unincorporated Areas of St. Charles County (05–07–0760P).	October 26, 2005; November 2, 2005; *St. Charles Journal*.	The Honorable Joe Ortwerth, County Executive, St. Charles County, 100 North Third Street, St. Charles, Missouri 63301.	February 1, 2006	290315
St. Charles, (FEMA Docket No.: B–7455).	City of Weldon Spring (04–07–A375P).	October 19, 2005; October 26, 2005; *St. Charles Journal*.	The Honorable Donald D. Licklider, Mayor, City of Weldon Spring, 5401 Independence Road, Weldon Spring, Missouri 63304.	January 18, 2006	290901
St. Charles, (FEMA Docket No.: B–7455).	City of Wentzville (05–07–0760P).	October 26, 2005; November 2, 2005; *Wentzville Suburban Journal*.	The Honorable Paul Lambi, Mayor, City of Wentzville, Wentzville City Hall, 310 West Pearce Boulevard, Wentzville, Missouri 63385.	February 1, 2006	290320
Nebraska:					
Douglas, (FEMA Docket No.: B–7455).	City of Omaha (04–07–A438P).	October 6, 2005; October 13, 2005; *Omaha World Herald*.	The Honorable Mike Fahey, Mayor, City of Omaha, 1819 Farnam Street, Suite 300, Omaha, Nebraska 68183.	January 12, 2006	315274
Douglas, (FEMA Docket No.: B–7455).	City of Omaha (05–07–0345P).	October 20, 2005; October 27, 2005; *Omaha World Herald*.	The Honorable Mike Fahey, Mayor, City of Omaha, 1819 Farnam Street, Suite 300, Omaha, Nebraska 68183.	December 3, 2005	315274
Nevada:					
Clark, (FEMA Docket No.: B–7455).	City of Las Vegas (05–09–0073P).	October 6, 2005; October 13, 2005; *Las Vegas Review Journal*.	The Honorable Oscar B. Goodman, Mayor, City of Las Vegas, 400 Stewart Avenue, Las Vegas, Nevada 89101.	January 12, 2006	325276
Clark, (FEMA Docket No.: B–7455).	Unincorporated areas of Clark County (04–09–0462P).	May 26, 2005; June 2, 2005; *Las Vegas Review Journal*.	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.	September 1, 2005	320003
Clark, (FEMA Docket No.: B–7455).	Unincorporated areas of Clark County (05–09–0285P).	August 25, 2005; September 1, 2005; *Las Vegas Review-Journal*.	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.	December 1, 2005	320003
Clark, (FEMA Docket No.: B–7455).	Unincorporated areas of Clark County (05–09–1034P).	November 3, 2005; November 10, 2005; *Las Vegas Review-Journal* .	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.	February 9, 2006	320003
Clark, (FEMA Docket No.: B–7455).	Unincorporated areas of Clark County (05–09–0913P).	November 10, 2005; November 17, 2005; *Las Vegas Review-Journal* .	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.	February 16, 2006	320003
Washoe, (FEMA Docket No.: B–7455).	City of Sparks (05–09–0144P).	August 11, 2005; August 18, 2005; *Reno Gazette-Journal* .	The Honorable Geno Martini, Mayor, City of Sparks, Sparks City Hall, 431 Prater Way, Sparks, Nevada 89432–0857.	July 21, 2005	320021
Washoe, (FEMA Docket No.: B–7455).	Unincorporated areas of Washoe County (04–09–1534P).	April 14, 2005; April 21, 2005; *Reno Gazette-Journal*.	The Honorable Bonnie Weber, Commission Chair, Washoe County Commission, 1001 East Ninth Street, Reno, Nevada 89512.	July 21, 2005	320019
New Jersey: Monmouth, (FEMA Docket No.: B–7455).	Borough of Monmouth Beach (05–02–0298P).	May 24, 2005; May 31, 2005; *Asbury Park Press*.	The Honorable James P. McConville III, Mayor, Borough of Monmouth Beach, Borough Hall, 22 Beach Road, Monmouth Beach, New Jersey 07750.	May 12, 2005	340315
New York: Dutchess, (FEMA Docket No.: B–7455).	Town of Beekman (05–02–0303P).	August 4, 2005; August 11, 2005; *The Voice Ledger*.	The Honorable John Adams, Town Supervisor, Town of Beekman, Four Main Street, Poughquag, New York 12570.	January 18, 2006	361333
North Carolina:					
Durham, (FEMA Docket No.: B–7455).	City of Durham (04–04–A570P).	May 26, 2005; June 2, 2005; *The Herald-Sun*.	The Honorable William V. Bell, Mayor, City of Durham, City Hall, 101 City Hall Plaza, Durham, North Carolina 27701.	September 1, 2005	370086
Mecklenburg, (FEMA Docket No.: B–7455).	Unincorporated areas of Mecklenburg County (04–04–B009P).	September 29, 2005; October 6, 2005; *Charlotte Observer*.	Mr. Harry Jones, County Manager, Mecklenburg County, 600 East Fourth Street, 11th Floor, Charlotte, North Carolina 28202.	January 5, 2006	370158
New Mexico: Bernalillo, (FEMA Docket No.: B–7455).	City of Albuquerque (05–06–0440P).	October 13, 2005; October 20, 2005; *The Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	September 30, 2005	350002
Ohio:					
Hocking, (FEMA Docket No.: B–7455).	Unincorporated areas of Hocking County (05–05–3596P).	September 15, 2005; September 22, 2005; *Logan Daily News*.	The Honorable Gary Starner, County Commissioner, Hocking County, One East Main Street, Logan, Ohio 43138.	December 22, 2005	390272
Lucas, (FEMA Docket No.: B–7455).	City of Toledo (05–05–0485P).	June 2, 2005; June 9, 2005; *Toledo Legal News*.	The Honorable Jack Ford, Mayor, City of Toledo, One Government Center, Suite 2200, Toledo, Ohio 43604.	September 8, 2005	395373
Medina, (FEMA Docket No.: B–7455).	City of Brunswick (04–05–A934P).	May 19, 2005; May 26, 2005; *Brunswick Sun Times*.	The Honorable Dale Strasser, Mayor, City of Brunswick, 4095 Center Road, Brunswick, Ohio 44212.	August 26, 2005	390380

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Montgomery, (FEMA Docket No.: B–7455).	City of Englewood (04–05–B063P).	May 4, 2005; May 11, 2005; *Englewood Independent*. May 11, 2005; May 18, 2005; *Dayton Daily News*.	The Honorable Michael Bowers, Ph.D., Mayor, City of Englewood, 333 West National Road, Englewood, Ohio 45322.	April 21, 2005	390828
Warren, (FEMA Docket No.: B–7455).	City of Mason (05–05–3134P).	August 11, 2005; August 18, 2005; *Pulse Journal*.	The Honorable Peter A. Beck, Mayor, City of Mason, 6000 Mason-Montgomery Road, Mason, Ohio 45040.	July 18, 2005	390559
Oklahoma:					
Oklahoma, (FEMA Docket No.: B–7455).	City of Oklahoma City (05–06–0390P).	September 14, 2005; September 21, 2005; *Journal Record*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker, Third Floor, Oklahoma City, Oklahoma 73102.	August 30, 2005	405378
Oklahoma, (FEMA Docket No.: B–7455).	City of Oklahoma City (05–06–1527P).	September 15, 2005; September 22, 2005; *Journal Record*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker, Third Floor, Oklahoma City, Oklahoma 73102.	August 23, 2005	405378
Oregon:					
Coos, (FEMA Docket No.: B–7455).	City of Bandon (05–10–0355P).	June 23, 2005; June 30, 2005; *Bandon Western World*.	The Honorable Mary Schamehorn, Mayor, City of Bandon, P.O. Box 67, Bandon, Oregon 97411.	June 16, 2005	410043
Marion, (FEMA Docket No.: B–7455).	City of Aumsville (03–10–0210P).	October 13, 2005; October 20, 2005; *Statesman Journal*.	The Honorable Harold White, Mayor, City of Aumsville, Aumsville City Hall, 595 Main Street, Aumsville, Oregon 97325.	January 19, 2006	410155
Marion, (FEMA Docket No.: B–7455).	Unincorporated areas of Marion County (03–10–0210P).	October 13, 2005; October 20, 2005; *Statesman Journal*.	The Honorable Sam Brentano, Chair, Marion County, Board of Commissioners, P.O. Box 14500, Salem, Oregon 97309.	January 19, 2006	410154
Clackamas, Multnomah Washington, (FEMA Docket No.: B–7455).	City of Portland (05–10–0477P).	August 11, 2005; August 18, 2005; *The Oregonian*.	The Honorable Tom Potter, Mayor, City of Portland, 1221 Southwest Fourth Avenue, Room 340, Portland, Oregon 97204.	July 20, 2005	410183
Pennsylvania: Clinton, (FEMA Docket No.: B–7455).	Township of Lamar (05–03–0397P).	July 13, 2005; July 20, 2005; *Renovo Record*.	The Honorable Michael L. Geyer, Chairman, Board of Supervisors, Township of Lamar, 148 Beagle Road, Mill Hall, Pennsylvania 17751.	October 19, 2005	420327
Tennessee:					
Davidson, (FEMA Docket No.: B–7455).	Metropolitan Government of Nashville (05–04–3100P).	November 10, 2005; November 17, 2005; *Nashville Record*.	The Honorable Bill Purcell, Mayor, Metropolitan Government of Nashville and Davidson County, 107 Metropolitan Courthouse, 225 Polk Avenue, Nashville, Tennessee 37201.	October 27, 2005	470040
Sevier, (FEMA Docket No.: B–7455).	City of Pigeon Forge (05–04–0672P).	October 27, 2005; November 3, 2005; *The Mountain Press*.	Ms. Earlene M. Teaster, City Manager, City of Pigeon Forge, P.O. Box 1350, Pigeon Forge, Tennessee 37868.	February 2, 2006	475442
Shelby, (FEMA Docket No.: B–7455).	City of Germantown (04–04–A700P).	July 21, 2005; July 28, 2005; *The Daily News*.	The Honorable Sharon Goldsworthy, Mayor, City of Germantown, P.O. Box 38809, Germantown, Tennessee 38183–0809.	October 27, 2005	470353
Texas:					
Bexar, (FEMA Docket No.: B–7455).	City of Converse (05–06–1186P).	September 7, 2005; September 14, 2005; *Daily Commercial Recorder*.	The Honorable Craig Martin, Mayor, City of Converse, City Hall, 403 South Seguin, Converse, Texas 78109.	December 14, 2005	480038
Bexar, (FEMA Docket No.: B–7455).	City of San Antonio (05–06–0027P).	June 30, 2005; July 6, 2005; *San Antonio Express-News*.	The Honorable Edward D. Garza, Mayor, City of San Antonio, City Hall Office, P.O. Box 839966, San Antonio, Texas 78283–3966.	June 7, 2005	480035
Collin, (FEMA Docket No.: B–7455).	City of Frisco (05–06–0046P).	July 22, 2005; July 29, 2005; *Frisco Enterprise*.	The Honorable Mike Simpson, Mayor, City of Frisco, City Hall, P.O. Box 1100, Frisco, Texas 75034–1100.	October 27, 2005	480134
Collin, (FEMA Docket No.: B–7455).	City of Plano (05–06–0506P).	June 4, 2005; June 9, 2005; *Plano Star Courier*.	The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	May 24, 2005	480140
Collin, (FEMA Docket No.: B–7455).	City of Plano (05–06–0294P).	August 11, 2005; August 18, 2005; *Plano Star Courier*.	The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	November 17, 2005	480140
Collin, (FEMA Docket No.: B–7455).	Unincorporated areas of Collin County (04–06–A195P).	May 11, 2005; May 18, 2005; *The Wylie News*.	The Honorable Ron Harris, Collin County Judge, 210 South McDonald Street, McKinney, Texas 75069.	August 17, 2005	480130
Collin, (FEMA Docket No.: B–7455).	City of Wylie (04–06–A195P).	May 11, 2005; May 18, 2005; *The Wylie News*.	The Honorable John Mondy, Mayor, City of Wylie, 2000 State Highway 78 North, Wylie, Texas 75098.	August 17, 2005	480759
Dallas, (FEMA Docket No.: B–7455).	Town of Addison (05–06–0244P).	November 17, 2005; November 24, 2005; *Dallas Morning News*.	The Honorable Joe Chow, Mayor, Town of Addison, P.O. Box 9010, Addison, Texas 75001.	February 23, 2006	481089
Dallas, (FEMA Docket No.: B–7455).	City of Dallas (04–06–A316P).	May 26, 2005; June 2, 2005; *Daily Commercial Record*.	The Honorable Laura Miller, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, Texas 75201–6390.	May 12, 2005	480171

State and country	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Dallas, (FEMA Docket No.: B–7455).	City of Farmer Branch (05–06–0244P).	November 17, 2005; November 24, 2005; *Dallas Morning News*.	The Honorable Bob Phelps, Mayor, City of Farmers Branch, 12705 Epps Field, Farmers Branch, Texas 75234.	February 23, 2006	480174
Dallas, (FEMA Docket No.: B–7455).	City of Garland (04–06–A117P).	June 30, 2005; July 7, 2005; *Daily Commercial Record*.	The Honorable Bob Day, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002.	October 6, 2005	485471
Dallas, (FEMA Docket No.: B–7455).	City of Irving (04–06–A212P).	October 6, 2005; October 13, 2005; *Dallas Morning News*.	The Honorable Joe Putnam, Mayor, City of Irving, 825 West Irving Boulevard, Irving, TX 75060.	September 20, 2005	480180
Dallas, (FEMA Docket No.: B–7455).	City of Mesquite (05–06–0938P).	June 23, 2005; June 30, 2005; *Mesquite News*.	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185–0137.	September 29, 2005	485490
Dallas, (FEMA Docket No.: B–7455).	City of Mesquite (05–06–0527P).	August 4, 2005; August 11, 2005; *Mesquite News*.	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, Texas 75185–0137.	November 10, 2005	485490
Dallas, (FEMA Docket No.: B–7455).	City of Rowlett (05–06–0921P).	September 23, 2005; September 30, 2005; *Rowlett Lakeshore Times*.	The Honorable C. Shane Johnson, Mayor, City of Rowlett, 4000 Main Street, Rowlett, Texas 75088.	December 30, 2005	480185
Denton, (FEMA Docket No.: B–7455).	Town of Copper Canyon (04–06–A302P).	April 14, 2005; April 21, 2005; *Denton Record-Chronicle*.	The Honorable Lawrence Johnson, Mayor, Town of Copper Canyon, 400 Woodland Drive, Copper Canyon, Texas 75077.	July 21, 2005	481508
Denton, (FEMA Docket No.: B–7455).	Town of Flower Mound (05–06–1432P).	November 2, 2005; November 9, 2005; *Flower Mound Leader*.	The Honorable Jody A. Smith, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, Texas 75028.	February 8, 2006	480777
Denton, (FEMA Docket No.: B–7455).	City of Lewisville (05–06–0171P).	July 6, 2005; July 13, 2005; *Lewisville Leader*.	The Honorable Gene Cary, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, Texas 75029–9002.	October 12, 2005	480195
Denton, (FEMA Docket No.: B–7455).	City of Lewisville (05–06–0576P).	October 5, 2005; October 12, 2005; *Lewisville Leader*.	The Honorable Gene Cary, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, Texas 75029–9002.	September 9, 2005	480195
El Paso, (FEMA Docket No.: B–7455).	City of El Paso (05–06–0356P).	July 30, 2005; August 6, 2005; *El Paso Times*.	The Honorable Joe D. Wardy, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901–1196.	July 18, 2005	480214
Harris, (FEMA Docket No.: B–7455).	Unincorporated areas of Harris County (05–06–0569P).	August 11, 2005; August 18, 2005; *Houston Chronicle*.	The Honorable Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	July 29, 2005	480287
Johnson, (FEMA Docket No.: B–7455).	City of Burleson (05–06–0320P).	September 14, 2005; September 21, 2005; *Burleson Star*.	The Honorable Kenneth Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	September 7, 2005	485459
San Patricio, (FEMA Docket No.: B–7455).	City of Ingleside (05–06–0918P) (05–06–1433X).	May 19, 2005; May 26, 2005; *Ingleside Index*.	The Honorable Gene Stewart, Mayor, City of Ingleside, P.O. Drawer 400, Ingleside, Texas 78362.	May 16, 2005	485480
Tarrant, (FEMA Docket No.: B–7455).	City of Benbrook (05–06–0681P).	May 19, 2005; May 26, 2005; *Benbrook News*.	The Honorable Felix T. Hebert, Mayor, City of Benbrook, P.O. Box 26569, Benbrook, Texas 76126.	May 5, 2005	480586
Tarrant, (FEMA Docket No.: B–7455).	City of Fort Worth (04–06–A210P).	May 12, 2005; May 19, 2005; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Forth Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	August 18, 2005	480596
Tarrant, (FEMA Docket No.: B–7455).	City of Fort Worth (04–06–A325P).	July 21, 2005; July 28, 2005; *Fort Worth Star Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Forth Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	July 5, 2005	480596
Tarrant, (FEMA Docket No.: B–7455).	City of Fort Worth (05–06–0480P).	August 25, 2005; September 1, 2005; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Forth Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	December 1, 2005	480596
Tarrant, (FEMA Docket No.: B–7455).	City of Fort Worth (05–06–0707P).	September 3, 2005; September 8, 2005; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	September 22, 2005	480596
Tarrant, (FEMA Docket No.: B–7455).	City of Fort Worth (05–06–0209P) (06–06–B429X).	October 20, 2005; October 27, 2005; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	February 23, 2006	480596
Tarrant, (FEMA Docket No.: B–7455).	City of Grapevine (05–06–0048P).	May 19, 2005; May 26, 2005; *Northeast Tarrant Star Telegram*.	The Honorable William D. Tate, City of Grapevine, P.O. Box 95104, Grapevine, Texas 76099.	May 11, 2005	480598
Tarrant, (FEMA Docket No.: B–7455).	City of Grapevine (05–06–0423P).	September 1, 2005; September 8, 2005; *Grapevine Sun*.	The Honorable William D. Tate, City of Grapevine, P.O. Box 95104, Grapevine, Texas 76099.	September 9, 2005	480598
Tarrant, (FEMA Docket No.: B–7455).	City of North Richland Hills (05–06–0481P) (05–06–2100056X).	June 30, 2005; July 7, 2005; *Dallas Morning News*.	The Honorable T. Oscar Trevino, Jr., P.E., Mayor, City of North Richland Hills, 7301 Northeast Loop 820, North Richland Hills, Texas 76180.	July 26, 2006	480607

State and country	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tarrant, (FEMA Docket No.: B–7455).	City of North Richland Hills (05–06–1126P).	November 3, 2005; November 10, 2005; *Dallas Morning News*.	The Honorable T. Oscar Trevino, Jr., P.E., Mayor, City of North Richland Hills, 7301 Northeast Loop 820, North Richland Hills, Texas 76180.	February 9, 2006	480607
Travis, (FEMA Docket No.: B–7455).	City of Pflugerville (04–06–A208P).	September 1, 2005; September 8, 2005; *Austin American-Statesman*.	The Honorable Catherine T. Callen, Mayor, City of Pflugerville, 100 East Main Street, Suite 300, Pflugerville, Texas 78660.	December 8, 2005	481028
Virginia: Prince William Independent City, (Docket No.: B–7455).	City of Manassas (04–03–111P).	October 6, 2005; October 13, 2005; *Manassas Journal Messenger*.	The Honorable Douglas S. Waldron, Mayor, City of Manassas, City Hall, 9027 Center Street, Manassas, Virginia 20110.	January 12, 2006	510122

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

Dated: March 1, 2007.

David I. Maurstad,

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

[FR Doc. E7–4156 Filed 3–7–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

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

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

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
Ascension Parish, Louisiana and Incorporated Areas Docket No.: FEMA–B–7462			
Bayou Boyle	At the confluence of Bayou Conway and Bayou Boyle	+7	Ascension County (Unincorporated Areas), City of Gonzales.
	At the intersection of Bayou Boyle and S. St. Landry Avenue	+10	
Bayou Conway	At the confluence of Panama Canal and Bayou Conway	+7	Ascension County (Unincorporated Areas), City of Gonzales
	At the divergence of Panama Canal and Bayou Conway	+9	
Bayou Francois	At the confluence of New River and Bayou Francois	+8	Ascension County (Unincorporated Areas), City of Gonzales.
	At the intersection of State Route 431 and Bayou Francois	+8	
McCall Bayou	At the confluence of McCall Bayou and Smokebend Canal	+19	Ascension County (Unincorporated Areas), City of Donaldsonville.
	At the intersection of Texas and Pacific Railroad and McCall Bayou.	+19	
Middle Branch of Grand Goudine Bayou.	At the intersection of Highway 10 and Middle Branch of Grand Goudine Bayou.	+15	Ascension County (Unincorporated Areas).
	Approximately 200 feet downstream the intersection of Highway 10 and Middle Branch of Grand Goudine Bayou.	+15	
Northern Branch of Grand Goudine Bayou.	At the confluence of New River and Northern Branch of Grand Goudine Bayou.	+11	Ascension County (Unincorporated Areas).
	Northern Branch of Grand Goudine Bayou	+18	
Saveiro Canal	At the confluence of New River Canal and Saveiro Canal	+7	Ascension County (Unincorporated Areas).
	At the confluence of Babin Canal and Saveiro Canal	+8	
Smith Bayou Diversion	At the confluence of Bayou Francois and Smith Bayou Diversion.	+11	Ascension County (Unincorporated Areas).
	At the confluence of Bayou Francois a and Smith Bayou Diversion.	+11	
Southern Branch of Grand Goudine.	At Intersection of Highway 10 and Southern Branch of Goudine Bayou.	+15	Ascension County (Unincorporated Areas).
	At Intersection of Southern Branch of Grand Goudine Bayou and State Highway 73.	+15	

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

ADDRESSES

City of Donaldsonville

Maps are available for inspection at City of Donaldsonville, 609 Railroad, Donaldsonville, LA 70346.

City of Gonzales

Maps are available for inspection at City Hall, 120 South Irma Blvd., Gonzales, LA 70737.

Ascension Parish (Unincorporated Areas)

Maps are available for inspection at President's Office, 208 East Railroad Avenue, Gonzalez, LA 70737.

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

Dated: March 1, 2007.

David I. Maurstad,

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

[FR Doc. E7–4152 Filed 3–7–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

National Flood Insurance Program (NFIP).

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD) + Elevation in feet (NAVD) Modified
City of Durham, North Carolina Docket No.: FEMA–D–7674				
North Carolina	City of Durham	Third Fork Creek Tributary	At the confluence with Third Fork Creek Tributary C.	+328
			Approximately 260 feet upstream of Sherbon Drive.	+273
	City of Durham	Third Fork Creek Tributary A.	Approximately 1,700 feet upstream of the confluence with Third Fork Creek.	+252
			Approximately 200 feet upstream of Southpoint Crossing Drive.	+291
	City of Durham	Third Fork Creek Tributary C.	Approximately 50 feet downstream of Hope Valley Road.	+258
			Approximately 250 feet upstream of Princeton Avenue.	+319
	City of Durham	Third Fork Creek Tributary D.	Approximately 1,100 feet upstream of the confluence with Third Fork Creek.	+256
			Approximately 200 feet upstream of Morningside Drive.	+288
	City of Durham	Third Fork Creek Tributary E.	Approximately 300 feet upstream of the confluence with Third Fork Creek.	+290
			Approximately 250 feet upstream of Ward Street.	+332

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

ADDRESSES

City of Durham

Maps are available for inspection at the Durham City Hall, Public Works Department, Stormwater Services Division, 101 City Hall Plaza, Durham, North Carolina.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Johnson County, Indiana and Incorporated Areas Docket No.: FEMA–B–7454			
Brewer Ditch	At confluence with Youngs Creek	+749	Johnson County (Unincorporated Areas), City of Franklin, Town of Whiteland.
	Approximately 1,600 feet downstream of U.S. Highway 31	+782	
	Approximately 1,600 feet downstream of U.S. Highway 31	+782	Town of Whiteland.
	Approximately at County Road 125	+802	
Canary Ditch	At confluence with Youngs Creek	+744	Johnson County (Unincorporated Areas), City of Franklin.
	Approximately 1,300 feet upstream of Earlywood Drive	+767	
	Approximately 1,300 feet upstream of Earlywood Drive	+767	Johnson County (Unincorporated Areas).
	Approximately 1,900 feet upstream of County Road East 400 North.	+784	
East Grassy Creek	At confluence with Grassy Creek	+781	Johnson County (Unincorporated Areas).
	Approximately at Whiteland Road	+782	
	Approximately at Whiteland Road	+785	Johnson County (Unincorporated Areas), Town of New Whiteland, Town of Whiteland.
	Approximately at Tracy Road	+810	
	Approximately at Tracy Road	+810	Johnson County (Unincorporated Areas).
	Approximately 300 feet upstream of County Road East 750 North.	+820	
Graham Ditch	At confluence with Canary Ditch	+761	Johnson County (Unincorporated Areas), City of Franklin.
	Approximately 1,500 feet upstream of Earlywood Drive	+768	
Grassy Creek	Approximately 2,400 feet upstream of County Road West 200 North.	+766	Johnson County (Unincorporated Areas), City of Greenwood, Town of Whiteland, Town of New Whiteland.
	Approximately 750 feet downstream of Granada Drive	+809	
	Approximately 750 feet downstream of Granada Drive	+809	City of Greenwood.
	Approximately 250 feet upstream of Fiesta Drive	+814	
	Approximately 250 feet upstream of Fiesta Drive	+814	City of Greenwood.
	Approximately 300 feet downstream of Interstate 65	+821	
Hurricane Creek	At confluence with Youngs Creek	+723	City of Franklin.
	Approximately at Upper Shelbyville Road	+728	
	Approximately at Upper Shelbyville Road	+728	Johnson County (Unincorporated Areas)
	Approximately at County Road 375 East	+811	
Tracy Ditch	At confluence with Grassy Creek	+789	Johnson County (Unincorporated Areas), City of Greenwood.
	Approximately 50 feet upstream of West Stop 18 Road	+794	
Youngs Creek	Approximately 7,500 feet upstream of U.S Highway 31	+712	Johnson County (Unincorporated Areas), City of Franklin.
	Approximately 4,000 feet upstream of South Morton Street	+729	
	Approximately 4,000 feet upstream of South Morton Street	+729	Johnson County (Unincorporated Areas), City of Franklin.
	At confluence with Roberts Ditch	+766	

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

ADDRESSES

Johnson County (Unincorporated Areas)

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected

Maps available for inspection at Johnson County Planning Zoning, 86 West Court Street, Franklin, IN.
Town of Edinburgh
Maps available for inspection at Town Hall, 107 S. Holland Street, Edinburgh, IN.
City of Franklin
Maps available for inspection at Planning Department, 55 W. Madison Street, Franklin, IN.
City of Greenwood
Maps available for inspection at Planning Department, 225 E. Emerson Avenue, Greenwood, IN.
Town of New Whiteland
Maps available for inspection at Town Hall, 401 Mooreland Drive, New Whiteland, IN.
Town of Prince's Lake
Maps available for inspection at Town Hall, 14 E. Lakeview Drive, Nineveh, IN.
Town of Whiteland
Maps available for inspection at Whiteland Town Hall, 549 Main Street, Whiteland, IN.

Hardin County, Kentucky and Incorporated Areas
Docket No.: FEMA–B–7470

Buffalo Creek	Approximately 750 feet upstream of Poplar Street	+708	City of Elizabethtown, Hardin County (Unincorporated Areas).
	Approximately 2,065 feet downstream of Bluegrass Road	+812	
Hawkins Steel Tributary	Approximately 130 feet downstream of Steel Drive	+745	City of Elizabethtown, Hardin County (Unincorporated Areas).
	Approximately 615 feet upstream of Hodgenville Road	+763	
Park Lane Tributary	From the confluence with Freeman Creek	+702	City of Elizabethtown, Hardin County (Unincorporated Areas).
	Approximately 60 feet downstream Of Meadow Lane	+737	
Pear Orchard Tributary	Approximately 545 feet downstream of Village Drive	+716	City of Elizabethtown, Hardin County (Unincorporated Areas).
	Approximately 80 feet upstream of Pear Orchard Road	+789	

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

ADDRESSES

Hardin County (Unincorporated Areas)
Maps are available for inspection at 14 Public Square, 3rd Floor, Elizabethtown, Kentucky 42701.
City of Elizabethtown
Maps are available for inspection at 200 West Dixie Avenue, Elizabethtown, Kentucky 42701.

Cayuga County, New York (All Jurisdictions)
Docket No.: FEMA–D–7642

Cayuga Lake	Entire shoreline within communities	+386	Town of Aurelius, Town of Genoa, Town of Ledyard, Town of Springport.
	Entire shoreline within community	+386	Village of Cayuga.
Cold Spring Brook (Reach 2)	Approximately 2,200 feet upstream of State Street	+554	City of Auburn, Town of Throop.
	Approximately 1,380 feet upstream of York Street	+590	
Cold Spring Brook/North Brook	Approximately 1,320 feet upstream of confluence with Seneca River/Erie Canal.	+383	Town of Brutus, Town of Mentz, Village of Weedsport.
	Approximately 4,550 feet upstream of Hamilton Road	+420	
Crane Brook	Approximately 3,175 feet downstream of Conrail	+589	City of Auburn, Town of Aurelius.
	Approximately 1,600 feet upstream of Genesee Street	+649	
Dry Creek	At confluence with Owasco Inlet	+731	Village of Moravia, Town of Moravia.
	Approximately 1,840 feet upstream of Main Street (State Route 38).	+773	
Dutch Hollow Brook	Approximately 780 feet upstream of confluence with Owasco Lake.	+717	Town of Oswasco.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
	Approximately 2,480 feet upstream of State Route 38A (East Lake Road).	+743	
Hunter Brook	Approximately 520 feet downstream of Conrail	+644	City of Auburn.
	Approximately 1,370 feet upstream of North Marvine Avenue	+761	
Tributary No. 1	Approximately 1,960 feet downstream of Grant Avenue	+653	City of Auburn, Town of Sennett.
	Approximately 1,135 feet upstream of Prospect Street	+755	
Tributary No. 2	At confluence with Hunter Brook	+716	City of Auburn, Town of Owasco.
	Approximately 940 feet upstream of Second Avenue	+767	
Mill Creek	At confluence with Owasco Inlet	+728	Town of Moravia, Village of Moravia.
	Approximately 2,650 feet upstream of East Cayuga Street (State Route 38A).	+783	
North Brook Tributary 1	At the confluence with North Brook	+400	Town of Brutus.
	Approximately 580 feet upstream of Hamilton Road	+420	
Owasco Inlet	Approximately 2,070 feet downstream of State Route 38	+722	Village of Moravia, Town of Moravia, Town of Locke.
	Approximately 2.16 miles upstream of Aurora Street	+744	
Owasco Lake	Entire shoreline within community	+717	Town of Fleming, Town of Moravia, Town of Niles, Town of Scipio, Town of Venice.
Owasco Lake Outlet	Approximately 6,420 feet upstream of Sperry Road	+385	Town of Mentz, Town of Throop, Village of Port Byron.
	Approximately 1,930 feet upstream of Hayden Road	+425	
Owasco Outlet	Approximately 900 feet downstream of Canoga Street	+553	City of Auburn, Town of Aurelius, Town of Fleming, Town of Owasco.
	Approximately 1,040 feet upstream of State Route 437 (White Bridge Road).	+716	
Paines Creek	Approximately 25 feet downstream of State Route 90 (Main Street).	+387	Village of Aurora, Town of Ledyard.
	Approximately 1,000 feet upstream of State Route 90 (Main Street).	+389	
Putnam Brook	At confluence with Cold Spring Brook	+389	Town of Brutus, Village of Weedsport.
	Approximately 2,200 feet upstream of Stevens Road	+571	
Tributary No. 1	At confluence with Putnam Brook	+454	Town of Brutus, Town of Sennett.
	Approximately 2,710 feet upstream of Shepherd Road	+562	
Tributary No. 2	At confluence with Putnam Brook	+485	Town of Brutus.
	Approximately 2,300 feet upstream of East Brutus Road (second crossing).	+539	
Tributary No. 3	Approximately 110 feet upstream of confluence with Putnam Brook.	+524	Town of Brutus, Town of Sennett.
	Approximately 4,450 feet upstream of Jericho Road	+551	
Tributary No. 4	At confluence with Putnam Brook	+568	Town of Brutus, Town of Sennett.
	Approximately 1,220 feet upstream of Grant Avenue/State Highway 5.	+580	
Seneca River	Approximately 225 feet downstream of Haiti Road	+384	Town of Mentz, Town of Conquest.
	Approximately 1.69 miles upstream of Haiti Road	+384	
Seneca River/Erie Canal	Approximately 80 feet upstream of Jordan Road	+382	Town of Mentz, Town of Brutus, Town of Cato, Town of Conquest, Town of Montezuma.
	Approximately 8,960 feet upstream of Conrail	+384	
Sucker Brook	Approximately 1,010 feet upstream of confluence with Owasco Lake.	+717	Town of Owasco.
	Approximately 2,570 feet upstream of East Lake Road (State Route 38A).	+730	
Unnamed Tributary 2 to Cayuga Lake.	Approximately 65 feet upstream of confluence with Cayuga Lake.	+386	Village of Union Springs, Town of Springport.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
	Approximately 585 feet upstream of Creager Road	+560	

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

ADDRESSES

City of Auburn
Maps are available for inspection at the Auburn Memorial City Hall, 24 South Street, Auburn, New York 13021.
Town of Aurelius
Maps are available for inspection at the Aurelius Town Hall, 1241 West Genesee Street Road, Auburn, New York 13021.
Town of Brutus
Maps are available for inspection at the Brutus Town Clerk's Office, 9021 North Seneca Street, Weedsport, New York 13166.
Town of Cato
Maps are available for inspection at the Cato Town Hall, 11320 Shortcut Road, Cato, New York 13033.
Town of Conquest
Maps are available for inspection at the Town of Conquest, 1289 Fuller Road, Port Byron, New York 13140.
Town of Fleming
Maps are available for inspection at the Town of Fleming, 2433 Dublin Road, Auburn, New York 13021.
Town of Genoa
Maps are available for inspection at the Genoa Town Hall, 1000 Bartnick Road, Genoa, New York 13071.
Town of Ledyard
Maps are available for inspection at the Ledyard Town Hall, 1099 Poplar Ridge Road, Aurora, New York 13026.
Town of Locke
Maps are available for inspection at the Town of Locke, 703 State Route 38, Locke, New York 13092.
Town of Mentz
Maps are available for inspection at the Town of Mentz, 14 Mentz Drive, Port Byron, New York 13140.
Town of Montezuma
Maps are available for inspection at the Town of Montezuma Memorial Building, Dock Street, 52, Montezuma, New York 13117.
Town of Moravia
Maps are available for inspection at the Town of Moravia, 139 Main Street, Moravia, New York 13118.
Town of Niles
Maps are available for inspection at the Niles Town Hall, 5921 New Hope Road, Moravia, New York 13118.
Town of Owasco
Maps are available for inspection at the Owasco Town Hall, 2 Bristol Avenue, Auburn, New York 13021.
Town of Scipio
Maps are available for inspection at the Town of Scipio, 3705 State Route 34, Scipio Center, New York 13147.
Town of Sennett
Maps are available for inspection at the Town of Sennett, 6931 Cherry Street Road, Auburn, New York 13021.
Town of Springport
Maps are available for inspection at the Springport Town Hall, 859 State Route 326, Cayuga, New York 13034.
Town of Throop
Maps are available for inspection at the Throop Town Hall, 7471 Robinson Road, Auburn, New York 13021.
Town of Venice
Maps are available for inspection at the Town of Venice, 1589 McAllister Road, Genoa, New York 13071.
Village of Aurora
Maps are available for inspection at the Aurora Village Office, 456 Main Street, Aurora, New York 13026.
Village of Cayuga
Maps are available for inspection at the Village of Cayuga, 6205 Railroad Street, Cayuga, New York 13034.
Village of Moravia
Maps are available for inspection at the Moravia Village Office, 22 Central Street, Moravia, New York 13118.
Village of Port Byron
Maps are available for inspection at the Port Byron Village Hall, 52 Utica Street, Port Byron, New York 13140.
Village of Union Springs
Maps are available for inspection at the Village of Union Springs, 26 Chapel Street, Union Springs, New York 13160.
Village of Weedsport
Maps are available for inspection at the Weedsport Village Hall, 8892 South Street, Weedsport, New York 13166.

Lincoln County, North Carolina and Incorporated Areas
Docket No.: FEMA–D–7672

Anderson Creek	At the confluence with Killian Creek	+667	Lincoln County (Unincorporated Areas).
	At the confluence with Hooper Creek and Wingate Creek	+709	
Tributary 1	At the confluence with Anderson Creek	+675	Lincoln County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
	Approximately 1.9 miles upstream of the confluence with Anderson Creek.	+746	
Armstrong Branch	At the confluence with Dellinger Branch	+712	Lincoln County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Dellinger Branch.	+765	
Ballard Creek	At the confluence with Wingate Creek	+714	Lincoln County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence of Ballard Creek Tributary 3.	+829	
Tributary 1	At the confluence with Ballard Creek	+745	Lincoln County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Ballard Creek.	+791	
Tributary 2	At the confluence with Ballard Creek	+765	Lincoln County (Unincorporated Areas).
	Approximately 90 feet downstream of East King Wilkinson Road (State Route 1349).	+827	
Tributary 3	At the confluence with Ballard Creek	+811	Lincoln County (Unincorporated Areas).
	Approximately 1,900 feet upstream of North Ernest Huss Lane	+911	
Bradshaw Branch	At the confluence with Leepers Creek	+713	Lincoln County (Unincorporated Areas).
	Approximately 1.7 miles upstream of the confluence with Leepers Creek.	+754	
Buffalo Creek	At Cleveland/Lincoln County boundary	+957	Lincoln County (Unincorporated Areas).
	Approximately 600 feet upstream of NC–10	+1,155	
Tributary 5	At the confluence with Buffalo Creek	+988	Lincoln County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Buffalo Creek.	+1,017	
Tributary 6	At the confluence with Buffalo Creek	+1,033	Lincoln County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence of Buffalo Creek Tributary 6A.	+1,099	
Tributary 6A	At the confluence with Buffalo Creek Tributary 6	+1,074	Lincoln County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Buffalo Creek Tributary 6.	+1,118	
Carpenter Creek	Approximately 0.4 mile upstream of the confluence with Clarks Creek.	+774	Lincoln County (Unincorporated Areas), City of Lincolnton.
	Approximately 100 feet downstream of U.S. 321	+865	
Tributary 1	At the confluence with Carpenter Creek	+801	Lincoln County (Unincorporated Areas).
	Approximately 0.4 mile upstream of North Bulldog Lane	+833	
Catawba River	At Gaston/Lincoln County boundary	+665	Lincoln County (Unincorporated Areas).
	At Cowans Ford Dam	+670	
Tributary 4	At the confluence with Catawba River	+665	Lincoln County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Catawba River.	+665	
Tributary 5	At the confluence with Catawba River	+667	Lincoln County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Catawba River.	+673	
Tributary 6	At the confluence with Catawba River	+668	Lincoln County (Unincorporated Areas).
	Approximately 300 feet upstream of North Club Drive (State Route 1395).	+682	
Clarks Creek	Approximately 0.8 mile downstream of West Maiden-Salem Road (State Route 1274).	+780	Lincoln County (Unincorporated Areas).
	Approximately 200 feet upstream of Lincoln/Catawba County boundary.	+792	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Tributary 1	Approximately 1,100 feet upstream of the confluence with Clarks Creek.	+765	City of Lincolnton.
	Approximately 150 feet upstream of North Aspen Street	+788	
Tributary 2	At the confluence with Clarks Creek	+781	Lincoln County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Clarks Creek.	+790	
Crooked Creek	At the confluence with Leepers Creek	+691	Lincoln County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Leepers Creek.	+722	
Dellinger Branch	At the confluence with Leepers Creek	+712	Lincoln County (Unincorporated Areas).
	Approximately 1,150 feet upstream of South Low Bridge Road (State Route 1314).	+792	
Tributary 1	At the confluence with Dellinger Branch	+738	Lincoln County (Unincorporated Areas).
	Approximately 1,200 feet upstream of East Orchard Road (State Route 1358).	+809	
Forney Creek	At the confluence with Killian Creek	+663	Lincoln County (Unincorporated Areas).
	Approximately 2.6 miles upstream of East Optimist Club Road (State Route 1380).	+769	
Tributary 1	At the confluence with Forney Creek	+679	Lincoln County (Unincorporated Areas).
	Approximately 1,350 feet upstream of the confluence of Forney Creek Tributary 1B.	+710	
Tributary 1A	At the confluence with Forney Creek Tributary 1	+679	Lincoln County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the Railroad	+707	
Tributary 1B	At the confluence with Forney Creek Tributary 1	+695	Lincoln County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Forney Creek Tributary 1.	+702	
Glenn Creek	At Cleveland/Lincoln County boundary	+899	Lincoln County (Unincorporated Areas).
	Approximately 230 feet downstream of NC–27	+1,041	
Hog Branch	At the confluence with Larkard Creek	+788	Lincoln County (Unincorporated Areas).
	Approximately 1.0 mile upstream of North U.S. 321 (State Route 1844).	+830	
Hooper Creek	At the confluence with Anderson Creek and Wingate Creek	+709	Lincoln County (Unincorporated Areas).
	Approximately 1.6 miles upstream of the confluence with Anderson Creek and Wingate Creek.	+753	
Howards Creek	Approximately 1,800 feet upstream of the confluence with South Fork Catawba River.	+769	Lincoln County (Unincorporated Areas).
	Approximately 100 feet upstream of Catawba/Lincoln County boundary.	+972	
Tributary 1	At the confluence with Howards Creek	+769	Lincoln County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Howards Creek.	+795	
Tributary 2	At the confluence with Howards Creek	+780	Lincoln County (Unincorporated Areas).
	Approximately 1.4 miles upstream of North Alf Hoover Road (State Route 1200).	+904	
Tributary 3	At the confluence with Howards Creek	+839	Lincoln County (Unincorporated Areas).
	Approximately 0.5 mile upstream of North Howards Creek Mill Road (State Route 1194).	+880	
Tributary 4	At the confluence with Howards Creek	+859	Lincoln County (Unincorporated Areas).
	Approximately 0.5 mile upstream West Abernethy Farm Road (State Route 1195).	+904	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Tributary 5	At the confluence with Howards Creek	+867	Lincoln County (Unincorporated Areas).
	Approximately 100 feet downstream of North Overlook Lane	+909	
Tributary 6	At the confluence with Howards Creek	+911	Lincoln County (Unincorporated Areas).
	Approximately 0.8 mile upstream of West Reepsville Road (State Route 1113).	+1,001	
Tributary 7	At the confluence with Howards Creek	+928	Lincoln County (Unincorporated Areas).
	Approximately 1,100 feet upstream of West Gilbert Sain Road (State Route 1210).	+1,022	
Hoyle Creek	Approximately 200 feet downstream of Gaston/Lincoln County boundary.	+742	Lincoln County (Unincorporated Areas).
	Approximately 10 feet downstream of East Keener Road (State Route 1323).	+872	
Tributary 1	At the confluence with Hoyle Creek	+742	Lincoln County (Unincorporated Areas).
	Approximately 0.4 mile upstream of East Magnolia Grove Road (State Route 1309).	+773	
Tributary 2	At the confluence with Hoyle Creek	+756	Lincoln County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Hoyle Creek.	+770	
Tributary 4	At the confluence with Hoyle Creek	+767	Lincoln County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Hoyle Creek.	+789	
Tributary 5	At the confluence with Hoyle Creek	+784	Lincoln County (Unincorporated Areas).
	Approximately 0.4 mile upstream of East Hovis Road (State Route 1315).	+810	
Tributary 6	At the confluence with Hoyle Creek	+809	Lincoln County (Unincorporated Areas).
	Approximately 0.4 mile upstream of South Hill Road (State Route 1321).	+855	
Indian Creek	Approximately 0.6 mile downstream of Gaston/Lincoln County boundary.	+787	Lincoln County (Unincorporated Areas).
	At Catawba/Lincoln County boundary	+1,011	
Tributary 1	At upstream side of South Landers Church Road (State Route 1176).	+762	Lincoln County (Unincorporated Areas).
	Approximately 650 feet upstream of South St. Marks Church Road (State Route 1172).	+808	
Tributary 2	Approximately 1,200 feet upstream of the confluence with Indian Creek.	+773	Lincoln County (Unincorporated Areas).
	Approximately 1,200 feet upstream of the dam	+896	
Johnson Creek	At Gaston/Lincoln County boundary	+664	Lincoln County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Gaston/Lincoln County boundary.	+680	
Killian Creek	At Gaston/Lincoln County boundary	+635	Lincoln County (Unincorporated Areas).
	Approximately 1.5 miles upstream of East Mundy Road (State Route 1349).	+829	
Larkard Creek	At the confluence with Clarks Creek	+782	Lincoln County (Unincorporated Areas).
	Approximately 200 feet upstream of East Springs East Road (State Route 1342).	+845	
Leepers Creek	At the Gaston/Lincoln County boundary	+635	Lincoln County (Unincorporated Areas).
	At the confluence with Lippard Creek and Sawmill Branch	+807	
Tributary 1	At the confluence with Leepers Creek	+661	Lincoln County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Leepers Creek.	+677	
Tributary 2	At the confluence with Leepers Creek	+663	Lincoln County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
	Approximately 0.7 mile upstream of the confluence with Leepers Creek.	+685	
Tributary 3	At the confluence with Leepers Creek	+665	Lincoln County (Unincorporated Areas).
	Approximately 2,000 feet upstream of the confluence with Leepers Creek.	+686	
Tributary 4	At the confluence with Leepers Creek	+667	Lincoln County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Leepers Creek.	+696	
Tributary 5	At the confluence with Leepers Creek	+671	Lincoln County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence with Leepers Creek.	+702	
Leonard Fork	Approximately 1,300 feet upstream of the confluence with Indian Creek.	+773	Lincoln County (Unincorporated Areas).
	Approximately 0.5 mile upstream of West Flay Road (State Route 1140).	+934	
Tributary 1	At the confluence with Leonard Fork	+868	Lincoln County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Leonard Fork.	+937	
Lick Fork Creek	At the confluence with Indian Creek	+790	Lincoln County (Unincorporated Areas).
	Approximately 1,300 feet upstream of Gaston/Lincoln County boundary.	+792	
Lick Run Creek	At the confluence with Leepers Creek	+754	Lincoln County (Unincorporated Areas).
	Approximately 900 feet upstream of North Leeping Brook Road (State Route 1530).	+895	
Lippard Creek	At the confluence with Leepers Creek and Sawmill Branch	+807	Lincoln County (Unincorporated Areas).
	At Catawba/Lincoln County boundary	+869	
Tributary 1	At the confluence with Lippard Creek	+832	Lincoln County (Unincorporated Areas).
	Approximately 1,600 feet upstream of East Ivey Church Road (State Route 1343).	+891	
Lithia Inn Branch	Approximately 500 feet downstream of North Jonas Drive	+774	City of Lincolnton.
	Approximately 450 feet upstream of U.S. 321	+878	
Tributary 1	Approximately 500 feet upstream of the confluence with Lithia Inn Branch.	+772	City of Lincolnton.
	Approximately 600 feet upstream of State Route 150/South Dave Warlick Drive.	+828	
Tributary 2	At the confluence with Lithia Inn Branch Tributary 1	+783	City of Lincolnton.
	Approximately 200 feet upstream of East Laurel Street	+805	
Little Buffalo Creek	At Cleveland/Lincoln County boundary	+854	Lincoln County (Unincorporated Areas).
	Approximately 50 feet downstream of West Flay Road (State Route 1140).	+964	
Little Creek (East)	At the confluence with Indian Creek	+847	Lincoln County (Unincorporated Areas).
	Approximately 200 feet upstream of West Houser Farm Road (State Route 1127).	+960	
Little Creek (West)	At the Cleveland/Lincoln County boundary	+961	Lincoln County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Cleveland/Lincoln County boundary.	+1,022	
Little Indian Creek	At the confluence of Indian Creek	+878	Lincoln County (Unincorporated Areas).
	Approximately 250 feet upstream of West Macedonia Church Road.	+1,067	
Tributary 1	At the confluence with Little Indian Creek	+905	Lincoln County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Little Indian Creek.	+991	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Tributary 2	At the confluence with Little Indian Creek	+917	Lincoln County (Unincorporated Areas).
	Approximately 0.5 mile upstream of North Red Dawn Estate Trail.	+986	
Tributary 3	At the confluence with Little Indian Creek	+934	Lincoln County (Unincorporated Areas).
	Approximately 300 feet upstream of Hulls Grove Church Road	+984	
Tributary 4	At the confluence with Little Indian Creek	+937	Lincoln County (Unincorporated Areas).
	Approximately 0.4 mile upstream of West Macedonia Church Road (State Route 1108).	+1,069	
Tributary 4A	At the confluence with Little Indian Creek Tributary 4	+978	Lincoln County (Unincorporated Areas).
	Approximately 0.7 mile upstream of North Tallent Road (State Route 1120).	+1,047	
Little Pott Creek	At the confluence with Pott Creek	+793	Lincoln County (Unincorporated Areas).
	Approximately 150 feet downstream of North Cansler Road (State Route 1197).	+874	
Lutz Branch	At the Gaston/Lincoln County boundary	+738	Lincoln County (Unincorporated Areas).
	Approximately 150 feet downstream of East Mirror Lake Road (State Route 1474).	+760	
McClure Branch	At the confluence with Leepers Creek	+671	Lincoln County (Unincorporated Areas).
	Approximately 1.6 miles upstream of South Mt. Zion Church Road (State Route 1404).	+743	
Mill Creek	At the confluence with Indian Creek	+795	Lincoln County (Unincorporated Areas).
	Approximately 1.5 miles upstream of South Bess Chapel Church Road (State Route 1150).	+1,023	
Muddy Creek	At Gaston/Lincoln County boundary	+713	Lincoln County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence of Muddy Creek Tributary 2.	+786	
Tributary 1	At the confluence of Muddy Creek	+748	Lincoln County (Unincorporated Areas).
	Approximately 1,700 feet upstream of U.S. 321	+778	
Tributary 2	At the confluence with Muddy Creek	+752	Lincoln County (Unincorporated Areas).
	Approximately 1,450 feet upstream of U.S. 321	+793	
Ore Bank Branch	At the confluence with Leepers Creek	+783	Lincoln County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with Leepers Creek.	+822	
Pott Creek	At the confluence with South Fork Catawba River	+778	Lincoln County (Unincorporated Areas).
	At Catawba/Lincoln County boundary	+802	
Reed Creek	At the confluence with Leepers Creek	+723	Lincoln County (Unincorporated Areas).
	Approximately 1,900 feet upstream of East Stagecoach Road (State Route 1363).	+773	
Rockdam Creek	At the confluence with Howards Creek	+769	Lincoln County (Unincorporated Areas).
	Approximately 250 feet upstream of South Howards Creek School Road (State Route 1186).	+830	
Sawmill Branch	At the confluence with Leepers Creek	+807	Lincoln County (Unincorporated Areas).
	Approximately 1.3 miles upstream of North Union Church Road (State Route 1344).	+871	
Tributary 1	At the confluence with Sawmill Branch	+833	Lincoln County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Sawmill Branch.	+864	
Snyder Creek	At the confluence with Killian Creek	+686	Lincoln County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
	Approximately 1.8 mile upstream of the confluence with Killian Creek.	+732	
South Fork Catawba River	Approximately 2.4 miles upstream of the confluence of Howards Creek.	+773	Lincoln County (Unincorporated Areas).
	At Catawba/Lincoln County boundary	+793	
South Fork Catawba River Tributary 3.	At Gaston/Lincoln County boundary	+717	Lincoln County (Unincorporated Areas).
	Approximately 500 feet upstream of West Hoffman Road (State Route 1245).	+730	
Tributary 4	At Railroad	+757	Lincoln County (Unincorporated Areas), City of Lincolnton.
	Approximately 200 feet upstream of State Route 150	+776	
Tributary 5	At the confluence with South Fork Catawba River	+782	Lincoln County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with South Fork Catawba River.	+800	
Tanyard Creek	At the confluence with Howards Creek	+779	Lincoln County (Unincorporated Areas).
	Approximately 2.6 miles upstream of West Reepsville Road (State Route 1113).	+906	
Tributary 1	At the confluence with Tanyard Creek	+791	Lincoln County (Unincorporated Areas).
	Approximately 1.6 miles upstream of West Reepsville Road (State Route 1113).	+890	
Walker Branch	Approximately 200 feet downstream of North Aspen Street	+765	Lincoln County (Unincorporated Areas), City of Lincolnton.
	Approximately 200 feet downstream of East Wilma Sigmon Road.	+815	
Tributary 2	At the confluence with Walker Branch	+805	Lincoln County (Unincorporated Areas), City of Lincolnton.
	Approximately 0.4 mile upstream of North Huss Street	+947	
Wilkinson Creek	At the confluence with Wingate Creek	+753	Lincoln County (Unincorporated Areas).
	Approximately 300 feet upstream of State Route 150	+910	
Wingate Creek	At the confluence with Anderson Creek and Hooper Creek	+709	Lincoln County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the confluence of Wilkinson Creek.	+804	

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

ADDRESSES

City of Lincolnton
Maps are available for inspection at the City of Lincolnton Planning Department, 114 West Sycamore Street, Lincolnton, North Carolina.

Lincoln County (Unincorporated Areas)
Maps are available for inspection at the Lincoln County Planning Department, 302 North Academy Street, Lincolnton, North Carolina.

Brown County, South Dakota and Incorporated Areas
Docket No.: FEMA–B–7343

4th Street Drainageway	Approximately 400 feet downstream of Sixth Street	+1,295	City of Groton.
	Approximately 200 feet downstream of Sixth Street	+1,296	
	Approximately 300 feet upstream of 13th Avenue/Highway 12	+1,302	

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

ADDRESSES

City of Groton
Maps are available for inspection City Hall, 209 North Main Street, Groton, South Dakota, 57445.

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

Dated: February 28, 2007.

David I. Maurstad,

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

[FR Doc. E7–4157 Filed 3–7–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 30

RIN 0991–AB18

Claims Collection

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Health and Human Services' (HHS) regulations to implement the provisions of the Debt Collection Improvement Act of 1996 (DCIA), as implemented by the Department of Justice (Justice) and the Department of the Treasury (Treasury) as the Federal Claims Collection Standards (FCCS). This final rule implements the final rule promulgated by Justice and Treasury, and amends the process by which HHS can administratively collect, offset, compromise, suspend and terminate collection activity for civil claims for money, funds, or property, and the rules and process by which HHS can refer civil claims to Treasury, Treasury-designated debt collection centers, or Justice for collection by further administrative action or litigation, as applicable.

DATES: *Effective Date:* March 8, 2007.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Davis, Associate General Counsel, General Law Division, Office of the General Counsel, Department of Health and Human Services, Room 4760 Cohen Building, 330 Independence Avenue SW., Washington, DC 20201.

SUPPLEMENTARY INFORMATION:

Background

The Debt Collection Act of 1982 (DCA), Public Law No. 97–365, was implemented on a government-wide basis by the FCCS, set forth at 4 CFR part 101 *et seq.*, issued by Justice and the General Accounting Office on March 9, 1984. See 49 FR 8889 (1984). HHS implemented the FCCS at 45 CFR part 30. As mandated by the DCIA, Justice and Treasury jointly promulgated the revised FCCS at 31 CFR parts 900–904 to reflect the legislative changes to the Federal debt collection procedures enacted by the DCIA. The revised FCCS superseded the current FCCS, and removed the Comptroller General as promulgator of the FCCS. HHS is required to implement regulations, consistent with the DCIA and the regulations promulgated by Justice and Treasury. The following changes to the Department's current debt collection regulation are incorporated in the proposed regulation to reflect the DCIA and the implementing final rule:

1. Demand Letter. One demand should be sufficient. It will include the applicable standards for imposing any interest, penalties, or administrative costs; use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation; any rights the debtor may have to seek review of the Department's determination of the debt and to enter into a reasonable repayment agreement; and information regarding the Department's remedies to enforce payment of the debt.

2. Mutual Releases. HHS and debtors will exchange mutual releases of non-tax liabilities, in all appropriate instances, when a claim is compromised.

3. Increase in Amounts. The principal claim amount that HHS is authorized to compromise or to suspend or terminate collection activity thereon, without concurrence by Justice, is increased from $20,000 to $100,000. In addition, the minimum amount of a claim that may be referred to Justice for litigation is increased from $600 to $2,500.

4. Transferring or Referring Delinquent Debt. There are new debt collection procedures for transferring or referring delinquent debt to Treasury or a Treasury-designated debt collection center for collection.

5. Centralized Administrative Offset. There are new debt collection procedures for mandatory, centralized administrative offset by disbursing officials.

6. Mandatory Credit Bureau Reporting. There are new debt collection procedures for mandatory credit bureau reporting.

7. Prohibition Against Federal Financial Assistance. There are new debt collection procedures prohibiting Federal financial assistance in the form of loans, loan guarantees, or loan insurance to debtors, unless waived by the Secretary. Disaster loans are exempt from this prohibition.

8. Army Hold-up List. The use of the Army hold-up list to report indebted contractors to the Department of the Army has been discontinued.

Additionally, we note that the current HHS claims collection regulations at 45 CFR 30.13(d) provided: ''[u]nless specifically authorized by statute, regulation or written agreement, or unless the debts arise from, or involve, fraud or criminal activity, the Secretary will not charge interest on debts arising from payments to beneficiaries under Titles II, XVI, and XVIII of the Social Security Act.'' This rule will not change this Departmental practice. For debts arising from payments to beneficiaries under Titles XVI and XVIII of the Social Security Act (Title II is now administered by the Social Security Administration), the Secretary will not assess interest unless specifically required to do so by statute, regulation or written agreement, or unless the debts arise from, or involve, fraud or criminal activity.

To the extent any provision of this rule is inconsistent with a more specific provision (*e.g.*, certain provisions in 45 CFR parts 31, 32, and 33 and 42 CFR parts 401 and 405), the more specific provision shall apply.

Basic Provisions

In accordance with the requirements of the DCIA and the implementing regulations promulgated by Justice and Treasury at 31 CFR parts 900–904, this final rule establishes the procedures for the administrative collection, offset, compromise, suspension and termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), and the process by which HHS can refer civil claims to Treasury, Treasury-designated debt collection centers, or Justice for collection by further administrative action or litigation, as applicable. The rule does not apply to claims between Federal agencies. The rule affects HHS's debtors. This rule revises the current Department regulation in accordance with the substantive and procedural requirements of the DCIA and the implementing final rule.

(Authority: 31 U.S.C. 3711.)

Public Comments

We received the following comments on the proposed rule.

Comment: One commenter asserted that the mandatory demand letter statements required by § 30.11 of the proposed rule potentially conflicted with validation disclosures of § 809 of the Fair Debt Collection Practices Act (FDCPA) that private collection contractors are required to deliver in their initial demand letters.

Response: We do not agree that the requirements of § 30.11 of the final rule conflict with the FDCPA and have made no changes to the final rule based on this comment. Section 30.11(b)(1) provides a listing of the information that must be included in a demand letter. The specific clauses that concerned the commenter are found in § 30.11(b)(2) which provides the listing of the information which should be included in a demand letter, including the statements of fact that: (1) A debtor delinquent on a debt is ineligible for Government loans, loan guarantees, or loan insurance until the debtor resolves the debt; (2) when seeking to collect statutory penalties, forfeiture or other similar types of claims, the debtor's licenses, permits, or other privileges may be suspended or revoked if failure to pay the debt is inexcusable or willful; and (3) knowingly making false statements or bringing frivolous actions may subject the debtor to civil or criminal penalties under 31 U.S.C. 3729–3731, 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority, and, if the debtor is a Federal employee, to disciplinary action under 5 CFR part 752 or other applicable authority.

Comment: One commenter noted that in the Medicare Secondary Payer (MSP) context, the Centers for Medicare & Medicaid Services (CMS) currently utilizes two demand letters and requested either the section 30.11(b) statement, ''[g]enerally one demand letter should suffice * * *'' be deleted or recognize that in the MSP context two demand letters are generally appropriate.

Response: We are making no changes to the final rule based on this comment. Under the FCCS, agencies are permitted to use more than one demand letter to meet the requirements at 31 CFR 901.2. Therefore, there is no need to change the current language of § 30.11(b) to accommodate the use of more than one demand letter.

Comment: One commenter stated that in the MSP context, initial demand letters and intent to refer letters are not often directed to the appropriate, responsible party. As a result, the entity bearing responsibility for the debt may not have an opportunity to respond prior to the referral of the debt to Treasury for collection. The commenter recommended HHS:

(1) Amend proposed § 30.11(a)(2) to state that demand letters ''shall be sent by first class mail to the debtor's last known address, as confirmed through reasonable efforts'';

(2) Add a new sentence stating that if a letter is returned as undeliverable, the Secretary shall take reasonable steps to determine the appropriate address of the alleged debtor and send a second letter; and

(3) Add a new provision stating that the Secretary shall provide alleged debtors (generally employers, insurers or third party administrators) with the opportunity to designate a central agent (at a specific location) to receive MSP demand letters.

Response: We are making no changes to the final rule based on this comment. As to the first two suggestions, CMS uses the most recent address information in its system specific to a particular debt. As to the third suggestion, the final rule would not prohibit an employer, insurer, or third party administrator from reaching an agreement with CMS on a designated agent for the receipt of MSP demand letters to the extent that CMS systems can handle the request and the specific debtor information can be appropriately matched. Employers, insurers, and third party administrators should have internal procedures which ensure correct internal routing of such letters if the letter is received at any address of the entity.

Comment: In another comment relating to MSP debts, a commenter urged HHS to amend proposed § 30.11(b)(1) to state that the written demand for payment ''shall include sufficient information to allow the recipient to identify the specific debt involved.'' The commenter noted in the MSP context, sufficient information includes: beneficiary name, HIC number, basis for Medicare eligibility, policy number, services included in the claim, dates of service, provider type, amount due, and member name/company.

Response: We are making no changes to the final rule based on this comment. The current CMS process is adequate because most of the information listed is already included in the demand letter package. The demand package contains sufficient information to allow the recipient to identify the specific debt involved. The intent to refer letter package includes the initial demand letter (including attachments) when it is issued. However, the content of the initial demand letter is dependent on the debtor responding to CMS's requests, if any, for additional information. Finally, CMS has no control over what information Treasury includes in its first letter to the debtor and the information Treasury instructs the private collection agency to include in its collection letter.

Comment: One commenter requested HHS to modify proposed § 30.11 to add new text (modeled directly on the FCCS at 31 CFR 901.2(e)) that reads ''the Secretary should respond promptly to communications from debtors, within 30 days whenever feasible, and should advise debtors who dispute debts to furnish available evidence to support their contentions.''

Response: We have made this change requested by the commenter and have added a new 30.11(f) providing: *Communications from debtors.* The Secretary should respond promptly to communications from debtor, within 30 days where feasible, and should advise debtors who dispute debts to furnish available evidence to support their contentions.

Comment: One commenter noted that § 30.11(b)(1)(ii) would require that demand letters state ''[t]he date by which payment should be made to avoid late charges and enforced collection, which generally shall be no later than 30 days from the date the demand letter is mailed.'' The commenter sought confirmation that the proposed regulation will not (1) Require CMS to shorten the period allowed by the MSP statute for entities to respond to demands for payment before the imposition of interest or (2) prohibit the Secretary from exercising discretion to waive interest, where appropriate.

Response: We are making no changes to the final rule based on this comment. We confirm that the regulation does not require CMS to shorten the period allowed by the MSP statute for MSP debtors to respond to demands for payment before the imposition of interest, or prohibit the Secretary from exercising discretion to waive interest, where appropriate (see § 30.18(g), Waiver). Proposed § 30.11(b)(1)(ii) is not intended to alter any existing CMS policies and procedures on when entities must respond to demands for payment to avoid interest in the MSP context (currently, 60 days), nor is it intended to limit the Secretary from waiving interest where appropriate and where consistent with government-wide and agency-specific debt collection standards. The language in proposed 30.11(b)(1)(ii) states payment ''should'' be made ''generally'' no later than 30 days to avoid late charges and enforced collection. Based on this language, CMS may exercise discretion in extending the time frame for entities to respond for specific types of debt such as MSP debts.

Comment: Proposed § 30.10(c)(1) states that ''[t]he Secretary shall transfer debts 180 days or more delinquent to the Treasury in accordance with the requirements of 31 CFR 285.12.'' A commenter requested that the regulation

be amended, consistent with the Treasury regulations, to make clear that debt is not required to be transferred to Treasury unless and until a final agency determination has been made. Accordingly, the commenter requested that HHS amend section 30.10 to read: ''(c) The Secretary shall transfer debts 180 days or more delinquent to Treasury, where appropriate, in accordance with the requirements of 31 CFR 285.12 when there is a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action.'' The commenter believed that premature referral of debt would not only violate the terms of the Treasury regulation, but also undermine efficient administration of debt collection since alleged MSP debtors, whom the commenter incorrectly asserted do not receive final agency determinations prior to referral, generally seek reconsideration at the Treasury level. The commenter contended that this adds an unnecessary level of complication to the debt collection process and typically results in claims being sent back to CMS for further review and verification of the validity of the debt.

Response: We are making no changes to the final rule based on this comment. It is implicit in the regulatory language that, before transfer to Treasury, there will have been a final agency determination that the debt, in the amount stated, is due.

Comment: One commenter urged HHS to modify the proposed regulation to clearly state the specific process with which CMS must comply before transferring MSP debt to Treasury for administrative offset and/or other cross-servicing. The commenter believed that the proposed regulations do not include all of the criteria set forth in the Treasury regulations as prerequisites to transfer, and recommended that HHS amend proposed § 30.12(b)(2) to state: ''When referring delinquent debt to the Secretary of the Treasury for centralized administrative offset or other debt collection activity, the appropriate agency official must certify, in written form acceptable to the Secretary of the Treasury, that (i) The debt is valid, past due and legally enforceable; and (ii) the Department has complied with all due process requirements under 31 U.S.C. 3716(a) and paragraph (c)(2) of this section and all prerequisites to a particular collection action under the laws, regulations or policies applicable to the agency (unless the Secretary of the Treasury has agreed to comply with such requirements on the Department's behalf).''

Response: We are making three changes to the final rule based on this comment. First, we are changing the definition of ''Legally enforceable'' in § 30.2 to add on to the end ''(for example, the debt is not the subject of a pending administrative review required by statute or regulation and collection action during the review process is prohibited.)'' Second, we are adding ''legally enforceable'' before the word ''debts'' in 30.10(c)(1). While we believe the requirement that the debt not be transferred, under mandatory transfer, if it is the subject of a pending administrative review required by statute or regulation and collection action during the review process is prohibited was clear, as previously drafted, since this is a requirement of 31 CFR 285.12(c)(3)(i) and 30.10(c)(1) specified that transfers to Treasury would be made in accordance with the requirements of 31 CFR 285.12, the regulation is more complete with this clarification. Related to the part of the comment that 30.10(c)(2) did not include all of the criteria set forth in the Treasury regulations as prerequisites to transfer, we are also amending 30.10(c)(2) to include ''in accordance with the requirements of 31 CFR 285.12.'' Therefore, the requirements of Treasury's regulations are clearly included.

Comment: One commenter suggested that the Claims Collection regulations be amended to state that the Secretary may, where appropriate, in the MSP debt context, explore the use of alternative dispute resolution to resolve disputed debt.

Response: We are making no changes to the final rule based on this comment because we believe that CMS's current regulations and processes provide adequate opportunity for the debtor to dispute a debt.

Comment: One commenter recommended that HHS define the term ''valid debt'' under § 30.2 to mean debt where the government has a reasonable expectation of being able to prove the existence of the debt in court, based on the legal issues and the facts.

Response: We are making no changes to the Final Rule based on this comment. We do not agree that it is necessary to define ''valid debt.''

Comment: One commenter noted the proposed Claims Collection regulations state that the term ''legally enforceable'' means ''there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action.'' Proposed § 30.2, Definitions. The commenter requested HHS amend the proposed regulations to expressly state that, when an alleged debtor has disputed a debt, the appropriate agency official may not refer the debt to Treasury unless and until a written determination explaining the basis for the decision has been issued (and a copy provided to the alleged debtor) concerning the validity of the alleged debt.

Response: We are making no changes to the final rule based on this comment. First, in response to a previously discussed comment, we are changing the definition of ''Legally enforceable'' in § 30.2 to add on to the end ''(for example, the debt is not the subject of a pending administrative review required by statute or regulation and collection action during the review process is prohibited.)'' Also, a final determination that a debt, in the amount stated, is due and there are no legal bars to collection action does not require issuing a formal written determination, separate from and in addition to the demand letter, explaining the basis for such decision. Also, the regulations provide, in the definition of a debt (§ 30.2, Definitions) that an appropriate official of the Federal Government determined an amount of funds or other property is owed to the Government. Such a determination, therefore, is needed before a demand letter would be sent and before the debt would be referred to Treasury for collection.

Comment: One commenter noted that proposed section 30.12(b) states that when referring delinquent debts to the Secretary of Treasury for centralized administrative offset, the Department must certify that the Department has complied with all due process requirements under 31 U.S.C. 3716(a) and § 30.12(c)(2) of the proposed rule. 31 U.S.C. 3716(a)(3) states that the head of an administrative agency may collect by offset only after, among other things, giving the debtor ''an opportunity for a review within the agency of the decision of the agency related to the claim.'' The commenter noted that the proposed HHS regulations state that where review is required, the Secretary must afford the alleged debtor an oral or paper hearing. *See* Proposed § 30.12(e). The commenter supported this provision of the regulation, but noted the need for clarification regarding the specific due process rights that will be afforded to employers/unions and health plans/insurers disputing alleged MSP debt. The commenter noted that CMS has published proposed Medicare claims appeal regulations which expressly allow beneficiaries and providers/suppliers to appeal Medicare contractor determinations that they owe the government monies under the MSP

statute, but has not provided any specific due process appeal rights to employers/unions or health plans/insurers in similar circumstances. *See* 67 FR 69311, 69317–20 (Nov. 15, 2003). The commenter asserted that, as a matter of law, employers/unions and health plans/insurers are entitled to independent review of an alleged MSP debt determination by a Medicare contractor prior to referral of the debt to Treasury for offset. The commenter strongly urged HHS to identify the specific due process rights to be afforded such entities challenging the existence of MSP debt, particularly the nature of any associated appeal rights. The commenter noted that the FCCS encourages agencies to use ''all authorized remedies, including alternative dispute resolution,'' for claims collection, 31 CFR 900.1(c), and requested HHS to amend the Claims Collection regulation to state that the Secretary may, in appropriate circumstances, explore the use of alternative dispute resolution mechanisms to resolve disputed debt. While the commenter does not request that CMS be required to use such alternative dispute resolution mechanisms, the commenter believes CMS should be granted the flexibility through regulation to develop creative and cost-effective ways of resolving disputed claims short of transfer to Treasury (and without incurring the significant costs associated with use of private collection agencies).

Response: We are making no changes to the final rule based on this comment. We believe that current CMS procedures provide adequate opportunity for the non-beneficiary or non-provider/supplier MSP debtor (*e.g.*, employers/unions or health plans/insurers) to dispute a debt. Employers, insurers, third party administrators, plans, or other plan sponsors that are issued a demand letter are provided adequate notice of the debt and an opportunity to rebut the debt prior to CMS referring the MSP debt to Treasury.

Comment: One commenter stated that it is aware of numerous situations in which offset of a claim occurred after CMS had determined that monies were not in fact due with respect to the particular claim. Accordingly, the commenter recommended HHS amend the Claims Collection regulations to include the following language adapted from 31 CFR 285.12 of the Treasury regulations: ''Once a debt is referred to Treasury, the Secretary must promptly notify Treasury of any change in the status of the debt, including any decision that the debt is not in fact owed.''

Response: We are making no changes to the final rule based on this comment. As noted by the commenter, Treasury's current regulations already provide for notification to Treasury of changes in the status of the legal enforceability of a debt. Since 30.10(c) states that the transfer of debts be in accordance with 31 CFR 285.12, and 31 CFR 285.12(i) includes this notification of status requirement, it is unnecessary to restate that requirement here.

Comment: One commenter noted that proposed § 30.18 requires the Department to assess administrative costs incurred for processing and handling delinquent debts and, ''[u]nless otherwise established by contract, repayment agreement, or statute,'' to impose a penalty of six percent a year on the amount due on a debt that is delinquent for more than 90 days. The commenter asserted that the mandatory imposition of administrative costs and penalties is not appropriate for MSP debt since the interest and penalty provision of the Debt Collection Improvement Act, 31 U.S.C. 3717, does not (with limited exceptions not here relevant) apply to ''a claim or debt under, or an amount payable under * * * the Social Security Act,'' 31 U.S.C. 3701(d). Accordingly, commenter requested that HHS amend § 30.18 to incorporate language from the current HHS Claims Collection regulations which states: ''[t]he Secretary will charge administrative costs or late payment penalties on debts arising under the Social Security Act where authorized by statute, regulations, or written agreement.'' *See* 45 CFR 30.13(d)(2).

Response: We are making no changes to the final rule based on this comment. The proposed regulation did not change the current CMS process for assessing administrative fees. As to comments on MSP debts not being subject to the interest and penalties provisions of the DCIA, the MSP provisions of the Medicare statute (section 1862(b) of the Social Security Act) and implementing regulations (42 CFR 411.24(m)) provide CMS separate, independent authority for assessing interest on delinquent MSP debts.

Comment: One commenter noted that proposed § 30.24(b) states ''[t]he Secretary will ensure that a compromise agreement with one debtor does not release the Department's claim against the remaining debtors.'' The commenter requested that given the unique nature of MSP claims, HHS delete or modify the text of the proposed regulation to expressly authorize the Secretary to release all potential debtors, where appropriate with respect to a particular debt. The commenter expressed a belief that historically, MSP settlements with the government have released claims against *all* potential debtors. The commenter urged HHS to amend the regulations to allow the Secretary to retain the flexibility to execute similar agreements in the future. The commenter believed that such comprehensive settlements are particularly appropriate in the MSP context where it is not cost-effective to adjudicate claims twice and health plans/insurers will have significantly less incentive to enter into MSP settlement agreements if potential claims against their group health plan customers are not released.

Response: The proposed regulation is intended to govern situations where agency (in this case, CMS) regulations are silent or fail to govern a specific debt situation. The proposed language in § 30.24(b) would not prohibit the Secretary from executing a compromise of selected debts where an insurer is negotiating on its own behalf and on behalf of others as authorized. However, HHS will insert the word ''automatically'' before the word ''release'' to make clear that some action could take place which would release all parties.

Comment: A commenter requested that HHS amend proposed § 30.11(b)(2)(vi) to provide that ''[a]ny amounts collected and ultimately found not to have been owed by the debtor will be refunded promptly.'' The commenter explained the proposed modification is fair and appropriate where monies are not in fact due. In addition, the commenter requested that HHS modify the proposed regulation to require individual agencies, including CMS, to establish clearly publicized processes for debtors to request reimbursement of disputed amounts that were paid in order to avoid the imposition of interest or were taken by offset and specific timelines for prompt adjudication of the amounts in dispute.

Response: We are making no changes to the final rule based on this comment. Applicable statutes and regulations do not mandate that the above quoted language be included in demand letters, nor do they mandate a specific time frame or published process for debtors to request reimbursement of disputed amounts or for refunding amounts previously collected. HHS will revisit this suggestion if it is problematic in practice.

Comment: One commenter stated that, when a debt is contested at the Treasury/private collection agency level, Treasury will often seek input from CMS concerning the validity of the

underlying debt. The commenter submitted that when this occurs, it is appropriate for Treasury to suspend all collection efforts, including offset. Accordingly, the commenter requested that HHS add a provision to the regulation authorizing suspension of all collection activities by Treasury or a private collection agency when Treasury seeks guidance from HHS regarding the validity of a particular debt in dispute.

Response: We are making no changes to the final rule based on this comment. This comment addresses current Treasury procedures and is outside the scope of the Claims Collection regulations.

Comment: One commenter supported HHS's proposed modifications of the regulations which would authorize HHS to compromise, suspend or terminate collection activity on a debt under $100,000 in principal amount without the concurrence of Justice. See Proposed §§ 30.21 and 30.28. The commenter also supports amendments set forth in proposed § 30.36 which raise the minimum amount of debt necessary for referral for litigation.

Response: No response to this comment is necessary.

Comment: One commenter supported proposed § 30.22(a)(3)(i) which authorizes the Secretary to compromise a debt where the cost of collecting the debt does not justify the enforced collection of the full amount, but requested that the regulation be amended to state that ''[t]he amount accepted in compromise of such cases may reflect an appropriate discount for the administrative and litigation costs of collection, with consideration given to the time it will take to effect collection and the age of the delinquent debt.'' Likewise, the commenter requested that proposed § 30.19 be amended to direct that the age of delinquent debt be considered in developing data on costs and corresponding recovery rates to be used (among other things) in establishing guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries. The commenter believed the age of alleged MSP debt directly affects the demand letter processing and collection costs for both the government and the alleged debtors and should be expressly considered in establishing collection guidelines. The commenter requested that HHS amend the Claims Collection regulation to expressly recognize that it is appropriate for agencies to (1) Take the age of a debt into account when determining what documentation must be provided by the alleged debtor to mount a defense, and (2) exercise flexibility in determining whether additional collection efforts are appropriate or justified concerning old debt.

Response: We are making no changes to the final rule based on this comment. We do not agree that it is necessary or appropriate to specifically require consideration of the age of the delinquent debt as a factor in pursuing or compromising a debt.

Comment: There were several comments related to the rule's impact on state collection activities when states seek to collect debts due under a program authorized under the Social Security Act for which Federal funds were provided (*i.e.*, Temporary Assistance to Needy Families (TANF), State Children's Health Insurance Program (SCHIP) and Medicaid). Certain commenters explained the difficulties and increased burdens on states in following the proposed rule. For example, one commenter offered that the particular state would need to change its computer system and the current way it did business. Other commenters explained the benefits of interpreting the rule to allow TANF debts to be collected pursuant to the rule and strongly recommended the rule be interpreted to include state debts and authorize states to submit TANF debts to the Treasury Offset Program.

Response: We are making no changes to the final rule based on these comments, but draw the commenters' attention to several points. In the TANF program, there is no direct Federal share in recipient overpayments because TANF is a block grant program. Therefore, these regulations would not affect state collection activities with respect to recipient families. In addition, states are not subject to the FCCS when seeking to collect state overpayments made to providers in the Medicaid and SCHIP programs. Because we do not believe that this regulation imposes any new requirement related to state collection activities in the referenced Social Security Act programs that are related to overpayments or other debts to or on behalf of individual recipients, we do not find any burden on states related to such collection activities.

Comment: One commenter recommended that many mandates in the regulation be made permissive (*i.e.*, changing ''shall'' to ''may'' in certain places in the regulation text) so as not to mandate certain state action.

Response: We are making no changes to the final rule based on this comment because, as explained in the response to the previous comments (directly above), the HHS regulation does not place these mandates on states.

Comment: One commenter asked whether states administering TANF, SCHIP or Medicaid should refer cases to the HHS Office of the Inspector General.

Response: The proposed rule was not intended to change the current way states refer to law enforcement entities claims that are suspected to involve fraud, false information, or misrepresentation on the part of the debtor. States should continue to refer such claims to the appropriate governmental entity pursuant to applicable Federal and State laws and agency guidance.

Other Changes Made to the Final Rule

We have also changed § 30.18(b)(2), regarding the percentage of interest to be charged on debts. The NPRM requirement that the Department document in writing the reasons for charging a higher rate was omitted and the following language was added: ''Any such higher rate of interest charged will be based on Treasury's quarterly rate certification to the U.S. Public Health Service for delinquencies in the National Research Services Awards and the National Health Services Corps Scholarship Program. The Department publishes this rate in the **Federal Register** quarterly.''

Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order (EO) 13132 (Federalism). We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the EO and, consequently, a federalism summary impact statement is not required.

Analysis of Impacts

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, this proposed rule will impose no new reporting or recordkeeping requirements on any member of the public.

Economic Impact

We have examined the impact of this rule as required by EO 12866 (Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980; Pub. L. No. 96–354); the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. No. 104–4); and the Truth in Regulating Act of 2000 (5 U.S.C. 801 note). EO 12866

directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize the benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in 1 year). We have determined that the rule is consistent with the principles set forth in EO 12866, and we find that the rule would not have an effect on the economy that exceeds $100 million in any one year. In addition, this rule is not a major rule as defined at 5 U.S.C. 804(2). In accordance with the provisions of the EO 12866, the rule was reviewed by the Office of Management and Budget.

Under the RFA, 5 U.S.C. 605(b), if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. The agency has considered the effect that this rule would have on small entities. I hereby certify, under 5 U.S.C. 605(b), that the rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizations and small local governments. Therefore, a regulatory flexibility analysis is not required by 5 U.S.C. 603. Section 202 of the UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. As noted above, we find that the rule would not have an effect of this magnitude on the economy. Therefore, no further analysis is required under the UMRA.

Plain Language

EO 12866 and the President's memorandum of June 1, 1998, require all rules to be written in plain language. We believe we have done so.

List of Subjects in 45 CFR Part 30

Administrative practice and procedure, Claims, Debts, Appeals, Government employees, Privacy.

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■ HHS revises 45 CFR part 30 to read as follows:

PART 30—CLAIMS COLLECTION

Subpart A—General Provisions

Sec.

30.1 Purpose, authority, and scope.
30.2 Definitions.
30.3 Antitrust, fraud, exception in the account of an accountable official, and interagency claims excluded.
30.4 Compromise, waiver, or disposition under other statutes not precluded.
30.5 Other administrative remedies.
30.6 Form of payment.
30.7 Subdivision of claims.
30.8 Required administrative proceedings.
30.9 No private rights created.

Subpart B—Standards for the Administrative Collection of Debts

30.10 Collection activities.
30.11 Demand for payment.
30.12 Administrative offset.
30.13 Debt reporting and the use of credit reporting agencies.
30.14 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.
30.15 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits or privileges.
30.16 Liquidation of collateral.
30.17 Collection in installments.
30.18 Interest, penalties, and administrative costs.
30.19 Review of cost effectiveness of collection.
30.20 Taxpayer information.

Subpart C—Debt Compromise

30.21 Scope and application.
30.22 Basis for compromise.
30.23 Enforcement policy.
30.24 Joint and several liability.
30.25 Further review of compromise offers.
30.26 Consideration of tax consequences to the Government.
30.27 Mutual release of the debtor and the Government.

Subpart D—Suspending and Terminating Collection Activities

30.28 Scope and application.
30.29 Suspension of collection activity.
30.30 Termination of collection activity.
30.31 Exception to termination.
30.32 Discharge of indebtedness; reporting requirements.

Subpart E—Referrals to the Department of Justice

30.33 Prompt referral.
30.34 Claims Collection Litigation Report.
30.35 Preservation of evidence.
30.36 Minimum amount of referrals.

Authority: 31 U.S.C. 3711(d).

Subpart A—General Provisions

§ 30.1 Purpose, authority, and scope.

(a) *Purpose.* This part prescribes the standards and procedures for the Department's use in the administrative collection, offset, compromise, and suspension or termination of collection activity for claims for funds or property, as defined by 31 U.S.C. 3701(b) and this part. Covered activities include the collection of debts in any amount; the compromise and suspension or termination of collection activity of debts that do not exceed $100,000, or such higher amount as the Attorney General may prescribe, exclusive of interest, penalties, and administrative costs; and the referral of debts to the Department of the Treasury (Treasury), the Treasury-designated debt collection centers, or the Department of Justice (Justice) for collection by further administrative action or litigation, as applicable.

(b) *Authority.* The Secretary is issuing the regulations in this part under the authority contained in 31 U.S.C. 3711(d). The standards and procedures prescribed in this part are authorized under the Federal Claims Collection Act, as amended, Public Law No. 89–508, 80 Stat. 308 (July 19, 1966), the Debt Collection Act of 1982, Public Law No. 97–365, 96 Stat. 1749 (October 25, 1982), the Debt Collection Improvement Act of 1996, Public Law No. 104–134, 110 Stat. 1321, 1358 (April 26, 1996) and the Federal Claims Collection Standards at 31 CFR parts 900 through 904.

(c) *Scope.* (1) The standards and procedures prescribed in this part apply to all officers and employees of the Department, including officers and employees of the various Operating Divisions and Regional Offices of the Department, charged with the collection and disposition of debts owed to the United States.

(2) The standards and procedures set forth in this part will be applied except where specifically excluded herein or where a statute, regulation or contract prescribes different standards or procedures.

(3) Regulations governing the use of certain debt collection procedures created under the Debt Collection Improvement Act of 1996, including tax refund offset, administrative wage garnishment, and Federal salary offset, are contained in parts 31 through 33 of this chapter.

§ 30.2. Definitions.

In this part—

Administrative offset means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt.

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Government, including Government corporations.

Appropriate official means the Department official who, by statute or delegation of authority, determines the existence and amount of debt.

Business day means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a Federal holiday, in which case the next business day following the holiday will be considered the last day of the period.

Claim see the definition for the term ''debt.'' The terms ''claim'' and ''debt'' are synonymous and interchangeable.

Creditor agency means an agency to which a debt is owed, including a debt collection center acting on behalf of a creditor agency.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal holiday, in which case the next business day will be considered the last day of the period.

Debt or claim means an amount of funds or other property determined by an appropriate official of the Federal Government to be owed to the United States from any person, organization, or entity, except another Federal agency. For the purpose of administrative offset, the term includes an amount owed by an individual to a State, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico. Debts include, but are not limited to, amounts owed pursuant to: Loans insured or guaranteed by the United States; fees; leases; rents; royalties; services; sales of real or personal property; Federal salary overpayments; overpayments to program beneficiaries, contractors, providers, suppliers, and grantees; audit disallowance determinations; civil penalties and assessments; theft or loss; interest; fines and forfeitures (except those arising under the Uniform Code of Military Justice); and all other similar sources.

Debt collection center means the Department of the Treasury, or other Federal agency, subagency, unit, or division designated by the Secretary of the Treasury to collect debts owed to the United States.

Debtor means an individual, organization, association, partnership, corporation, or State or local government or subdivision indebted to the Government, or the person or entity with legal responsibility for assuming the debtor's obligation.

Debts arising under the Social Security Act are overpayments to, or contributions, reimbursements, penalties or assessments owed by, any entity, individual, or State under the Social Security Act. Such amounts include amounts owed to the Medicare program under section 1862(b) of the Social Security Act. Salary overpayments and other debts that result from the administration of the provisions of the Social Security Act are not deemed to ''arise under'' the Social Security Act for purposes of this part.

Delinquent debt means a debt which the debtor does not pay or otherwise resolve by the date specified in the initial demand for payment, or in an applicable written repayment agreement or other instrument, including a post-delinquency repayment agreement.

Department means the Department of Health and Human Services, and its Operating Divisions and Regional Offices.

Disbursing official means an officer or employee who has authority to disburse public money pursuant to 31 U.S.C. 3321 or another law.

Disposable pay means that part of the debtor's current basic, special, incentive, retired, and retainer pay, or other authorized pay, remaining after deduction of amounts required by law to be withheld. For purposes of calculating disposable pay, legally required deductions that must be applied first include: Tax levies pursuant to the Internal Revenue Code (title 26, United States Code); properly withheld taxes, FICA, Medicare; health and life insurance premiums; and retirement contributions. Amounts deducted under garnishment orders, including child support garnishment orders, are not legally required deductions for calculating disposable pay.

Evidence of service means information retained by the Department indicating the nature of the document to which it pertains, the date of mailing of the document, and the address and name of the debtor to whom it is being sent. A copy of the dated and signed written notice provided to the debtor pursuant to this part may be considered evidence of service for purposes of this part. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

FMS means the Financial Management Service, a bureau of the Department of the Treasury.

Hearing means a review of the documentary evidence to confirm the existence or amount of a debt or the terms of a repayment schedule. If the Secretary determines that the issues in dispute cannot be resolved by such a review, such as when the validity of the claim turns on the issue of credibility or veracity, the Secretary may provide an oral hearing. (See 45 CFR 33.6(c)(2) for oral hearing procedures that may be provided by the Secretary).

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury.

Late charges means interest, penalties, and administrative costs required or permitted to be assessed on delinquent debts.

Legally enforceable means that there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action.

Local government means a political subdivision, instrumentality, or authority of any State, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico, or an Indian tribe, band or nation.

Operating Division means each separate component, agency, subagency, and unit within the Department of Health and Human Services, including, but not limited to, the Administration for Children and Families, the Administration on Aging, the Centers for Disease Control and Prevention, the Centers for Medicare & Medicaid Services, the Food and Drug Administration, the National Institutes of Health, Substance Abuse and Mental Health Services Administration, Indian Health Service, Health Resources and Services Administration, Agency for Toxic Substances and Disease Registry, Agency for Healthcare Research and Quality, and the Office of the Secretary.

OPM means the Office of Personnel Management.

Payment authorizing agency means an agency that transmits a voucher to a disbursing official for the disbursement of public money.

Payments made under the Social Security Act means payments by this Department or other agencies to beneficiaries, providers, intermediaries, physicians, suppliers, carriers, States, or other contractors or grantees under a Social Security Act program, including: Title I (Grants to States for Old-Age Assistance for the Aged); Title II (Federal Old-Age, Survivors, and Disability Insurance Benefits); Title III (Grants to States for Unemployment Compensation Administration); Title IV (Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services); Title V (Maternal and Child Health Services Block Grant); Title IX (Miscellaneous Provisions Relating to Employment Security); Title X (Grants to States for Aid to the Blind); Title XI, Part B (Peer Review of the Utilization and Quality of Health Care Services); Title XII (Advances to State Unemployment Funds); Title XIV (Grants to States for

Aid to Permanently and Totally Disabled); Title XVI (Grants to States for Aid to the Aged, Blind, and Disabled); Title XVII (Grants for Planning Comprehensive Action to Combat Mental Retardation); Title XVIII (Health Insurance for the Aged and Disabled); Title XIX (Grants to States for Medical Assistance Programs); Title XX (Block Grants to States for Social Services); and Title XXI (State Children's Health Insurance Program). Federal employee salaries and other payments made by the Department or other agencies in the course of administering the provisions of the Social Security Act are not deemed to be ''payable under'' the Social Security Act for purposes of this part.

Private collection contractors means private debt collection under contract with the Department to collect a nontax debt or claim owed to the Department. The term includes private debt collectors, collection agencies, and commercial attorneys.

Salary offset means an administrative offset to collect a debt owed by a Federal employee through deductions at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

Secretary means the Secretary of Health and Human Services, or the Secretary's designee.

Taxpayer identification number means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is the individual's Social Security Number.

Tax refund offset means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt.

§ 30.3 Antitrust, fraud, exception in the account of an accountable official, and interagency claims excluded.

(a) *Claims involving antitrust violations or fraud.* (1) The standards in this part relating to compromise, suspension, and termination of collection activity do not apply to any debt based in whole or in part on conduct in violation of antitrust laws, or to any debt involving fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, unless the Department of Justice returns a referred claim to the Department for further handling in accordance with parts 31 CFR 900 through 904 and this part.

(2) Upon identification of a debt suspected of involving an antitrust violation or fraud, a false claim, misrepresentation, or other criminal activity or misconduct, the Secretary shall refer the debt to the Office of the Inspector General for review.

(3) Upon the determination of the Office of the Inspector General that a claim is based in whole or in part on conduct in violation of the antitrust laws, or involves fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, the Secretary shall promptly refer the case to the Department of Justice for action.

(b) *Exception in the account of an accountable official.* The standards in this part do not apply to compromise of an exception in the account of an accountable official.

(c) *Interagency claims.* This part does not apply to claims between Federal agencies. The Department will attempt to resolve interagency claims by negotiation in accordance with EO 12146.

§ 30.4 Compromise, waiver, or disposition under other statutes not precluded.

Nothing in this part precludes the Department from disposing of any claim under statutes and implementing regulations other than subchapter II of chapter 37 of Title 31 of the United States Code and the Federal Claims Collection Standards, 31 CFR parts 900 through 904. Any statute and implementing regulation specifically applicable to the claims collection activities of the Department will take precedence over this part.

§ 30.5 Other administrative remedies.

The remedies and sanctions available under this part for collecting debts are not intended to be exclusive. Nothing contained in this part precludes using any other administrative remedy which may be available for collecting debts owed to the Department, such as converting the method of payment under a grant from an advancement to a reimbursement method or revoking a grantee's letter-of-credit.

§ 30.6 Form of payment.

Claims may be paid in the form of money or, when a contractual basis exists, the Department may demand the return of specific property or the performance of specific services.

§ 30.7 Subdivision of claims.

Debts may not be subdivided to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor's liability arising from a particular transaction or contract shall be considered a single debt in determining whether the debt, exclusive of interest, penalties and administrative costs, does not exceed $100,000, or such higher amount as prescribed by the Attorney General for purposes of compromise, or suspension or termination of collection activity.

§ 30.8 Required administrative proceedings.

This part does not supersede, or require omission or duplication of administrative proceedings required by contract, or other laws or regulations. See for example, 42 CFR part 50 (Public Health Service), 45 CFR part 16 (Departmental Grant Appeals Board), and 48 CFR part 33 (Federal Acquisition Regulation) and part 333 (HHS Acquisition Regulation).

§ 30.9 No private rights created.

The standards in this part do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, the Department, its officers, or any other person, nor shall the failure of the Department to comply with any of the provisions of this part be available to any debtor as a defense.

Subpart B—Standards for the Administrative Collection of Debts

§ 30.10 Collection activities.

(a) *General rule.* The Secretary shall aggressively and timely collect all debts arising out of activities of, or referred or transferred for collection actions to, the Department. Normally, an initial written demand for payment shall be made no later than 30 days after a determination by an appropriate official that a debt exists.

(b) *Cooperation with other agencies.* The Department shall cooperate with other agencies in their debt collection activities.

(c) *Transfer of delinquent debts.* (1) *Mandatory transfer.* The Department shall transfer legally enforceable debts 180 days or more delinquent to Treasury in accordance with the requirements of 31 CFR 285.12. This requirement does not apply to any debt that:

(i) Is in litigation or foreclosure;

(ii) Will be disposed of under an approved asset sale program within one year of becoming eligible for sale;

(iii) Has been referred to a private collection contractor for a period of time acceptable to the Secretary of the Treasury;

(iv) Is at a debt collection center for a period of time acceptable to the Secretary of the Treasury (see paragraph (c)(2) of this section);

(v) Will be collected under internal offset procedures within three years after the debt first became delinquent; or

(vi) Is exempt from this requirement based on a determination by the

Secretary of the Treasury that exemption for a certain class of debt is in the best interest of the United States.

(2) *Permissive transfer.* The Secretary may refer debts less than 180 days delinquent, including debts referred to the Department by another agency, to the Treasury in accordance with the requirements of 31 CFR 285.12, or with the consent of the Treasury, to a Treasury-designated debt collection center to accomplish efficient, cost effective debt collection. Referrals to debt collection centers shall be at the discretion of, and for a time period acceptable to, the Secretary of the Treasury. Referrals may be for servicing, collection, compromise, suspension, or termination of collection action.

§ 30.11 Demand for payment.

(a) *Written demand for payment.* (1) Written demand, as described in paragraph (b) of this section, shall be made promptly upon a debtor in terms that inform the debtor of the consequences of failing to cooperate with the Department to resolve the debt.

(2) Normally, the demand letter will be sent no later than 30 days after the appropriate official determines that the debt exists. The demand letter shall be sent by first class mail to the debtor's last known address.

(3) When necessary to protect the Government's interest, for example to prevent the running of a statute of limitations, the written demand for payment may be preceded by other appropriate action under this part, including immediate referral to Justice for litigation.

(b) *Demand letters.* The specific content, timing, and number of demand letters shall depend upon the type and amount of the debt and the debtor's response, if any, to the Department's letters or telephone calls. Generally, one demand letter should suffice; however, more may be used.

(1) The written demand for payment shall include the following information:

(i) The nature and amount of the debt, including the basis for the indebtedness;

(ii) The date by which payment should be made to avoid late charges and enforced collection, which generally shall be no later than 30 days from the date the demand letter is mailed;

(iii) The applicable standards for imposing any interest, penalties, or administrative costs (see § 30.18);

(iv) The rights, if any, the debtor may have to:

(A) Seek review of the Department's determination of the debt, and for purposes of administrative wage garnishment or salary offset, to request a hearing (see 45 CFR parts 32 and 33); and

(B) Enter into a reasonable repayment agreement.

(v) An explanation of how the debtor may exercise any of the rights described in paragraph (b)(1)(iv) of this section;

(vi) The name, address, and phone number of a contact person or office within the Department to address any debt-related matters; and

(vii) The Department's remedies to enforce payment of the debt, which may include:

(A) Garnishing the debtor's wages through administrative wage garnishment;

(B) Offsetting any Federal payments due the debtor, including income tax refunds, salary, certain benefit payments such as Social Security, retirement, and travel reimbursements and advances;

(C) Referring the debt to a private collection contractor;

(D) Reporting the debt to a credit bureau or other automated database;

(E) Referring the debt to Justice for litigation; and

(F) Referring the debt to Treasury for any of the collection actions described in paragraphs (b)(1)(vii)(A) through (E) of this section, advising the debtor that such referral is mandatory if the debt is 180 or more days delinquent.

(2) The written demand for payment should also include the following information:

(i) The debtor's right to inspect and copy all records of the Department pertaining to the debt, or if the debtor or the debtor's representative cannot personally inspect the records, to request and receive copies of such records;

(ii) The Department's willingness to discuss with the debtor alternative methods of payment;

(iii) A debtor delinquent on a debt is ineligible for Government loans, loan guarantees, or loan insurance until the debtor resolves the debt;

(iv) When seeking to collect statutory penalties, forfeiture or other similar types of claim, the debtor's licenses, permits, or other privileges may be suspended or revoked if failure to pay the debt is inexcusable or willful. Such suspension or revocation shall extend to programs or activities administered by the States on behalf of the Federal Government, to the extent that they affect the Federal Government's ability to collect money or funds owed by debtors;

(v) Knowingly making false statements or bringing frivolous actions may subject the debtor to civil or criminal penalties under 31 U.S.C. 3729–3731, 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority, and, if the debtor is a Federal employee, to disciplinary action under 5 CFR part 752 or other applicable authority;

(vi) Any amounts collected and ultimately found not to have been owed by the debtor will be refunded;

(vii) For salary offset, up to 15% of the debtor's current disposable pay may be deducted every pay period until the debt is paid in full; and

(viii) Dependent upon applicable statutory authority, the debtor may be entitled to consideration for a waiver.

(c) The Secretary will retain evidence of service indicating the date of mailing of the demand letter. The evidence of service, which may include a certificate of service, may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(d) Prior to, during, or after the completion of the demand process, if the Secretary determines to pursue, or is required to pursue offset, the procedures applicable to offset should be followed (see § 30.12). The availability of funds for debt satisfaction by offset and the Secretary's determination to pursue collection by offset shall release the Secretary from the necessity of further compliance with paragraphs (a), (b), and (c) of this section.

(e) *Finding debtors.* The Secretary will use every reasonable effort to locate debtors, using such sources as telephone directories, city directories, postmasters, drivers license records, automobile title and license records in State and local government agencies, the IRS, credit reporting agencies and skip locator services. Referral of a confess-judgment note to the appropriate United States Attorney's Office for entry of judgment will not be delayed because the debtor cannot be located.

(f) *Communications from debtors.* The Secretary should respond promptly to communications from debtor, within 30 days where feasible, and should advise debtors who dispute debts to furnish available evidence to support their contentions.

(g) *Exception.* This section does not require duplication of any notice already contained in a written agreement, letter or other document signed by, or provided to, the debtor.

§ 30.12 Administrative offset.

(a) *Scope.* (1) Administrative offset is the withholding of funds payable by the United States to, or held by the United States for, a person to satisfy a debt.

(2) This section does not apply to:

(i) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c), and implementing regulation at 31 CFR 285.4;

(iii) Debts arising under, or payments made under, the Internal Revenue Code or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K; 31 CFR 285.7; and part 33 of this chapter);

(v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments for particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(4) Unless otherwise provided by law, collection by administrative offset under the authority of 31 U.S.C. 3716 may not be conducted more than 10 years after the Department's right to collect the debt first accrued, unless facts material to the Department's right to collect the debt were not known and could not reasonably have been known by the Secretary. This limitation does not apply to debts reduced to judgment.

(5) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, the Office of the General Counsel should be contacted for legal advice concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362 and 553, on pending or contemplated collections by offset.

(b) *Centralized administrative offset.* (1) Except as provided in the exceptions listed in § 30.10(c)(1), legally enforceable debts which are 180 days delinquent shall be referred to the Secretary of the Treasury for collection by centralized administrative offset pursuant to and in accordance with 31 CFR 901.3(b). Debts which are less than 180 days delinquent, including debts referred to the Department by another agency, also may be referred to the Secretary of the Treasury for collection by centralized administrative offset.

(2) When referring delinquent debts to the Secretary of the Treasury for centralized administrative offset, the Department must certify, in a form acceptable to the Secretary of the Treasury, that:

(i) The debt is past due and legally enforceable; and

(ii) The Department has complied with all due process requirements under 31 U.S.C. 3716(a) and paragraph (c)(2) of this section.

(3) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. The Secretary of the Treasury shall exempt payments under means-tested programs from centralized administrative offset when requested in writing by the head of the payment certifying or authorizing agency. Also, the Secretary of the Treasury may exempt other classes of payments from centralized offset upon the written request of the head of the payment certifying or authorizing agency.

(c) *Non-centralized administrative offset.* (1) Unless otherwise prohibited by law, when centralized administrative offset under paragraph (b) of this section is not available or appropriate, the Secretary may collect a delinquent debt by conducting non-centralized administrative offset internally or in cooperation with the agency certifying or authorizing payments to the debtor.

(2) Except as provided in paragraph (c)(3) of this section, administrative offset may be initiated only after:

(i) The debtor has been sent written notice of the type and amount of the debt, the intention of the Department to initiate administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(ii) The debtor has been given:

(A) The opportunity to inspect and copy Department records related to the debt;

(B) The opportunity for a review within the Department of the determination of indebtedness; and

(C) The opportunity to make a written agreement to repay the debt.

(3) The due process requirements under paragraph (c)(2) of this section may be omitted when:

(i) Offset is in the nature of a recoupment, i.e., the debt and the payment to be offset arise out of the same transaction or occurrence;

(ii) The debt arises under a contract as set forth in Cecile Industries, Inc. v. Cheney, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets covered by the Contracts Disputes Act); or

(iii) In the case of non-centralized administrative offset conducted under paragraph (c)(1) of this section, the Department first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, the Secretary shall give the debtor such notice and an opportunity for review as soon as practical and shall promptly refund any money ultimately found not to have been owed to the Government.

(4) When the debtor previously has been given any of the required notice and review opportunities with respect to a particular debt, such as under § 30.11 of this part, the Department need not duplicate such notice and review opportunities before administrative offset may be initiated.

(5) Before requesting that a payment authorizing agency to conduct non-centralized administrative offset, the Department shall:

(i) Provide the debtor with due process as set forth in paragraph (c)(2) of this section; and

(ii) Provide the payment authorizing agency written certification that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the Department has fully complied with this section.

(6) When a creditor agency requests that the Department, as the payment authorizing agency, conduct non-centralized administrative offset, the Secretary shall comply with the request, unless the offset would not be in the best interest of the United States with respect to the program of the Department, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset, including salary offset.

(7) When collecting multiple debts by non-centralized administrative offset, the Department will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(d) *Requests to OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund and the Federal Employee Retirement System.* Upon providing OPM written certification that a debtor has been

afforded the procedures provided in paragraph (c)(2) of this section, the Department may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with 5 CFR part 831, subpart R, or under the Federal Employee Retirement System (FERS) in accordance with 5 CFR part 845, subpart D. Upon receipt of such a request, OPM will identify and ''flag'' a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund or under FERS. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in 31 CFR 901.3(b)(4).

(e) *Review requirements.* (1) For purposes of this section, whenever the Secretary is required to afford a debtor a review within the Department, the debtor shall be provided with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the Secretary determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity.

(2) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the Department will carefully document all significant matters discussed at the hearing.

(3) An oral hearing is not required with respect to debt collection systems where determinations of indebtedness rarely involve issues of credibility or veracity, and the Secretary has determined that a review of the written record is adequate to correct prior mistakes.

(4) In those cases when an oral hearing is not required by this section, the Secretary shall accord the debtor a ''paper hearing,'' that is, a determination of the request for reconsideration based upon a review of the written record.

§ 30.13 Debt reporting and use of credit reporting agencies.

(a) *Reporting delinquent debts.* (1) The Secretary will report delinquent debts over $100 to credit bureaus or other automated databases. Debts arising under the Social Security Act are excluded from paragraph (a).

(2) Debts owed by individuals will be reported to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12).

(3) Once a debt has been referred to Treasury for collection, any subsequent reporting to or updating of a credit bureau or other automated database may be handled by the Treasury.

(4) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, the Office of the General Counsel should be contacted for legal advice concerning the impact of the Bankruptcy Code, particularly with respect to the applicability of the automatic stay, 11 U.S.C. 362, and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

(5) If the debtor has not received prior written notice under § 30.11(b), before reporting a delinquent debt under this section, the Secretary shall provide the debtor at least 60 days written notice of the amount and nature of the debt; that the debt is delinquent and the Department intends to report the debt to a credit bureau (including the specific information that will be disclosed); that the debtor has the right to dispute the accuracy and validity of the information being disclosed; and, if a previous opportunity was not provided, that the debtor may request review within the Department of the debt or rescheduling of payment. The Secretary may disclose only the individual's name, address, and social security number and the nature, amount, status and history of the debt.

(b) *Use of credit reporting agencies.* The Secretary may also use credit reporting agencies to obtain credit reports to evaluate the financial status of loan applicants, potential contractors and grantees; to determine a debtor's ability to repay a debt; and to locate debtors. In the case of an individual, the Secretary may disclose, as a routine use under 5 U.S.C 552a(b)(3), only the individual's name, address, and Social Security number and the purpose for which the information will be used.

§ 30.14 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.

(a) Subject to the provisions of paragraph (b) of this section, the Secretary may contract with private collection contractors to recover delinquent debts, provided that:

(1) The Secretary retains the authority to resolve disputes, compromise debts, suspend or terminate collection action, and refer debts to Justice for litigation;

(2) The private collection contractor is not allowed to offer the debtor, as an incentive for payment, the opportunity to pay the debt less the private collection contractor's fee unless the Secretary has granted such authority prior to the offer;

(3) The contract provides that the private collection contractor is subject to the Privacy Act of 1974 to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices, including but not limited to the Fair Debt Collection Practices Act, 15 U.S.C. 1692; and

(4) The private collection contractor is required to account for all amounts collected.

(b) The Secretary shall use government-wide debt collection contracts to obtain debt collection services provided by private collection contractors. However, the Secretary may refer debts to private collection contractors pursuant to a contract between the Department and the private collection contractor only if such debts are not subject to the requirement to transfer debts to the Department of the Treasury for debt collection under 31 U.S.C. 3711(g) and 31 CFR 285.12(e).

(c) Debts arising under the Social Security Act (which can be collected by private collection contractors only by Treasury after the debt has been referred to Treasury for collection) are excluded from this section.

(d) The Secretary may fund private collection contractor contracts in accordance with 31 U.S.C. 3718(d), or as otherwise permitted by law. A contract under paragraph (a) of this section may provide that the fee a private collection contractor charges the Department for collecting the debt is payable from the amounts collected.

(e) The Department may enter into contracts for locating and recovering assets of the United States including unclaimed assets. However, before entering into a contract to recover assets of the United States that may be held by a State government or financial institution, the Department must establish procedures that are acceptable to the Secretary of Treasury.

(f) The Secretary may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges the Department for such services may be payable from the amounts recovered, unless otherwise prohibited by statute.

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

(a)(1) Unless waived by the Secretary, financial assistance in the form of loans, loan guarantees, or loan insurance shall not be extended to any person delinquent on a non-tax debt owed to the United States. This prohibition does not apply to disaster loans. Grants,

cooperative agreements, and contracts are not considered to be loans.

(2) The authority to waive the application of this section may be delegated to the Chief Financial Officer and re-delegated only to the Deputy Chief Financial Officer.

(3) States that manage Federal activities, pursuant to approval from the Secretary, should ensure that appropriate steps are taken to safeguard against issuing licences, permits, or other privileges to debtors who fail to pay their debts to the Federal Government.

(b) The Secretary will report to Treasury any surety that fails to honor its obligations under 31 U.S.C. 9305.

(c) In non-bankruptcy cases, when seeking to collect statutory penalties, forfeitures, or other types of claims, the Secretary may suspend or revoke licenses, permits, or other privileges of a delinquent debtor if the failure to pay the debt is found to be inexcusable or willful. Such suspension or revocation will extend to programs or activities administered by the States on behalf of the Federal Government, to the extent that they affect the Federal Government's ability to collect money or funds owed by debtors.

(d) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, before taking any action to suspend or revoke under paragraph (c) of this section, the Office of the General Counsel should be contacted for legal advice concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 30.16 Liquidation of collateral.

(a)(1) The Secretary will liquidate security or collateral through the exercise of a power of sale in the security instrument or a non-judicial foreclosure, and apply the proceeds to the applicable debt(s), if the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the best interests of the United States.

(2) Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(3) The Secretary will give the debtor reasonable notice of the sale and an accounting of any surplus proceeds and will comply with other requirements under law or contract.

(b) Where there is reason to believe that a bankruptcy petition has been filed with respect to a debtor, the Office of the General Counsel should be contacted for legal advice concerning the impact of the Bankruptcy Code, particularly with respect to the applicability of the automatic stay, 11 U.S.C. 362, and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 30.17 Collection in installments.

(a) Whenever feasible, the total amount of a debt shall be collected in one lump sum payment. If a debtor is financially unable to pay a debt in one lump sum, either by funds or administrative offset, the Secretary may accept payment in regular installments. The Secretary will obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations as described in § 30.22(a)(1).

(b)(1) When the Secretary agrees to accept payments in regular installments, a legally enforceable written agreement should be obtained from the debtor that specifies all the terms and conditions of the agreement, and that includes a provision accelerating the debt in the event of a default.

(2) The size and frequency of the payments should reasonably relate to the size of the debt and the debtor's ability to pay. Whenever feasible, the installment agreement will provide for full payment of the debt, including interest and charges, in three years or less.

(3) In appropriate cases, the agreement should include a provision identifying security obtained from the debtor for the deferred payments.

§ 30.18 Interest, penalties, and administrative costs.

(a) *Generally.* Except as provided in paragraphs (g), (h), and (i) of this section, the Department shall charge interest, penalties, and administrative costs on delinquent debts owed to the United States. These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) *Interest.* The Department shall charge interest on delinquent debts owed the United States as follows:

(1) Interest shall accrue from the date of delinquency, or as otherwise provided by law. For debts not paid by the date specified in the written demand for payment made under § 30.11, the date of delinquency is the date of mailing of the notice. The date of delinquency for an installment payment is the due date specified in the payment agreement.

(2) Unless a different rate is prescribed by statute, contract, or a repayment agreement, the rate of interest charged shall be the rate established annually by the Secretary of the Treasury pursuant to 31 U.S.C. 3717. The Department may charge a higher rate if necessary to protect the rights of the United States and the Secretary has determined and documented a higher rate for delinquent debt is required to protect the Government's interests. Any such higher rate of interest charged will be based on Treasury's quarterly rate certification to the U.S. Public Health Service for delinquencies in the National Research Services Awards and the National Health Services Corps Scholarship Program. The Department publishes this rate in the **Federal Register** quarterly.

(3) Unless prescribed by statute or contract, the rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the Department may require payment of interest at a new rate that reflects the Treasury rate in effect at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, or administrative costs required by this section, unless prescribed by statute or contract. If, however, the debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.

(c) *Administrative costs.* The Department shall assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs should be based on actual costs incurred or a valid estimate of the actual costs. Calculation of administrative costs shall include all direct (personnel, supplies, etc.) and indirect collection costs, including the cost of providing a hearing or any other form of administrative review requested by a debtor, and any costs charged by a collection agency under § 30.14. These charges will be assessed monthly, or per payment period, throughout the period that the debt is overdue. Such costs may also be in addition to other administrative costs if collection is being made for another Federal agency or unit.

(d) *Penalty.* Unless otherwise established by contract, repayment agreement, or statute, the Secretary will charge a penalty of six percent a year on the amount due on a debt that is

delinquent for more than 90 days. This charge shall accrue from the date of delinquency.

(e) *Cost of living adjustment.* When there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt, an administrative debt may be increased by the cost of living adjustment in lieu of charging interest and penalties under this section. Administrative debt includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guaranties. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Such increases to administrative debts shall be computed annually.

(f) *Priority.* When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding penalties, second to administrative charges, third to interest, and last to principal.

(g) *Waiver.* (1) The Secretary shall waive the collection of interest and administrative charges imposed pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. The Secretary may extend this 30-day period on a case-by-case basis if the Secretary determines that such action is in the best interest of the Government, or otherwise warranted by equity and good conscience.

(2) The Secretary also may waive interest, penalties, and administrative charges charged under this section, in whole or in part, without regard to the amount of the debt, based on:

(i) The criteria set forth at § 30.22(a)(1) through (4) for the compromise of debts; or

(ii) A determination by the Secretary that collection of these charges is:

(A) Against equity and good conscience; or

(B) Not in the best interest of the United States.

(h) *Review.* (1) Except as provided in paragraph (h)(2) of this section, administrative review of a debt will not suspend the assessment of interest, penalties, and administrative costs. While agency review of a debt is pending, the debtor either may pay the debt or be liable for interest and related charges on the uncollected debt. When agency review results in a final determination that any amount was properly a debt and the debtor chose to retain the amount in dispute, the Secretary shall collect from the debtor the amount determined to be due, plus interest, penalties and administrative costs on such debt amount, as calculated under this section, starting from the date the debtor was first made aware of the debt and ending when the debt is repaid.

(2) *Exception.* Interest, penalties, and administrative cost charges will not be imposed on a debt for periods during which collection activity has been suspended under § 30.29(c)(1) pending agency review or consideration of waiver if statute prohibits collection of the debt during this period.

(i) *Common law or other statutory authority.* The Department may impose and waive interest and related charges on debts not subject to 31 U.S.C. 3717 in accordance with the common law or other statutory authority.

§ 30.19 Review of cost effectiveness of collection.

Periodically, the Secretary will compare costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges will be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken.

§ 30.20 Taxpayer information.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part or any other authority, the Secretary may send a request to Treasury in accordance with 31 CFR 901.11 to obtain a debtor's mailing address from the records of the IRS.

(b) Mailing addresses obtained under paragraph (a) of this section may be used to enforce collection of a delinquent debt and may be disclosed to other agencies and to collection agencies for collection purposes.

Subpart C—Debt Compromise

§ 30.21 Scope and application.

(a) *Scope.* The standards set forth in this subpart apply to the compromise of debts pursuant to 31 U.S.C. 3711. The Secretary may exercise such compromise authority for debts arising out of activities of, or referred or transferred for collection services to, the Department when the amount of the debt then due, exclusive of interest, penalties, and administrative costs, does not exceed $100,000, or any higher amount authorized by the Attorney General.

(b) *Application.* Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds $100,000 or any higher amount authorized by the Attorney General, the authority to accept a compromise rests with Justice. The Secretary shall evaluate the compromise offer, using the factors set forth in this subpart. If an offer to compromise any debt in excess of $100,000 is acceptable to the Department, the Secretary shall refer the debt to the Civil Division or other appropriate litigating division in Justice using a Claims Collection Litigation Report (CCLR), which may be obtained from Justice's National Central Intake Facility. The referral shall include appropriate financial information and a recommendation for the acceptance of the compromise offer. Justice approval is not required if the Secretary rejects a compromise offer.

§ 30.22 Bases for compromise.

(a) *Compromise.* The Secretary may compromise a debt if the full amount cannot be collected based upon inability to pay, inability to collect the full debt, cost of collection, or doubt debt can be proven in court.

(1) *Inability to pay.* The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information. In determining a debtor's inability to pay the full amount of the debt within a reasonable time, the Secretary will obtain and verify the debtor's claim of inability to pay by using credit reports or a current financial Statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income, and expenses. The Secretary may use a Departmental financial information form or may request suitable forms from Justice or the local United States Attorney's Office. The Secretary also may consider other relevant factors such as:

(i) Age and health of the debtor;

(ii) Present and potential income;

(iii) Inheritance prospects;

(iv) The possibility that assets have been concealed or improperly transferred by the debtor; and

(v) The availability of assets or income that may be realized by enforced collection proceedings.

(2) *Inability to collect full debt.* The Government is unable to collect the debt in full within a reasonable time by enforced collection proceedings.

(i) In determining the Government's ability to enforce collection, the Secretary will consider the applicable exemptions available to the debtor under State and Federal law, and may also consider uncertainty as to the price the collateral or other property will bring at a forced sale.

(ii) A compromise effected under this section should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(3) *Cost of collection.* The cost of collecting the debt does not justify the enforced collection of the full amount.

(i) The Secretary may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount accepted in compromise of such cases may reflect an appropriate discount for the administrative and litigation costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts.

(ii) In determining whether the costs of collection justify enforced collection of the full amount, the Secretary will consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principal, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(4) *Doubt debt can be proven in court.* There is significant doubt concerning the Government's ability to prove its case in court.

(i) If there is significant doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or because of a bona fide dispute as to the facts, then the amount accepted in compromise of such cases should fairly reflect the probabilities of successful prosecution to judgment, with due regard to the availability of witnesses and other evidentiary support for the Government's claim.

(ii) In determining the litigation risks involved, the Secretary will consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, that may be imposed against the Government if it is unsuccessful in litigation.

(b) *Installments.* The Secretary generally will not accept compromises payable in installments. This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment of a compromise in installments is necessary, the Secretary shall, except in the case of compromises based on paragraph (a)(4) of this section, obtain a legally enforceable written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. The Office of the General Counsel should be consulted concerning the appropriateness of including such a requirement in the case of compromises based on paragraph (a)(4) of this section. Whenever possible, the Secretary will obtain security for repayment in the manner set forth in subpart B of this part.

§ 30.23 Enforcement policy.

The Secretary may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance if the Department's enforcement policy, in terms of deterrence and securing compliance, present and future, will be adequately served by the Secretary's acceptance of the sum to be agreed upon.

§ 30.24 Joint and several liability.

(a) When two or more debtors are jointly and severally liable, the Secretary will pursue collection against all debtors, as appropriate. The Secretary will not attempt to allocate the burden of payment between the debtors but will proceed to liquidate the indebtedness as quickly as possible.

(b) The Secretary will ensure that a compromise agreement with one debtor does not automatically release the Department's claim against the remaining debtor(s). The amount of a compromise with one debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

§ 30.25 Further review of compromise offers.

If the Secretary is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within the Secretary's delegated compromise authority, the Secretary may refer the offer to the Civil Division or other appropriate litigating division in Justice, using a CCLR accompanied by supporting data and particulars concerning the debt. Justice may act upon such an offer or return it to the Secretary with instructions or advice.

§ 30.26 Consideration of tax consequences to the Government.

In negotiating a compromise, the Secretary will consider the tax consequences to the Government. In particular, the Secretary will consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor. For information on discharge of indebtedness reporting requirements see § 30.32.

§ 30.27 Mutual release of the debtor and the Government.

In all appropriate instances, a compromise that is accepted by the Secretary will be implemented by means of a mutual release. The terms of such mutual release shall provide that the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount and the Government and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction that the debtor may have. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the Government and its officials related to the transaction giving rise to the compromised debt.

Subpart D—Suspending and Terminating Collection Activities

§ 30.28 Scope and application.

(a) *Scope.* The standards set forth in this subpart apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on debts that do not exceed $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to Justice for litigation, the Secretary may suspend or terminate collection under this subpart with respect to debts arising out of activities of, or referred or transferred for collection services to, the Department.

(b) *Application.* (1) If, after deducting the amount of partial payments or collections, the principal amount of the debt exceeds $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with Justice.

(2) If the Secretary believes that suspension or termination of any debt in excess of $100,000 may be appropriate,

the Secretary shall refer the debt to the Civil Division or other appropriate litigating division in Justice, using the CCLR. The referral will specify the reasons for the Secretary's recommendation. If, prior to referral to Justice, the Secretary determines that a debt is plainly erroneous or clearly without merit, the Secretary may terminate collection activity regardless of the amount involved without obtaining Justice concurrence.

§ 30.29 Suspension of collection activity.

(a) *Generally.* The Secretary may suspend collection activity on a debt when:

(1) The Department cannot locate the debtor;

(2) The debtor's financial condition is expected to improve; or

(3) The debtor has requested a waiver or review of the debt.

(b) *Financial condition.* Based on the current financial condition of a debtor, the Secretary may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity, and:

(1) The applicable statute of limitations has not expired;

(2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, with due regard to the 10-year limitation for administrative offset prescribed by 31 U.S.C. 3716(e)(1); or

(3) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

(c) *Waiver or review.* (1) The Secretary shall suspend collection activity during the time required for consideration of the debtor's request for waiver or administrative review of the debt if the statute under which the request is sought prohibits the Secretary from collecting the debt during that time.

(2) If the statute under which the waiver or administrative review request is sought does not prohibit collection activity pending consideration of the request, the Secretary may use discretion, on a case-by-case basis, to suspend collection. Collection action ordinarily will be suspended upon a request for waiver or review if the Secretary is prohibited by statute or regulation from issuing a refund of amounts collected prior to agency consideration of the debtor's request. However, collection will not be suspended when the Secretary determines that the request for waiver or review is frivolous or was made primarily to delay collection.

(d) *Bankruptcy.* Upon learning that a bankruptcy petition has been filed with respect to a debtor, in most cases the Secretary must suspend collection activity on the debt, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless the Secretary can clearly establish that the automatic stay has been lifted or is no longer in effect. The Office of the General Counsel should be contacted immediately for legal advice, and the Secretary will take the necessary legal steps to ensure that no funds or money are paid by the Department to the debtor until relief from the automatic stay is obtained.

§ 30.30 Termination of collection activity.

(a) The Secretary may terminate collection activity when:

(1) The Department is unable to collect any substantial amount through its own efforts or through the efforts of others;

(2) The Department is unable to locate the debtor;

(3) Costs of collection are anticipated to exceed the amount recoverable;

(4) The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(5) The debt cannot be substantiated; or

(6) The debt against the debtor has been discharged in bankruptcy.

(b)(1) Collection activity will not be terminated before the Secretary has pursued all appropriate means of collection and determined, based upon the results of the collection activity, that the debt is uncollectible.

(2) Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude the Secretary from retaining a record of the account for purposes of:

(i) Selling the debt, if the Secretary of the Treasury determines that such sale is in the best interest of the United States;

(ii) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(iii) Offsetting against future income or assets not available at the time of termination of collection activity; or

(iv) Screening future applicants for prior indebtedness.

(c) Generally, the Secretary shall terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. The Secretary may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge. For example, when the Department is a known creditor of a debtor the claims of the Department may survive a discharge if the Department did not receive formal notice of the bankruptcy proceedings. When the Department believes that it has claims or offsets that may have survived the discharge of the debtor, the Office of the General Counsel should be contacted for legal advice.

§ 30.31 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, the Secretary may refer debts to Justice for litigation even though termination of collection activity may otherwise be appropriate.

§ 30.32 Discharge of indebtedness; reporting requirements.

(a)(1) Before discharging a delinquent debt, also referred to as close out of the debt, the Secretary shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g)(9), and parts 30 through 33 of this chapter, including, as applicable, administrative offset; tax refund offset; Federal salary offset; credit bureau reporting; administrative wage garnishment; litigation; foreclosure; and referral to Treasury, Treasury-designated debt collection centers, or private collection contractors.

(2) Discharge of indebtedness is distinct from termination or suspension of collection activity under this subpart, and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this part and 31 CFR parts 900 through 904.

(3) When the Department discharges a debt in full or in part, further collection action is prohibited. Therefore, before discharging a debt, the Secretary must:

(i) Make the determination that collection action is no longer warranted; and

(ii) Terminate debt collection action.

(b) In accordance with 31 U.S.C. 3711(i), the Secretary shall use competitive procedures to sell a delinquent debt upon termination of collection action if the Secretary of the

Treasury determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action, including the sale of a delinquent debt, the Secretary may not discharge a debt until the requirements of 31 U.S.C. 3711(i) have been meet.

(c) Upon discharge of an indebtedness, the Secretary must report the discharge to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1. The Secretary may request that Treasury or Treasury-designated debt collection centers file such a discharge report to the IRS on the Department's behalf.

(d) When discharging a debt, the Secretary must request that litigation counsel release any liens of record securing the debt.

Subpart E—Referrals to the Department of Justice

§ 30.33 Prompt referral.

(a)(1) The Secretary promptly shall refer to Justice for litigation debts on which aggressive collection activity has been taken in accordance with subpart B of this part, and that cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with subpart D of this part.

(2) The Secretary may refer to Justice for litigation those debts arising out of activities of, or referred or transferred for collection services to, the Department.

(b)(1) Debts for which the principal amount is over $1,000,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs shall be referred to the Civil Division or other division responsible for litigating such debts at the Department of Justice, Washington DC.

(2) Debts for which the principal amount is $1,000,000 or less, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs shall be referred to the Nationwide Central Intake Facility at Justice as required by the CCLR instructions.

(c)(1) Consistent with aggressive agency collection activity and the standards contained in this part and 31 CFR parts 900 through 904, debts shall be referred to Justice as early as possible, and, in any event, well within the period for initiating timely lawsuits against the debtors.

(2) The Secretary shall make every effort to refer delinquent debts to Justice for litigation within one year of the date such debts last became delinquent. In the case of guaranteed or insured loans, the Secretary will make every effort to refer these delinquent debts to Justice for litigation within one year from the date the loan was presented to the Department for payment or re-insurance.

(d) Justice has exclusive jurisdiction over debts referred to it pursuant to this subpart. Upon referral of a debt to Justice, the Secretary shall:

(1) Immediately terminate the use of any administrative collection activities to collect the debt;

(2) Advise Justice of the collection activities utilized to date, and their result; and

(3) Refrain from having any contact with the debtor and direct all debtor inquiries concerning the debt to Justice.

(e) After referral of a debt under this subpart, the Secretary shall immediately notify the Department of Justice of any payments credited by the Department to the debtor's account. Pursuant to 31 CFR 904.1(b), after referral of the debt under this subpart, Justice shall notify the Secretary of any payment received from the debtor.

§ 30.34 Claims Collection Litigation Report.

(a)(1) Unless excepted by Justice, the Secretary will complete the CCLR, accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to the Department of Justice for litigation.

(2) The Secretary shall complete all of the sections of the CCLR appropriate to each debt as required by the CCLR instructions, and furnish such other information as may be required in specific cases.

(b) The Secretary shall indicate clearly on the CCLR the actions that the Department wishes Justice to take with respect to the referred debt. The Secretary may indicate specifically any of a number of litigation activities which Justice may pursue, including enforced collection, judgement lien only, renew judgement lien only, renew judgement lien and enforced collection, program enforcement, foreclosure only, and foreclosure and deficiency judgment.

(c) The Secretary also shall use the CCLR to refer a debt to Justice for the purpose of obtaining approval of a proposal to compromise the debt, or to suspend or terminate administrative collection activity of the debt.

§ 30.35 Preservation of evidence.

The Secretary will maintain and preserve all files and records that may be needed by Justice to prove the Department's claim in court. When referring debts to Justice for litigation, certified copies of the documents that form the basis for the claim should be provided along with the CCLR. Upon its request, the original documents will be provided to Justice.

§ 30.36 Minimum amount of referrals.

(a) Except as in paragraph (b) of this section, claims of less than $2,500 exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General may prescribe, shall not be referred for litigation.

(b) The Secretary shall not refer claims of less than the minimum amount unless:

(1) Litigation to collect such smaller amount is important to ensure compliance with the policies and programs of the Department;

(2) The claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to the Department for enforcement; or

(3) The debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(c) The Secretary should consult with the Financial Litigation Staff of the Executive Office for United States Attorneys in Justice prior to referring claims valued at less than the minimum amount.

Dated: November 27, 2006.

Michael O. Leavitt,

Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 33

RIN 0991–AB19

Salary Offset

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) adds specific rules concerning involuntary salary

offset by adding a new part 33 to title 45 CFR. The rule implements 5 U.S.C. 5514, as amended by the salary offset provisions of the Debt Collection Improvement Act of 1996 (DCIA), as implemented by the Office of Personnel Management at 5 CFR part 550, subpart K. Involuntary salary offset was previously included in the Department's more general claims collection regulations at 45 CFR part 30.

DATES: *Effective Date:* March 8, 2007.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Davis, Associate General Counsel, General Law Division, Office of the General Counsel, Department of Health and Human Services, Room 4760 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

SUPPLEMENTARY INFORMATION:

Background

Current HHS regulations at 45 CFR part 30 provide standards and procedures for the collection and disposition of debts owed the United States, including collection by administrative offset. Standards and procedures for collection of debts from the current pay of federal employees by involuntary salary offset had been included in the administrative offset provisions of part 30. Those regulations, which this final rule replaces, are based on the Debt Collection Act of 1982 (DCA), Public Law No. 97–365, and were implemented on a government-wide basis by the Federal Claims Collection Standards (FCCS), set forth at 4 CFR part 101, issued by the Department of Justice and General Accounting Office on March 9, 1984 (49 FR 8889 (1984)), and the salary offset regulations set forth at 5 CFR part 550, subpart K, issued by the Office of Personnel Management on July 3, 1984 (49 FR 27472). The current HHS rules are in the process of being amended to comply with the Debt Collection Improvement Act of 1996 (DCIA), Public Law No. 104–134, as implemented by the Department of Treasury and the Department of Justice at 31 CFR 900–904. Since there are specific rules that apply to salary offset that go beyond those applicable to administrative offset generally, and because salary offset has a separate statutory basis, the Department takes this opportunity to segregate the salary offset provisions and provide separate guidance to specifically address the standards and procedures applicable to salary offset.

Basic Provisions

This rule prescribes the Department's standards and procedures for the collection of debts owed by Federal employees to the United States through involuntary salary offset, including changes made by the DCIA. Briefly, such changes provide for centralized computer matching through the Department of Treasury, an exclusion from the prior notice and hearing requirements for certain pay adjustments, and a priority for Federal tax levies. This regulation is inapplicable to U.S. Public Health Service Commissioned Corps officers and retirees, as, pursuant to 37 U.S.C. 1001, the U.S. Public Health Service Commissioned Corps follows regulations relating to active duty and retired pay and allowances, including the collection of indebtedness, set forth in the Department of Defense Financial Management Regulation, DOD 7000.14–R.

Authority: 5 U.S.C. 5514

This rule was published as a proposed rule on July 13, 2004 (69 FR 42022) and provided for a 60-day comment period ending on September 13, 2004. We received no comments concerning the proposed rule and are finalizing the rule as proposed with only minor clarifying changes to § 33.10. In § 33.10(b), we clarify that the employee can agree in writing to a greater deduction, as outlined in § 33.8. In § 33.10(c)(2), we inserted the word ''deemed'' in front of ''financially unable to pay.''

Reporting and Recordkeeping Requirements

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, this rule will impose no new reporting or recordkeeping requirements on any member of the public.

Economic Impact

We have examined the impact of this rule as required by Executive Order (EO) 12866 (September 1993, Regulatory Planning and Review), as amended by EO 13258 (February 2002, Amending EO 12866 on Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980; Pub. L. No. 96–354); the Unfunded Mandated Reform Act of 1995 (UMRA, Pub. L. No. 104–4); and EO 13132 (August 1999, Federalism). EO 12866, as amended by EO 13258, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize the benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects ($100 million or more in 1 year). We have determined that the rule is consistent with the principals set forth in the EO, and we find that the rule would not have an effect on the economy that exceeds $100 million in any one year. In addition, this rule is not a major rule as defined at 5 U.S.C. 804(2). In accordance with the provisions of the EO, the rule has been reviewed by the Office of Management and Budget.

Under the RFA, 5 U.S.C. 605(b), if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities and determined it will not have any effect. This rule only affects Federal employees. The agency has considered the effect that this rule would have on small entities. I hereby certify, under 5 U.S.C 605(b), that the rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizations and small local governments. Therefore, a regulatory flexibility analysis is not required by 5 U.S.C. 603. Section 202 of the UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribunal governments, in the aggregate, or by the private sector, of $100 million. As noted above, we find that the rule would not have an effect of this magnitude on the economy. Therefore, no further analysis is required under the UMRA. EO 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. We have reviewed the rule under the threshold criteria of EO 13132 and have determined that this proposed rule would not have substantial direct impact on States, or on the distribution of power and responsibilities among the various levels of government. As there are no federalism implications, a federalism impact statement is not required.

Alternatives Considered

Title 5 CFR part 550, subpart K, provides the standards to be used by Federal agencies to prepare regulations implementing 5 U.S.C. 5514. There is little room for us to consider alternatives, but where the Department has discretion (i.e., in § 33.1, specifying that the regulations cover Government-wide collections and in § 33.6, specifying that if the petition for hearing

is untimely, the Secretary may grant the request if the employee can establish that the delay was the result of circumstances beyond the employee's control, or that the employee failed to receive actual notice of the filing deadline), we drafted the rule to maximize the Department's debt collection ability and make the process fair as possible to debtors.

These regulations were submitted to the Office of Personnel Management for review prior to publication of this final rule, as required by 5 CFR part 550, subpart K.

List of Subjects in 45 CFR Part 33

Administrative practice and procedure, Claims, Debts, Claims, Debt collection, Hearings, Wages, Salary offset, and Government employees.

■ For the reasons set forth in the preamble, HHS adds 45 CFR part 33 as follows:

PART 33—SALARY OFFSET

Sec.
33.1 Purpose, authority, and scope.
33.2 Definitions.
33.3 General rule.
33.4 Notice requirements before offset.
33.5 Review of department records relating to the debt.
33.6 Hearings.
33.7 Obtaining the services of a hearing official.
33.8 Voluntary repayment agreement in lieu of salary offset.
33.9 Special review.
33.10 Procedures for salary offset.
33.11 Salary offset when the Department is the creditor agency but not the paying agency.
33.12 Salary offset when the Department is the paying agency but not the creditor agency.
33.13 Interest, penalties, and administrative costs.
33.14 Non-waiver of rights.
33.15 Refunds.
33.16 Additional administrative collection.

Authority: 5 U.S.C. 5514; 5 CFR Part 550, Subpart K.

§ 33.1 Purpose, authority, and scope.

(a) *Purpose.* This part prescribes the Department's standards and procedures for the collection of debts owed by Federal employees to the United States through involuntary salary offset.

(b) *Authority.* 5 U.S.C. 5514; 5 CFR Part 550, subpart K.

(c) *Scope.* (1) This part applies to internal and Government-wide collections of debts owed by Federal employees by administrative offset from the current pay account of the debtor without his or her consent.

(2) The procedures contained in this part do not apply to any case where an employee consents to collection through deduction(s) from the employee's pay account, or to debts arising under the Internal Revenue Code or the tariff laws of the United States, or where another statute explicitly provides for, or prohibits, collection of a debt by salary offset (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(3) This part does not preclude an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt, in the manner prescribed by the Secretary. Similarly, this part does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.

(4) Nothing in this part precludes the compromise of the debt, or the suspension or termination of collection actions, in accordance with part 30 of this title.

§ 33.2 Definitions.

In this part—

Administrative offset means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

Agency means an executive department or agency; a military department; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; and court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government Corporation.

Creditor agency means the agency to which the debt is owed, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal holiday, in which case the next business day will be considered the last day of the period.

Debt means an amount determined by an appropriate official to be owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

Debt collection center means the Department of the Treasury or other Government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

Debtor means a Federal employee who owes a debt to the United States.

Delinquent debt means a debt which the debtor does not pay or otherwise resolve by the date specified in the initial demand for payment, or in an applicable written repayment agreement or other instrument, including a post-delinquency repayment agreement.

Department means the Department of Health and Human Services, its Staff Divisions, Operating Divisions, and Regional Offices.

Disposable pay means that part of the debtor's current basic, special, incentive, retired, and retainer pay, or other authorized pay, remaining after deduction of amounts required by law to be withheld. For purposes of calculating disposable pay, legally required deductions that must be applied first include: Tax levies pursuant to the Internal Revenue Code (title 26, United States Code); properly withheld taxes, FICA, Medicare; health and life insurance premiums; and retirement contributions. Amounts deducted under garnishment orders, including child support garnishment orders, are not legally required deductions for calculating disposable pay.

Employee means any individual currently employed by an agency, as defined in this section, including seasonal and temporary employees and current members of the Armed Forces or a Reserve of the Armed Forces (Reserves).

Evidence of service means information retained by the Department indicating the nature of the document to which it pertains, the date of mailing the document, and the address and name of the debtor to whom it is being sent. A copy of the dated and signed written notice of intent to offset provided to the debtor pursuant to this part may be considered evidence of service for purposes of this part. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

Hearing means a review of the documentary evidence to confirm the existence or amount of a debt or the terms of a repayment schedule. If the Secretary determines that the issues in dispute cannot be resolved by such a review, such as when the validity of the claim turns on the issue of credibility or

veracity, the Secretary may provide an oral hearing.

Hearing official means a Departmental Appeals Board administrative law judge or appropriate alternate as outlined in § 33.7(a)(2).

Paying agency means the agency employing the individual and authorizing the payment of his or her current pay.

Salary offset means an administrative offset to collect a debt under 5 U.S.C. 5514 owed by a federal employee through deductions at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

Secretary means the Secretary of Health and Human Services, or the Secretary's designee within any Staff Division, Operating Division or Regional Office.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to this Department or another agency as required or permitted by 5 U.S.C. 5584, 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 33.3 General rule.

(a) Whenever a delinquent debt is owed to the Department by an employee, the Secretary may, subject to paragraphs (b) through (d) of this section, involuntarily offset the amount of the debt from the employee's disposable pay.

(b) Unless provided by another statute pertaining to a particular type of debt (e.g., 42 U.S.C. 292r, Health professionals education, 42 U.S.C. 297b, Nurse education), the Department may not initiate salary offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts.

(c) Except as provided in paragraph (d) of this section, prior to initiating collection through salary offset under this part, the Secretary must first provide the employee with the following:

(1) Written notice of intent to offset as described in § 33.4; and

(2) An opportunity to petition for a hearing, and, if a hearing is provided, to receive a written decision from the hearing official within 60 days on the following issues:

(i) The determination of the Department concerning the existence or amount of the debt; and

(ii) The repayment schedule, unless it was established by written agreement between the employee and Department.

(d) The provisions of paragraph (c) of this section do not apply to:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a federal benefits program requiring periodic deduction from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

§ 33.4 Notice requirements before offset.

(a) At least 30 days before the initiation of salary offset under this part, the Secretary shall mail, by first class mail, to the employee's last known address, a written notice informing the debtor of the following:

(1) The Secretary has reviewed the records relating to the debt and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(2) The Secretary's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest, penalties, and administrative costs are paid in full;

(3) The amount, stated either as a fixed dollar amount or as a percentage of pay not to exceed 15 percent of disposable pay, the frequency, the commencement date, and the duration of the intended deductions;

(4) An explanation of the Department's policies concerning the assessment of interest, penalties, and administrative costs, stating that such assessments must be made unless waived in accordance with 31 CFR 901.9 and § 30.18 of this title;

(5) The employee's right to inspect and copy all records of the Department pertaining to the debt or, if the employee or the employee's representative cannot personally inspect the records, to request and receive copies of such records;

(6) If not previously provided, the opportunity to establish a schedule for the voluntary repayment of the debt through offset, or to enter into an agreement to establish a schedule for repayment of the debt in lieu of offset, provided the agreement is in writing, signed by both the employee and the Department, and documented in the Department's files;

(7) The right to a hearing conducted by an impartial hearing official with respect to the existence and amount of the debt, or the repayment schedule, so long as a petition is filed by the employee as prescribed in § 33.6;

(8) Time limitations and other procedures or conditions for inspecting Department records pertaining to the debt, establishing an alternative repayment agreement, and requesting a hearing;

(9) The name, address, and telephone number of the person or office within the Department who may be contacted concerning the procedures for inspecting Department records, establishing an alternative repayment agreement, and requesting a hearing;

(10) The name and address of the office within the Department to which the petition for a hearing should be sent, which generally will be the Operating Division or Staff Division responsible for collecting the debt;

(11) A timely and properly filed petition for a hearing will stay the commencement of the collection proceeding;

(12) The Department will initiate action to effect salary offset not less than 30 days from the date of mailing the notice of intent, unless the employee properly files a timely petition for a hearing,

(13) A final decision on a hearing, if one is requested, will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceeding;

(14) Knowingly false or frivolous statements, representations or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code; part 752 of title 5, Code of Federal Regulations; or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or under any other applicable statutory authority; and

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or under any other applicable statutory authority;

(15) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(16) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt, which are later waived or found not owed to the United States, will be promptly refunded to the employee; and

(17) Proceedings with respect to such debt are governed by 5 U.S.C. 5514.

(b) The Secretary will retain evidence of service indicating the date of mailing of the notice.

§ 33.5 Review of department records relating to the debt.

(a) To inspect or copy Department records relating to the debt, the employee must send a written request to the Department official or office designated in the notice of intent to offset stating his or her intention. The written request must be received by the Department within 15 days from the employee's receipt of the notice.

(b) In response to a timely request as described in paragraph (a) of this section, the designated Department official shall notify the employee of the location and time when the employee may inspect and copy such records. If the employee or employee's representative is unable to personally inspect such records as the result of geographical or other constraints, the Department shall arrange to send copies of such records to the employee.

§ 33.6 Hearings.

(a) *Petitions for hearing.* (1) To request a hearing concerning the existence or amount of the debt or the offset schedule established by the Department, the employee must send a written petition to the office designated in the notice of intent to offset, see § 33.4(a)(10), within 15 days of receipt of the notice.

(2) The petition must:

(i) Be signed by the employee;

(ii) Fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position; and

(iii) Specify whether an oral or paper hearing is requested. If an oral hearing is requested, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(3) The timely filing of a petition for hearing shall stay any further collection proceedings.

(b) *Failure to timely request.* (1) If the petition for hearing is filed after the 15-day period provided for in paragraph (a)(1) of this section, the Secretary may grant the request if the employee can establish that the delay was the result of circumstances beyond the employee's control, or that the employee failed to receive actual notice of the filing deadline.

(2) An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the offset schedule established by the Department, if the employee:

(i) Fails to file a timely request for a hearing, unless such failure is excused; or

(ii) Fails to appear at an oral hearing, of which the employee was notified, unless the hearing official determines that the failure to appear was due to circumstances beyond the employee's control.

(c) *Form of hearings.* (1) General. After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing. If the hearing will be a review of the written record, the employee shall be notified that he or she should submit evidence and arguments in writing to the hearing official by a specified date, after which the record shall be closed. The date specified shall give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone because an issue of credibility or veracity is involved. Where an oral hearing is appropriate, the hearing is not an adversarial adjudication and need not take the form of an evidentiary hearing, i.e., the rules of evidence need not apply. *Oral hearings may take the form of, but are 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 arguments;

(ii) Informal meetings in which the hearing official interviews the employee; or

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

(3) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, the hearing official will make the determination based upon a review of the available written record.

(4) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this part. Witnesses who testify in oral hearings will do so under oath or affirmation.

(d) *Written decision.* (1) Date of decision. The hearing officer shall issue 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 sixty (60) days after the date on which the hearing petition was received by the creditor agency, unless the employee requested a delay in the proceedings, in which case the 60-day decision period shall be extended by the number of days by which the hearing was postponed. The recipient of an employee's request for a hearing must forward the request expeditiously to the Departmental Appeals Board so as to not jeopardize the Boards's ability to issue a decision within this 60-day period.

(2) *Content of decision.* The written decision shall include:

(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, including a determination whether the employee's petition for hearing was baseless and resulted from an intent to delay creditor agency collection activity; and

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

(e) *Failure to appear.* In the absence of good cause shown, an employee who fails to appear at a hearing shall be deemed, for the purpose of this part, to admit the existence and amount of the debt as described in the notice of intent. If the representative of the creditor agency fails to appear, the hearing official shall proceed with the hearing as scheduled and make a determination based upon oral testimony presented and the documentary evidence submitted by both parties. With the agreement of both parties, the hearing official shall schedule a new hearing date, and both parties shall be given reasonable notice of the time and place of the new hearing.

§ 33.7 Obtaining the services of a hearing official.

(a)(1) When the Department is the creditor agency, the office designated in § 33.4(a)(10) shall schedule a hearing, if one is requested by an employee, before a hearing official.

(2) When the Department cannot provide a prompt and appropriate hearing before an administrative law judge or a hearing official furnished pursuant to another lawful arrangement, the office designated in § 33.4(a)(10) may:

(i) When the debtor is not an employee of the Department, contact an agent of the employee's paying agency designated in 5 CFR part 581, Appendix A, to arrange for a hearing official; or

(ii) When the debtor is an employee of the Department, contact an agent of any agency designated in 5 CFR part 581, Appendix A, to arrange for a hearing official.

(b)(1) When another agency is the creditor agency, it is the responsibility of that agency to arrange for a hearing if one is requested. The Department will provide a hearing official upon the request of a creditor agency when the debtor is employed by the Department and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(2) Services rendered to a creditor agency under paragraph (b)(1) of this section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, as amended, 31 U.S.C. 1535.

(c) The determination of a hearing official designated under this section is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514 and this part. A creditor agency may make a certification to the Secretary of the Treasury under 5 CFR 550.1108 or a paying agency under 5 CFR 550.1109 regarding the existence and amount of the debt based on the certification of a hearing official. If a hearing official determines that a debt may not be collected via salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still seek collection of the debt through other means, such as offset of other Federal payments or litigation.

§ 33.8 Voluntary repayment agreement in lieu of salary offset.

(a)(1) In response to the notice of intent to offset, the employee may propose to establish an alternative schedule for the voluntary repayment of the debt by submitting a written request to the Department official designated in the notice of intent to offset. An employee who wishes to repay the debt without salary offset shall also submit a proposed written repayment agreement. The proposal shall admit the existence of the debt, and the agreement must be in such form that it is legally enforceable. The agreement must:

(i) Be in writing;

(ii) Be signed by both the employee and the Department;

(iii) Specify all the terms of the arrangement for payment; and

(iv) Contain a provision accelerating the debt in the event of default by the employee, but such an increase may not result in a deduction that exceeds 15 percent of the employee's disposable pay unless the employee has agreed in writing to deduction of a greater amount.

(2) Any proposal under paragraph (a)(1) of this section must be received by the Department within 30 days of the date of the notice of intent to offset.

(b) In response to a timely request as described in paragraph (a) of this section, the designated Department official shall notify the employee whether the proposed repayment schedule is acceptable. It is within the Secretary's discretion to accept a proposed alternative repayment schedule, and to set the necessary terms of a voluntary repayment agreement.

(c) No voluntary repayment agreement will be binding on the Secretary unless it is in writing and signed by both the Secretary and the employee.

§ 33.9 Special review.

(a) A Department employee subject to salary offset or a voluntary repayment agreement may, at any time, request a special review by the Secretary of the amount of the salary offset or voluntary repayment installments, based on materially changed circumstances, such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b)(1) In determining whether an offset would prevent the employee from meeting essential subsistence expenses, e.g., food, housing, clothing, transportation, and medical care, the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(i) Income from all sources;

(ii) Assets and liabilities;

(iii) Number of dependents;

(iv) Food, housing, clothing, transportation, and medical expenses; and

(v) Exceptional and unusual expenses, if any.

(2) When requesting a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents as described in paragraph (b)(1) of this section, stating why the current salary offset or payments result in an extreme financial hardship to the employee.

(c)(1) The Secretary shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes extreme financial hardship on the employee.

(2) Within 30 calendar days of the receipt of the request and supporting documents, the Secretary shall notify the employee in writing of such determination, including, if appropriate, a revised offset or repayment schedule.

(d) If the special review results in a revised offset or repayment schedule, the Secretary shall provide a new certification to the paying agency.

§ 33.10 Procedures for salary offset.

(a) *Method and source of deductions.* Unless the employee and the Secretary have agreed to an alternative repayment arrangement under § 33.8, a debt shall be collected in lump sum or by installment deductions at officially established pay intervals from an employee's current pay account.

(b) *Limitation on amount of deduction.* Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. However, the amount deducted for any pay period must 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, as outlined in § 33.8.

(c) *Duration of deductions.* (1) Lump sum. If the amount of the debt is equal to or less than 15 percent of the employee's disposable pay for an officially established pay interval, the debt generally will be collected in one lump-sum deduction.

(2) If the employee is deemed financially unable to pay in one lump-sum or the amount of the debt exceeds 15 percent of the employee's disposable pay for an officially established pay interval, the debt shall be collected in installments. Except as provided in paragraphs (e) and (f) of this section, installment deductions must be made over a period not greater than the anticipated period of active duty or employment.

(d) *When deductions may begin.* (1) Deductions will begin on the date stated in the notice of intent, unless an alternative repayment agreement under § 33.8 has been accepted or the employee has filed a timely request for a hearing.

(2) If the employee files a timely petition for hearing as provided in § 33.6, deductions will begin after the hearing official has provided the employee with a hearing and a final

written decision has been rendered in favor of the Department.

(e) *Liquidation from final check.* If an employee retires, resigns, or the period of employment ends before collection of the debt is completed, the remainder of the debt will be offset under 31 U.S.C. 3716 from subsequent payments of any nature (e.g., final salary payment or lump-sum leave) due the employee from the paying agency as of the date of separation.

(f) *Recovery from other payments due a separated employee.* If the debt cannot be satisfied by offset from any final payment due the employee on the date of separation, the Secretary will liquidate the debt, where appropriate, by administrative offset under 31 U.S.C. 3716 from later payments of any kind due the former employee (e.g., lump sum leave payment).

§ 33.11 Salary offset when the Department is the creditor agency but not the paying agency.

(a) *Centralized administrative offset.* (1) Under 31 U.S.C. 3716, the Department shall notify the Secretary of the Treasury of all past-due, legally enforceable debts which are 180 days delinquent for purposes of collection by centralized administrative offset. This includes debts which the Department seeks to recover from the pay account of an employee of another agency via salary offset. The Secretary of the Treasury and other Federal disbursing officials will match payments, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payments will be offset to collect the debt.

(2) Prior to offset of the pay account of an employee, the Department must comply with the requirements of 5 U.S.C. 5514; 5 CFR part 550, subpart K, and this part. Specific procedures for notifying the Secretary of the Treasury of a debt for purposes of collection by administrative offset, including salary offset, are contained in 31 CFR parts 285 and 901 and part 30 of this title.

(b) *Non-centralized administrative offset.* When salary offset through centralized administrative offset under paragraph (a) of this section is not possible, the Department may attempt to collect a debt through non-centralized administrative offset in accordance with part 30 of this title.

(1) *Format of the request. Upon completion of the procedures established in this part and pursuant to 5 U.S.C. 5514, the Department shall:*

(i) Certify in writing to the paying agency that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the Departmental regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(ii) If the collection is to be made in installments, advise the paying agency of the number of installments to be collected, the amount or percentage of disposable pay to be collected in each installment, and the commencement date of the installments, if a date other than the next officially established pay period is required.

(iii) Unless the employee has consented in writing to the salary deductions or signed a statement acknowledging receipt of the required procedures and this written consent or statement is forwarded to the paying agency, advise the paying agency of the action(s) taken under 5 U.S.C. 5514 and this part, and give the date(s) the action(s) was taken.

(2) *Requesting recovery from current paying agency.* (i) Except as otherwise provided in this paragraph, the Department shall submit a certified debt claim containing the information specified in paragraph (a) of this section, and an installment agreement, or other instruction on the payment schedule, if applicable, to the employee's paying agency.

(ii) If the employee is in the process of separating from the Federal Government, the Department shall submit the certified debt claim to the employee's paying agency for collection as provided in § 33.10(e). The paying agency must certify the total amount of its collection on the debt and send a copy of the certification to the employee and another copy to the Department. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments that may be due the employee from other Federal Government sources, the paying agency will provide written notification of the outstanding debt to the agency responsible for making such payments to the employee, stating the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. The Department must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(iii) If the employee is already separated and all payments due from the employee's former paying agency have been paid, the Department may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 or 5 CFR 845.401) or other similar funds, be administratively offset to collect the debt. See 31 U.S.C. 3716 and 31 CFR 901.3.

(iv) If the employee transfers to another paying agency, the Department must submit a properly certified debt claim to the new paying agency before collection can be resumed; however, the Department need not repeat the due process procedures described in 5 U.S.C. 5514 and this part. The Department shall review the debt to ensure that collection is resumed by the new paying agency.

§ 33.12 Salary offset when the Department is the paying agency but not the creditor agency.

(a) *Format of the request.* (1) When the Department is the paying agency and another agency is the creditor agency, the creditor agency must certify, in writing, to the Department that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(2) If the collection is to be made in installments, the creditor agency must also advise the Department of the number of installments to be collected, the amount or percentage of disposable pay to be collected in each installment, and the commencement date of the installments, if a date other than the next officially established pay period is required.

(3) Unless the employee has consented in writing to the salary deductions or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the Department, the creditor agency must advise the Department of the action(s) taken under 5 U.S.C. § 5514, and give the date(s) the action(s) was taken.

(b) *Requests for recovery.* (1) Complete claim. When the Department receives a properly certified debt claim from a creditor agency, deductions should be scheduled to begin prospectively at the next officially established pay interval. The employee must receive written notice as described in § 33.10 that the Department has received a certified debt claim from the creditor agency, including the amount, and written notice of the date deductions from salary will commence and the amount of such deductions.

(2) *Incomplete claim.* When the Department receives an incomplete debt claim from a creditor agency, the Secretary shall return the debt claim with a notice that procedures under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(c) *Review.* The Secretary is not required or authorized to review the merits of the determination with respect to the amount or validity of the debt certified by the creditor agency.

(d) *Employees separating.* If an employee begins separation action before the Department collects the total debt due the creditor agency, the following actions will be taken:

(1) To the extent possible, the balance owed the creditor agency will be liquidated from a final salary check, or other final payments of any nature due the employee from the Department;

(2) The Secretary will certify the total amount of the Department's collection on the debt and send a copy of the certification to the employee and another copy to the creditor agency; and

(3) If the Department's collection does not fully satisfy the debt, and the Secretary is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments that may be due the employee from other Federal Government sources, the Secretary will provide written notification of the outstanding debt to the agency responsible for making such payments to the employee. The written notification shall state that the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. The Department shall furnish a copy of this written notification to the creditor agency so that it can file a properly certified debt claim with the agency responsible for making such payments.

(e) *Employees who transfer to another paying agency.* If, after the creditor agency has submitted a debt claim to the Department, the employee transfers from the Department to a different paying agency before the debt is collected in full, the Secretary shall:

(1) Certify the total amount of the collection made on the debt; and

(2) Furnish a copy of the certification to the employee and another copy to the creditor agency along with notice of the employee's transfer.

§ 33.13 Interest, penalties, and administrative costs.

Debts owed to the Department shall be assessed interest, penalties and administrative costs in accordance with 45 CFR 30.18.

§ 33.14 Non-waiver of rights.

An employee's involuntary payment of all or any portion of a debt collected under this part shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of law or contract, unless there are statutory or contractual provisions to the contrary.

§ 33.15 Refunds.

(a) The Secretary shall promptly refund any amounts paid or deducted under this part when:

(1) A debt is waived or otherwise found not owing to the United States; or

(2) The employee's paying agency is directed by administrative or judicial order to refund amount deducted from the employee's current pay.

(b) Unless required or permitted by law or contract, refunds shall not bear interest.

§ 33.16 Additional administrative collection action.

Nothing contained in this part is intended to preclude the use of any other appropriate administrative remedy.

Dated: November 27, 2006.

Michael O. Leavitt,

Secretary.

[FR Doc. E7–4005 Filed 3–7–07; 8:45 am]

BILLING CODE 4150–26–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060606150–6240–02; I.D. 030107A]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Modification of the Gear Restrictions and Georges Bank Yellowtail Flounder Trip Limits for the U.S./Canada Management Area

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

ACTION: Temporary rule; gear restriction, trip limit.

SUMMARY: NMFS announces that the Administrator, Northeast (NE) Region, NMFS (Regional Administrator), is eliminating the haddock separator trawl requirement, which was temporarily implemented on June 19, 2006, for all limited access NE multispecies vessels fishing with trawl gear on a NE multispecies day-at-sea (DAS), and is reducing from 10,000 lb (4,536 kg) to 5,000 lb (2,268 kg) the trip limit for Georges Bank (GB) yellowtail flounder for all NE multispecies vessels fishing without a haddock separator trawl on a NE multispecies DAS in the Eastern U.S./Canada Area. This temporary reduction in the GB yellowtail flounder trip limit is effective through April 30, 2007. A projection based on available catch and discard information indicates that removal of the haddock separator trawl requirement and establishment of a 5,000–lb (2,268 kg) trip limit for GB yellowtail flounder in the Eastern U.S./Canada Area will help vessels achieve the total allowable catch (TAC) limits established for the shared U.S./Canada stocks of cod, haddock, and yellowtail flounder while preventing the GB yellowtail flounder TAC from being exceeded before the end of the 2006 fishing year on April 30, 2007. This action is therefore intended to provide increased opportunities to harvest the healthy Eastern GB haddock TAC and maximize the harvest of the GB yellowtail flounder. This action is authorized by the regulations implementing Framework 42 to the NE Multispecies Fishery Management Plan (FMP) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective March 5, 2007, through April 30, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Management Specialist, (978) 281–9145, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: The U.S. portion of the U.S./Canada Area TACs for GB cod, GB haddock, and GB yellowtail flounder for the 2006 fishing year (May 1, 2006–April 30, 2007) were specified at 374 mt, 7,480 mt, and 2,070 mt, respectively, on April 28, 2006 (71 FR 25095). Pursuant to § 648.85(a)(3)(iv)(E), once the available TAC for GB cod, GB haddock, or GB yellowtail flounder is projected to be caught, the Regional Administrator is required to close the Eastern U.S./Canada Area to all NE multispecies DAS vessels for the remainder of the fishing year. The FMP requires trawl vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS in the Eastern U.S./Canada Area to fish with either a haddock separator trawl or a flounder net. Prohibitions governing the gear

requirements for the U.S./Canada Management Area are found at § 648.14(a)(132). The regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to modify certain measures governing the harvesting of fish from the U.S./Canada Management Area, including gear requirements and trip limits, to prevent over-harvesting or under-harvesting the U.S. portion of the shared U.S./Canada TAC allocations. On June 19, 2006, (71 FR 35199) the Regional Administrator required, on a temporary basis, that all limited access NE multispecies vessels fishing on a NE multispecies DAS with trawl gear in the Eastern U.S./Canada Area use a haddock separator trawl to prevent over-harvesting of the GB cod TAC under the authority granted by the regulations at § 648.85(a)(3)(iv)(D). At that time, based upon Vessel Monitoring System (VMS) reports and other information available, the Regional Administrator projected that the 2006 Eastern U.S./Canada Area GB cod TAC would be caught before the end of the 2006 fishing year, resulting in the premature closure of the Eastern U.S./Canada Area and the potential under-harvest of the available TACs for GB haddock and GB yellowtail flounder during the 2006 fishing year. Based on that information, the Regional Administrator required that all limited access NE multispecies vessels fishing in the Eastern U.S./Canada Area under a NE multispecies DAS with trawl gear use a haddock separator trawl to reduce catch and discards of GB cod.

Based upon recent VMS reports and other available information, the Regional Administrator has projected that the current rates of harvest may result in the under-harvest of the available TACs for GB cod, GB haddock, and GB yellowtail flounder during the 2006 fishing year. Based on this information, effective March 5, 2007, through April 30, 2007, the Regional Administrator is removing the temporary requirement that all limited access NE multispecies vessels fishing in the Eastern U.S./Canada Area under a NE multispecies DAS with trawl gear use a haddock separator trawl. The required use of the haddock separator trawl requires that certain performance incentives (cod 100 lb (45 kg)/DAS up to 1,000 lb (454 kg)/trip; all flounders combined 100 lb (45 kg)/DAS up to 500 lb (227 kg)/trip; yellowtail flounder 25 lb (11 kg)/DAS up to 250 lb (113 kg)/trip; white hake 100 lb (45 kg)/DAS up to 1,000 lb (454 kg)/trip, and all skates combined 500 lb (227 kg)/trip) be adhered to. This requirement has restricted vessels from more fully harvesting the GB yellowtail flounder TAC. Removal of the haddock separator trawl requirement allows vessels to fish with either a haddock separator trawl or a flounder net. NE multispecies vessels may elect to continue using a haddock separator trawl rather than a flounder trawl net, but will be restricted to the gear performance incentives (trip limits) associated with the haddock separator trawl. Vessels electing to fish with a flounder net will be subject to the current trip limits with the exception noted below. The Western U.S./Canada Area is unaffected by this action.

To reduce the risk of a derby fishery for GB yellowtail flounder and reduce the likelihood of attaining the GB yellowtail flounder TAC prior to the end of the 2006 fishing year, resulting in the premature closure of the Eastern U.S./Canada Area and potential under-harvest of the GB cod and GB haddock TACs, the Regional Administrator is reducing from 10,000 lb (4,536 kg) to 5,000 lb (2,268 kg) the trip limit for GB yellowtail flounder for all limited access NE multispecies DAS vessels, fishing without a haddock separator trawl, when declaring into the Eastern U.S./Canada Area, effective March 5, 2007, through April 30, 2007. For non-trawl gear vessels, this is a reduction from the current 10,000–lb (4,536–kg) trip limit.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator (AA) finds good cause to waive prior notice and opportunity for public comment for this action, because notice and comment would be impracticable and contrary to the public interest. The regulations at § 648.85(a)(3)(iv)(D) grant the Regional Administrator the authority to modify gear requirements in the U.S./Canada Management Area and to adjust the GB yellowtail flounder trip limit to prevent over-harvesting or under-harvesting the GB yellowtail flounder TAC allocation. This action would remove the requirement that all NE multispecies DAS vessels fishing with trawl gear use a haddock separator trawl when fishing in the Eastern U.S./Canada Area (i.e., vessels will be allowed the use of a flounder trawl net or a haddock separator trawl net). Removing this restriction will provide additional opportunities to harvest the healthy Eastern GB haddock stock and maximize the harvest of the GB yellowtail flounder TAC specified for the Eastern U.S./Canada Area during the 2006 fishing year. Given that approximately 30 percent of the GB yellowtail flounder TAC remains unharvested and the 2006 fishing year ends on April 30, 2007, the time necessary to provide for prior notice, opportunity for public comment, or delayed effectiveness would prevent the agency from helping to ensure that the 2006 TAC for GB yellowtail flounder will be fully harvested.

Reducing the GB yellowtail flounder trip limit from the current 10,000 lb (4,536 kg)/ trip to 5,000 lb (2,268 kg)/ trip for all limited access NE multispecies DAS vessels fishing in the Eastern U.S./Canada Area, when not fishing with a haddock separator trawl, is an ancillary measure necessary to help reduce the incentive for a derby fishery targeting GB yellowtail flounder in the Eastern U.S./Canada Area, and slow the harvest rate of GB cod and GB yellowtail flounder, while still allowing increased access to the relatively abundant Eastern GB haddock stock. Harvesting the GB yellowtail flounder TAC prior to the end of the 2006 fishing year would result in the premature closure of the Eastern U.S./Canada Area and could increase economic and social impacts to the industry beyond those analyzed for Amendment 13, because the full potential revenue from the available GB cod and GB haddock TACs in the U.S./Canada Management Area may not be realized.

For the reasons specified above, and because this action relieves a restriction, the AA finds good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the entire 30–day delayed effectiveness period for this action. A delay in the effectiveness of the gear requirement and trip limit modifications in this rule would prevent the agency from achieving a better balance between its obligations to prevent the TACs from being exceeded and facilitating the harvest of fish at a level that approaches optimum yield. Any such delay could lead to the negative impacts to the fishing industry described above.

The rate of harvest of the GB yellowtail flounder TAC in the U.S./Canada Management Area is updated weekly on the internet at *http://www.nero.noaa.gov*. Accordingly, the public is able to obtain information that would provide at least some advanced notice of a potential action to provide additional opportunities to the NE multispecies industry to fully harvest the TAC for GB yellowtail flounder during the 2006 fishing year. Further, the potential for this action was considered and open to public comment during the development of Amendment 13 and Framework 42. Therefore, any negative effect the waiving of public comment and delayed effectiveness may

have on the public is mitigated by these factors.

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

Dated: March 1, 2007.

Alan D. Risenhoover,

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

[FR Doc. 07–1067 Filed 3–2–07; 2:56 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01; I.D. 030207A]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod 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; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the A season apportionment of the 2007 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective March 5, 2007, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2007.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI 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 apportionment of the 2007 Pacific cod TAC specified for vessels using jig gear in the BSAI is 1,263 metric tons (mt) as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007), for the period 1200 hrs, A.l.t., January 1, 2007, through 1200 hrs, A.l.t., April 30, 2007. See § 679.20(c)(3)(iii), § 679.20(c)(5), § 679.20(a)(7)(i)(A), and § 679.20(a)(7)(iii)(A)(*3*).

The Acting Administrator, Alaska Region, NMFS, has determined that jig vessels will not be able to harvest 1,200 mt of the A season apportionment of the 2007 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(i)(A) and § 679.20(a)(7)(iii)(A)(*3*). Therefore, in accordance with § 679.20(a)(7)(ii)(C)(*1*), NMFS apportions 1,200 mt of Pacific cod from the A season jig gear apportionment to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007) are revised as follows: 63 mt to the A season apportionment for vessels using jig gear and 2,321 mt to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

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 reallocation of Pacific cod specified for jig vessels to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 2, 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: March 2, 2007.

James P. Burgess,

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

[FR Doc. 07–1084 Filed 3–5–07; 1:46 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 45
Thursday, March 8, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27494; Directorate Identifier 2006–NM–269–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

It has been found that both fuel level control units (LCU) and their associated harnesses throughout the aircraft does not comply with the requirements of proper segregation, in order to preclude a possible ignition source in the vicinity of the fuel tanks, as required by SFAR (Special Federal Aviation Regulation) 88 regulations.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 9, 2007.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–27494; Directorate Identifier 2006–NM–269–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2006–09–05, dated October 18, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

It has been found that both fuel level control units (LCU) and their associated harnesses throughout the aircraft does not comply with the requirements of proper segregation, in order to preclude a possible ignition source in the vicinity of the fuel tanks, as required by SFAR (Special Federal Aviation Regulation) 88 regulations.

The MCAI requires replacing the fuel LCU 1 and LCU 2; reworking the LCU 1 and LCU 2 supports; and segregating, replacing, and reworking some harnesses. You may obtain further information by examining the MCAI in the AD docket.

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

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

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

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

Relevant Service Information

EMBRAER has issued Service Bulletin 145LEG–28–0020, dated February 18, 2005. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 2 products of U.S. registry. We also estimate that it would take about 60 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $6,931 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $23,462, or $11,731 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

EMPRESA BRASILEIRA DE AERONAUTICA S.A. (EMBRAER): Docket No. FAA–2007–27494; Directorate Identifier 2006–NM–269–AD.

Comments Due Date

(a) We must receive comments by April 9, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ airplanes, certificated in any category, serial numbers 145484, 145540, 145555, 145706, and 145711.

Subject

(d) Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

''It has been found that both fuel level control units (LCU) and their associated harnesses throughout the aircraft does not comply with

the requirements of proper segregation, in order to preclude a possible ignition source in the vicinity of the fuel tanks, as required by SFAR (Special Federal Aviation Regulation) 88 regulations.''

The MCAI requires replacing the fuel LCU 1 and LCU 2; reworking the LCU 1 and LCU 2 supports; and segregating, replacing, and reworking some harnesses.

Actions and Compliance

(f) Within 48 months or 5,000 flight hours after the effective date of this AD, whichever occurs first, unless already done, do the following actions: Replace LCU 1 and LCU 2 by new ones bearing P/N (part number) 367–340–001, rework the LCU 1 and LCU 2 supports, rework and segregate electrical harnesses W102S and W102P, replace harnesses W164 and W221, and route electrical harnesses W1614 and W1620 segregating W1614, according to the detailed instructions and procedures described in EMBRAER Service Bulletin 145LEG–28–0020, dated February 18, 2005.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, *ATTN:* Dan Rodina, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2006–09–05, effective October 18, 2006; and EMBRAER Service Bulletin 145LEG–28–0020, dated February 18, 2005, for related information.

Issued in Renton, Washington, on March 1, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–4128 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–26973; Directorate Identifier 2007–CE–002–AD]

RIN 2120–AA64

Airworthiness Directives; REIMS AVIATION S.A. Model F406 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

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

* * * important corrosion found on the ailerons bearings. This condition, if left uncorrected, could result in the loss of the roll control on the airplane.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 9, 2007.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4144; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–26973; Directorate Identifier 2007–CE–002–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

substantive verbal contact we receive about this proposed AD.

Discussion

The Direction générale de l'aviation civile, which is the aviation authority for France, has issued AD No F–2005–177, dated November 9, 2005 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

* * * important corrosion found on the ailerons bearings. This condition, if left uncorrected, could result in the loss of the roll control on the airplane.

The MCAI requires:

Within the next 100 flight hours or 3 months after the effective date of this AD, whichever occurs first:

—Inspect the ailerons brackets and perform the lubrication of the ailerons bearings in accordance with the accomplishment instructions of the REIMS AVIATION INDUSTRIES Service Bulletin No. F406–59.

—Update the AMM Chapter 5–10–01 by inserting the Temporary Revision No 6 and amend consequently the operator maintenance program.

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

Relevant Service Information

REIMS AVIATION S.A. has issued REIMS AVIATION INDUSTRIES Service Bulletin No F406–59, dated October 24, 2005. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 7 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $100 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,380, or $340 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours and require parts costing $100, for a cost of $340 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

REIMS AVIATION S.A.: Docket No. FAA–2007–26973; Directorate Identifier 2007–CE–002–AD.

Comments Due Date

(a) We must receive comments by April 9, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model F406 airplanes, serial numbers F406–0001 through F406–0092, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

* * * important corrosion found on the ailerons bearings. This condition, if left uncorrected, could result in the loss of the roll control on the airplane.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within the next 100 flight hours or 3 months, whichever occurs first, after the effective date of this AD, and thereafter repetitively during a period not to exceed 12 months, inspect the aileron brackets and bearings and perform the lubrication of the aileron bearings in accordance with REIMS AVIATION INDUSTRIES Service Bulletin No. F406–59, dated October 24, 2005.

(2) If corrosion is found during any inspection required in paragraph (f)(1) of this AD, before further flight, replace the damaged parts in accordance with REIMS AVIATION INDUSTRIES Service Bulletin No. F406–59, dated October 24, 2005.

Note 1: We established the repetitive inspection times of this AD so that they may coincide with annual inspections.

Note 2: We encourage you to put Reims temporary revision No. 6 into the maintenance program of the F406 airplane (chapter 5 of the maintenance manual).

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: We added repetitive inspection requirements in this proposed AD to coincide with the maintenance requirement in the service bulletin.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Staff, FAA, *ATTN:* Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4144; *fax:* (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to Direction générale de l'aviation civile AD No F–2005–177, dated November 9, 2005; and REIMS AVIATION INDUSTRIES Service Bulletin No F406–59, dated October 24, 2005, for related information.

Issued in Kansas City, Missouri, on March 1, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–4131 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 358

[Docket No. RM07–1–000]

Standards of Conduct for Transmission Providers; Notice of Extension of Time

February 28, 2007.

AGENCY: Federal Energy Regulatory Commission; DOE.

ACTION: Notice of Proposed Rulemaking; extension of comment period.

SUMMARY: On February 28, 2007, the Commission issued a notice of proposed rulemaking proposing permanent regulations regarding the standards of conduct consistent with the decision of the United States Court of Appeals of the District of Columbia in *National Fuel Gas Supply Corporation* v. *FERC,* 468 F.3d 831 (2006), regarding natural gas pipelines. The Commission is extending the comment period on the Notice of Proposed Rulemaking at the request of the American Gas Association, the American Public Power Association, the Edison Electric Institute, the Electric Power Supply Association, the Interstate Natural Gas Association of America, the Large Public Power Council and the Natural Rural Electric Cooperative Association.

DATES: Comments must be filed on or before March 30, 2007. Reply comments must be filed on or before April 30, 2007.

FOR FURTHER INFORMATION CONTACT:

Eric Ciccoretti, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–8493, E-mail: *eric.ciccoretti@ferc.gov.*

Deme Anas, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–8178, E-mail: *demetra.anas@ferc.gov.*

Stuart Fischer, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–8517, E-mail: *stuart.fischer@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Notice Extending Comment and Reply Comment Period

On February 27, 2007, the American Gas Association, the American Public Power Association, the Edison Electric Institute, the Electric Power Supply Association, the Interstate Natural Gas Association of America, the Large Public Power Council, and the National Rural Electric Cooperative Association, filed jointly for an extension of time to file comments and reply comments in response to the Commission's Notice of Proposed Rulemaking issued January 18, 2007 in the above-captioned proceeding. Standards of Conduct for Transmission Providers, 118 FERC ¶ 61,031, 72 FR 3958 (Jan. 29, 2007), FERC Stats. & Regs. ¶ 32,611 (2007).

Upon consideration, the date for filing comments in this proceeding is extended to and including March 30, 2007 and the date for filing reply comments is extended to and including April 30, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–4117 Filed 3–7–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–055–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendments.

SUMMARY: We are announcing receipt of a proposed amendment to the Maryland regulatory program (the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Maryland Annotated Code (MAC) to increase the end of month balance cap of the Bond Supplement Reserve (Reserve) within the Bituminous Coal Open-Pit Mining Reclamation Fund. Maryland submitted these proposed amendments on its own initiative to improve the ability of the Maryland Department of the Environment to

finance reclamation projects by increasing the amounts available in the Reserve.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on April 9, 2007. If requested, we will hold a public hearing on the amendment on April 2, 2007. We will accept requests to speak at a hearing until 4 p.m. (local time), on March 23, 2007.

ADDRESSES: You may submit comments, identified by ''MD–055–FOR,'' by any of the following methods:

- *E-mail: grieger@osmre.gov*. Include ''MD–055–FOR'' in the subject line of the message;
- *Mail/Hand Delivery:* Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 415 Market Street, Room 304, Harrisburg, PA 17101; Telephone: (717) 782–4849 ext. 11;
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency docket number ''MD–055–FOR'' for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' Section in this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: You may review copies of the Maryland program, this submission, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the submission by contacting OSM's Pittsburgh Field Division Office.

Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 415 Market Street, Room 304, Harrisburg, PA 17101, Telephone: (717) 782–4849 ext. 11. E-mail: *grieger@osmre.gov*.

Mr. C. Edmon Larrimore, Program Manager, Mining Program, Maryland Department of the Environment,1800 Washington Boulevard, Baltimore, Maryland 21230, Telephone: (410) 537–3557 or 1–800–633–6101.

FOR FURTHER INFORMATION CONTACT: Mr. George Rieger, Telephone: (717) 782–4849 ext. 11. E-mail: *grieger@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Maryland Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * *a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act* * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Maryland program on December 1, 1980. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 1, 1980, **Federal Register** (45 FR 79431). You can also find later actions concerning Maryland's program and program amendments at 30 CFR 920.12, 920.15, and 920.16.

II. Description of the Proposed Amendment

By an undated letter received on January 29, 2007 (Administrative Record Number MD–587–00), Maryland sent us an amendment to revise its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment revises MAC provisions to increase the end of month balance cap of the Bond Supplement Reserve within the Bituminous Coal Open-Pit Mining Reclamation Fund. Maryland submitted these proposed amendments on its own initiative to improve the ability of the Maryland Department of the Environment to finance reclamation projects by increasing the amounts available in the Reserve.

In its submittal of this amendment, Maryland stated that this action will improve the ability of the Maryland Department of the Environment to finance reclamation projects by increasing the amounts available in the Reserve. It also addresses findings and recommendations found in the Actuarial Study approved by OSM in the **Federal Register** dated May 13, 1998 (63 FR 26451).

This Bond Supplement Reserve Fund was established for reclamation purposes when the original bond is not sufficient to reclaim the site for which it was posted in the event of forfeiture. A surcharge is assessed for each ton of coal removed by the open-pit or strip method. Part of that surcharge is deposited into the Bituminous Coal Open-Pit Mining Reclamation Fund and another part is remitted to the county. These funds are used to supplement forfeited bonds to enable the mine site to be reclaimed. An additional surcharge for each ton is assessed and credited to the county in which the mining is occurring.

A summary of the proposed changes follows:

1. MAC 15–517(c)

Subsection (c) provides as follows:

(c) When the amount of money in the bond supplement reserve equals or exceeds $300,000 at the end of the month, deposits into the reserve of the amounts provided in subsection (b)(1) and (2) of this section shall end temporarily.

Maryland proposes to revise Subsection (c) by increasing the end-of-month balance cap of the Bond Supplement Reserve Fund from $300,000 to $750,000.

As amended, Subsection (c) provides as follows:

(c) When the amount of money in the bond supplement reserve equals or exceeds $750,000 at the end of the month, deposits into the reserve of the amounts provided in subsection (b)(1) and (2) of this section shall end temporarily.

2. MAC 15–517(d)(1)

Subsection (d)(1) provides as follows:

(1) The amount of money in the bond supplement reserve equals or exceeds $300,000 at the end of the month;

Maryland proposes to raise the end-of-month balance cap of the Bond Supplement Reserve Fund from $300,000 to $750,000.

As amended, Subsection (d)(1) provides as follows:

(1) The amount of money in the bond supplement reserve equals or exceeds $750,000 at the end of the month;

3. MAC 15–517(e)

Subsection (e) reads as follows:

(e) At the end of any month when the amount of money in the bond supplement reserve is reduced below $200,000:

Maryland proposes to raise the amount from $200,000 to $500,000 because the end-of-month balance cap that triggers the resumption of surcharges and deposits needed to be increased as well.

As amended, Subsection (e) provides as follows:

(e) At the end of any month when the amount of money in the bond supplement reserve is reduced below $500,000:

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Maryland program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Pittsburgh Field Division Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: MD–055–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Pittsburgh Field Division Office at (717) 782–4849 ext. 11.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on March 23, 2007. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) Considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute

major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 13, 2007.

H. Vann Weaver,

Acting Regional Director, Appalachian Region.

[FR Doc. E7–4147 Filed 3–7–07; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 903

[Docket No. USAF–2007–0001]

RIN 0701–AA72

Air Force Academy Preparatory School

AGENCY: DoD, USAF.

ACTION: Proposed rule.

SUMMARY: This proposed rule tells how to apply for the Air Force Academy Preparatory School. It also explains the procedures for selection, disenrollment, and assignment. This rule has been updated to identify USAFA's revised mission statement, new selection criteria and updates of associated Air Force Instructions.

DATES: Interested parties should submit written comments on or before May 7, 2007.

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

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Scotty Ashley at (703) 695–3594, *scotty.Ashley@pentagon.af.mil.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review

It has been determined that 32 CFR part 903 is not a significant regulatory action. *This rule does not:*

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

It has been certified the 32 CFR part 903 does not contain a Federal Mandate that may 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.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule * * *

Public Law 95–511, Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 903 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Federalism (Executive Order 13132)

It has been certified that 32 CFR part 903 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 903

Military academy; military personnel.

Therefore, for the reasons set forth in the preamble, 32 CFR part 903 is proposed to be revised to read as follows:

PART 903—AIR FORCE ACADEMY PREPARATORY SCHOOL

Sec.
903.1 Mission.

903.2 Eligibility Requirements.
903.3 Selection Criteria.
903.4 Application Process and Procedures.
903.5 Reserve Enlistment Procedures.
903.6 Reassignment of Air Force Members to Become Cadet Candidates at the Preparatory School.
903.7 Reassignment of Cadet Candidates Who Graduate From the Preparatory School With an Appointment to U.S. Air Force Academy (USAFA).
903.8 Cadet Candidates Disenrollment.
903.9 Cadet Records and Reassignment.

Authority: 10 U.S.C. 8012, except as otherwise noted.

Note: This part is derived from AFI 36–3021, July 1, 1994. Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

§ 903.1 Mission.

The mission of the United States Air Force Academy Preparatory School (USAFA/PL) is to motivate, prepare, and evaluate selected candidates in an educational, military, moral, and physical environment, to perform successfully and enhance diversity at USAFA.

§ 903.2 Eligibility Requirements.

(a) For admission to the HQ USAFA/PL, applicants must be:

(1) At least 17 and no more than 22 years old by 1 July of the year of admission.

(2) A citizen or permanent resident of the United States able to obtain citizenship (or Secretary of Defense waiver allowed by 10 U.S.C. 532(f)) by projected commissioning date.

(3) Unmarried and have no dependents.

(4) Of high moral character. Applicants must have no record of Uniform Code of Military Justice convictions or civil offenses beyond minor violations; no history of drug or alcohol abuse; and no prior behaviors, activities, or associations incompatible with USAF standards.

(5) Medically qualified for appointment to the U.S. Air Force Academy (USAFA).

(6) A member of the armed services or eligible to enlist in the U.S. Air Force Reserve.

(b) Normally, applicants must not have previously attended college on a full-time basis or attended a U.S. Service Academy or a U.S. Service Academy Preparatory School. The Headquarters USAFA Registrar's Office (HQ USAFA/RR) determines an applicant's status in this regard.

(c) Every applicant must be an active candidate in the USAFA admissions program, normally through one of following:

(1) Nominated by a source specified in public law.

(2) Identified by the USAFA as fulfilling institutional needs.

(d) Members of the Air Force Reserve or Air National Guard (ANG) must agree to active duty service if admitted to the HQ USAFA/PL. Admitted ANG personnel first transfer to the Air Force Reserves before leaving their place of residence and being called to active duty.

(e) Regular and reserve members of the Armed Forces and the National Guard must have completed basic training.

(f) Regular members of the Armed Forces must have at least 1 year retainability when they enter the HQ USAFA/PL.

§ 903.3 Selection Criteria.

(a) Cadet candidates for the HQ USAFA/PL are selected on the basis of demonstrated character, test scores, medical examination, prior academic record, recommendation of the organization commander (if prior service), and other similar reports or records. USAFA is authorized to make selections IAW SECAF guidance including but not limited to selection from among enlisted personnel and recruited athletes. Each applicant must:

(1) Achieve satisfactory scores on the Scholastic Aptitude Test (SAT) or the American College Testing Program (ACT).

(2) Take and pass a medical evaluation administered through the Department of Defense Medical Evaluation Review Board (DODMERB).

(3) Have an acceptable academic record as determined by HQ USAFA/RR. Each applicant must furnish a certified transcript from each high school or civilian preparatory school attended. Applicants should send transcripts to HQ USAFA/RR, 2304 Cadet Drive, Suite 200, USAF Academy CO 80840–5025.

(4) Take the Candidate Fitness Assessment.

(b) HQ USAFA/RR oversees the holistic review of each viable candidate's record by a panel. This holistic review may include consideration of factors that would enhance diversity at USAFA, such as unique academic abilities, language skills, demonstrated leadership skills, foreign cultural knowledge, athletic prowess, flying aptitude, uncommon life experiences, demonstrated moral or physical courage or other performance-based factors.

(c) HQ USAFA/RR also examines reports and records that indicate an applicant's aptitude, achievement, or ability to graduate from the HQ USAFA/PL in the selection process.

(d) HQ USAFA/RR includes Preparatory School selection guidelines in the ''Criteria and Procedures for Air Force Academy Appointment, Class of 20XX'' (Contract) and submits for Superintendent approval.

(e) For members of the Armed Forces and the National Guard, HQ USAFA/RR also considers letters of recommendation from applicants' unit commanders.

§ 903.4 Application Process and Procedures.

(a) Regular and Reserve members of the Air Force must send their applications to: HQ USAFA/RR, 2304 Cadet Dr, Suite 200, USAF Academy CO 80840–5025, no later than 31 January for admission the following summer. Those otherwise nominated to the Air Force Academy must complete all steps of admissions by 15 April.

(b) Regular and Reserve members of the Air Force must complete AF Form 1786 and submit it to their unit commander.

(c) Regular and Reserve members of the Army, Navy, or Marine Corps, as well as members of the National Guard, must submit a letter of application through their unit commander.

(d) Civil Air Patrol (CAP) cadets send their applications to HQ USAFA/RR and must apply to CAP National Headquarters by 31 January for nomination.

(e) HQ USAFA/RR automatically considers civilian candidates for admission who have a nomination to the USAFA, but were not selected.

§ 903.5 Reserve Enlistment Procedures.

(a) Civilians admitted to the HQ USAFA/PL take the oath of enlistment on the date of their initial in-processing at the HQ USAFA/PL. Their effective date of enlistment is the date they take this oath.

(b) Civilians who enlist for the purpose of attending the HQ USAFA/PL will be awarded the rank of E–1. These cadet candidates are entitled to the monthly student pay at the same rate as USAFA cadets according to United States Code Title 37, Section 203.

§ 903.6 Reassignment of Air Force Members to Become Cadet Candidates at the Preparatory School.

Selected Regular Air Force members at technical training schools remain there in casual status until the earliest reporting date for the HQ USAFA/PL. Students must not leave their training

school without coordinating with HQ USAFA/RR.

§ 903.7 Reassignment of Cadet Candidates who Graduate from the Preparatory School with an Appointment to U.S. Air Force Academy (USAFA).

The following conditions apply to USAFA Cadet Enrollment for Cadet Candidates who graduate from the Preparatory School with an appointment to the USAFA:

(a) The Air Force releases cadet candidates entering the USAFA from active duty and reassigns them to active duty as Air Force Academy cadets, effective on their date of entry into the USAFA in accordance with one of these authorities:

(1) The Department of Air Force letter entitled Members of the Armed Forces Appointed to a Service Academy, 8 July 1957.

(2) Title 10, United States Code, Sections 516 and 523. Air Force Instruction (AFI) 36–3208, Administrative Separation of Airmen.

(b) The Air Force discharges active Reserve cadet candidates who enlisted for the purpose of attending the HQ USAFA/PL in accordance with AFI 36–3208 and reassigns them to active duty as Air Force Academy cadets, effective on their date of entry into the USAFA.

§ 903.8 Cadet Candidate Disenrollment.

(a) In accordance with AFI 36–3208, the Commander, HQ USAFA/PL, may disenroll a student who:

(1) Fails to meet and maintain HQ USAFA/PL educational, military, character, or physical fitness standards.

(2) Fails to demonstrate adaptability and suitability for participation in USAFA educational, military, character, or physical training programs.

(3) Displays unsatisfactory conduct.

(4) Fails to meet statutory requirements for admission to the USAFA, for example:

(i) Marriage or acquiring legal dependents.

(ii) Medical disqualification.

(iii) Refusal to serve as a commissioned officer in the U.S. Armed Forces.

(5) Requests disenrollment.

(b) The HQ USAFA/PL commander may also disenroll a student when it is determined that the student's retention is not in the best interest of the Government.

(c) The military personnel flight (10 MSS/DPM) processes Regular Air Force members for reassignment if:

(1) They are disenrolled from the HQ USAFA/PL.

(2) They fail to obtain or accept an appointment to a U.S. Service Academy.

(d) The Air Force reassigns Air Force Reserve cadet candidates who are disenrolled from the HQ USAFA/PL or who fail to obtain or accept an appointment to an U.S. Service Academy in either of two ways under AFI 36–3208:

(1) Discharges them from the United States Air Force without any further military obligation if they were called to active duty solely to attend the HQ USAFA/PL.

(2) Releases them from active duty and reassigns them to the Air Force Reserve Personnel Center if they were released from Reserve units to attend the HQ USAFA/PL.

(e) The National Guard (Army or Air Force) releases cadet candidates from active duty and reassigns them to their State Adjutant General.

(f) The Air Force reassigns Regular and Reserve personnel from other Services back to their unit of origin to complete any prior service obligation if:

(1) They are disenrolled from the HQ USAFA/PL.

(2) They fail to obtain or accept an appointment to the USAFA.

§ 903.9 Cadet Records and Reassignment Forms.

(a) Headquarters USAFA Cadet Personnel (HQ USAFA/DPY) maintains records of cadet candidates who enter the USAFA until they are commissioned or disenrolled.

(b) 10 MSS/DPM will send records of Regular Air Force personnel who enter one of the other Service Academies to HQ Air Force Personnel Center (HQ AFPC) for processing.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E7–4129 Filed 3–7–07; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD05–06–074]

RIN 1625–AA01

Anchorage G, Hampton Flats (Naval Explosives Anchorage) Hampton Roads, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes changing the boundaries of Hampton Roads Explosive Anchorage Golf in response to a widening of the Norfolk Entrance Reach by the U. S. Army Corps of Engineers (USACE) undertaken to improve deep draft vessel traffic maneuverability, and to remove the shallow water area in the Hampton Bar Flats from the boundaries of this deepwater anchorage.

DATES: Comments and related material must reach the Coast Guard on or before April 9, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpw), Fifth Coast Guard District, 431 Crawford Street, Room 100, Portsmouth, VA 23704–5004. The telephone number is (757) 398–6360. You may Email your comments to *Albert.L.Grimes@uscg.mil.* Commander (dpw), Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Albert Grimes, Fifth Coast Guard District Prevention and Waterways, (757) 398–6360, E-mail: *Albert.L.Grimes@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–074), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On Thursday, 20 April 2006, the Coast Guard was informed by the U.S. Army Corps of Engineers of its intention to widen the Norfolk Entrance Reach project in the vicinity of Hampton Roads Golf Anchorage to better facilitate the safe passage of deep draft vessel traffic in and out of the Port of Hampton Roads. USACE studies found that deep draft ships routinely exited the federal navigation project when turning into or out of the Elizabeth River and Norfolk Entrance Reach. USACE widened the turn area ensuring project depths are available to ships while maneuvering through this turn. As a result of this channel widening a small portion of Golf Anchorage will be lost. During the Coast Guard's subsequent review of the boundaries of Golf Anchorage, it was also determined that a significant portion of shallow water in the Hampton Bar Flats area was included as a part of this anchorage area. The Coast Guard believes that this shallow water area is not required to serve the needs of deep draft vessels that Golf Anchorage was designed for and therefore should be removed from the boundaries of the Golf Anchorage.

Discussion of Proposed Rule

The USACE widening of the Norfolk Harbor Reach federal navigation channel necessitates a change in the size and boundaries of Anchorage Golf. This change is necessary to facilitate the safe passage of inbound and outbound deep draft vessels. Removal of the shallow water area in Hampton Bar Flats was included in this proposed change to the anchorage as the Coast Guard determined that this area is not required to serve the needs of the deep draft vessels the anchorage was designed to serve.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The effect of this proposed action merely makes minor changes to the boundaries of the existing anchorage area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The area removed includes unusable shallow areas and is so small it would not otherwise impact the ability of vessels to use the anchorage. It would in fact create additional opportunities for the numerous small commercial fishing and recreational vessels to access a greater portion of the Hampton Bar Flats without impacting the regulated anchorage area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not

likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. The rule deals with reducing the size of an existing anchorage area. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph 34(f) of the Instruction, and ''Environmental Analysis Check List'' is not required for this rule. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. Revise part 110.168 to read as follows:

110.168 Hampton Roads, Virginia and adjacent waters (Datum: NAD 83).

(a) *Anchorage Grounds.* (a)(3)(iii) Anchorage G, Hampton Flats (Naval Explosives Anchorage). The waters bounded by a line connecting the following points:

Latitude	Longitude
36°58′50.9″ N	76°19′33.7″ W
36°58′50.3″ N	76°19′39.4″ W
36°58′19.3″ N	76°20′18.2″ W
36°58′16.5″ N	76°20′18.6″ W
36°58′07.3″ N	76°20′31.3″ W
36°57′42.0″ N	76°21′06.3″ W
36°57′35.2″ N	76°21′25.6″ W
36°57′31.8″ N	76°22′00.6″ W
36°58′07.6″ N	76°22′01.7″ W
36°58′47.2″ N	76°21′04.7″ W
36°59′17.0″ N	76°20′20.7″ W
36°59′25.0″ N	76°20′05.4″ W

Dated: February 14, 2007.

Larry L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E7–4111 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD05–06–064]

RIN 1625–AA01

Anchorage Grounds, Hampton Roads, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes updating the coordinates of the boundaries of the anchorages listed below from the former North American Datum 1927 (NAD 27) standard to the current North American Datum 1983 (NAD 83) standard. These changes will not affect the locations or size of the anchorages on the NOAA charts as published by NOAA. The proposed change simply updates the anchorage positions in 33 CFR part 110 to match the current datum in use on the applicable charts, which are NAD 83.

DATES: Comments and related material must reach the Coast Guard on or before April 9, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpw), Fifth Coast Guard District, 431 Crawford Street, Room 100, Portsmouth, VA 23704–5004. The telephone number is (757) 398–6360. You may e-mail your comments to *Albert.L.Grimes@uscg.mil.* Commander (dpw), Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at (dpw) between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Albert Grimes, Fifth Coast Guard District Prevention and Waterways, (757) 398–6360, e-mail: *Albert.L.Grimes@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–064), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On May 25, 2005, the Coast Guard published a final rule (70 FR 29953) that provided changes and improvements to many of the anchorages in the Hampton

Roads area. Coordinates for anchorages changed or improved as part of this final rule were also updated from their former NAD 27 position to a new NAD 83 position. Anchorages discussed in this NPRM were listed as ''No Change,'' while in another section of the final rule the reader was led to believe that the positions of these ''No Change'' anchorages had also been changed from NAD 27 to NAD 83. However, they are in fact still listed in 33 CFR part 110.168 as NAD 27 positions. This proposed rule will ensure that all of the Hampton Roads Anchorages listed in 33 CFR part 110.168 are NAD 83 positions.

Discussion of Proposed Rule

The anchorages that will be updated to NAD 83 datum are on the following table:

Current Anchorage [33 CFR 110.168(a)]	
A—Cape Henry Naval Anchorage (1)	Change to NAD 83.
B—Chesapeake Bay, Thimble Shoals Channel Naval Anchorage (CBTSC [(2)(i)]	Change to NAD 83.
C—CBTSC Naval Anchorage Naval [(2)(ii)]	Change to NAD 83.
D—CBTSC Naval Anchorage [(2)(iii)]	Change to NAD 83.
E—Commercial Explosive Anchorage [(2)(iv)]	Change to NAD 83.
E–1—Explosives Handling Berth [(2)(v)(A)]	Change to NAD 83.
F—Hampton Bar [(3)(i)]	Change to NAD 83.
F–1—[(3)(i)(A)]	Change to NAD 83.
G–1—Explosives Handling Berth [(3)(ii)(A)]	Change to NAD 83.
G–2—Explosives Handling Berth [(3)(ii)(B)]	Change to NAD 83.
H—Newport News Bar [(3)(iii)]	Change to NAD 83.
I—Newport News [(4)(i)]	Change to NAD 83.
I–1—Newport News [(4)(i)(A)]	Change to NAD 83.

This proposed rule is necessary to ensure all anchorages positions listed under 33 CFR 110.168 reflect that they are based on NAD 83 datum.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The effect of this proposed action merely modifies the datum of the geographic positions that define the boundaries of the existing anchorages.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed changes only make the boundary points of the anchorages referenced herein consistent with the current applicable NOAA navigation charts.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to

safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(i) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph 34(i) of the Instruction, an ''Environmental Analysis Check List'' is not required for this rule. Comments on this section will be considered before we make a final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority for part 110 is revised to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.168 to revise paragraphs (a)(1), (a)(2), (a)(3)(i), (a)(3)(ii), (a)(3)(iv), (a)(3)(v), (a)(3)(viii), (a)(4) (i), and (a)(4)(ii), to read as follows:

§ 110.168 Hampton Roads, Virginia and adjacent waters (Datum: NAD 83).

(a) *Anchorage Grounds.* (1) *Anchorage A [Naval Anchorage].* The waters bounded by the shoreline and a line connecting the following points:

Latitude	*Longitude*
36°55′36.2″ N	76°02′46.3″ W
36°57′03.3″ N	76°03′01.4″ W
36°56′45.5″ N	76°01′28.8″ W
36°55′55.7″ N	76°01′35.7″ W

(2) *Chesapeake Bay, Thimble Shoals Channel Anchorages.* (i) *Anchorage B [Naval Anchorage].* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°57′58.5″ N	76°06′05.8″ W
36°57′11.5″ N	76°03′00.9″ W
36°55′49.3″ N	76°03′12.8″ W
36°56′32.3″ N	76°06′05.8″ W
36°57′04.5″ N	76°06′05.8″ W
36°57′09.0″ N	76°06′23.3″ W

(ii) *Anchorage C [Naval Anchorage].* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°58′55.3″ N	76°09′40.3″ W
36°58′19.3″ N	76°07′16.8″ W
36°57′27.5″ N	76°07′36.3″ W
36°58′04.5″ N	76°09′58.8″ W

(iii) *Anchorage D [Naval Anchorage].* The waters bounded by the shoreline and a line connecting the following points:

Latitude	*Longitude*
36°55′49.5″ N	76°10′31.6″ W
36°58′04.5″ N	76°10′00.9″ W
36°57′31.7″ N	76°07′53.6″ W
36°55′24.6″ N	76°08′27.6″ W

(iv) *Anchorage E [Commercial Explosives Anchorage].* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°59′59.2″ N	76°13′45.8″ W
36°59′08.7″ N	76°10′32.6″ W
36°58′13.5″ N	76°10′50.6″ W
36°59′02.5″ N	76°14′04.9″ W

(v) *Explosives Handling Berth E–1 [Explosives Anchorage Berth].* The waters bounded by the arc of a circle with a radius of 500 yards and the center located at:

Latitude	*Longitude*
36°59′05.5″ N	76°11′21.8″ W

(3) Hampton Roads Anchorages. (i) *Anchorage F, Hampton Bar.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°59′52.1″ N	76°19′10.8″ W
36°59′25.7″ N	76°18′47.3″ W
36°58′49.6″ N	76°19′32.6″ W
36°59′25.5″ N	76°20′05.8″ W

(ii) *Anchorage Berth F–1.* The waters bounded by the arc of a circle with a radius of 500 yards and the center located at:

Latitude	*Longitude*
36°59′29.6″ N	76°19′13.9″ W

* * * * *

(iv) *Explosives Handling Berth G–1.* The waters bounded by the arc of a circle with a radius of 500 yards and the center located at:

Latitude	*Longitude*
36°57′50.5″ N	76°21′35.8″ W

(v) *Explosives Handling Berth G–2.* The waters bounded by the arc of a circle with a radius of 500 yards and the center located at:

Latitude	*Longitude*
36°58′14.5″ N	76°21′00.3″ W

* * * * *

(viii) *Anchorage H, Newport News Bar.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°57′38.8″ N	76°24′18.5″ W
36°57′52.3″ N	76°22′29.7″ W
36°58′07.4″ N	76°22′01.8″ W
36°57′31.6″ N	76°22′00.6″ W
36°57′18.7″ N	76°24′10.1″ W

(4) James River Anchorages. (i) *Anchorage I, Newport News.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°57′07.2″ N	76°24′43.1″ W
36°56′23.1″ N	76°24′26.8″ W
36°57′54.2″ N	76°26′40.3″ W
36°56′03.5″ N	76°24′35.8″ W
36°58′23.5″ N	76°27′09.8″ W
36°58′49.0″ N	76°27′09.8″ W
36°58′35.9″ N	76°26′37.2″ W
36°57′52.2″ N	76°26′01.6″ W
36°57′31.1″ N	76°25′33.3″ W

(ii) *Anchorage Berth I–1.* The waters bounded by the arc of a circle with a radius of 400 yards and the center located at:

Latitude	*Longitude*
36°57′09.0″ N	76°25′20.4″ W

* * * * *

Dated: February 14, 2007.

Larry L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E7–4113 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 07–025]

RIN 1625–AA00

Safety Zone; Fireworks, Lower Colorado River, Laughlin, NV

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on the navigable waters of the Lower Colorado River, Laughlin, NV, in support of a fireworks display near the AVI Resort and Casino. The safety zone is necessary to provide for the safety of the crew, spectators, participants of the event, participating vessels and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before April 30, 2007.

ADDRESSES: You may mail comments and related material to Marine Events, Prevention Department, Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101–1028. Marine Events, Prevention Department, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Sector San Diego between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Eric Carroll, Waterways Management, U.S. Coast Guard Sector San Diego, CA, at telephone (619) 278–7277.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP San Diego 07–025], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Sector San Diego at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes establishing a temporary safety zone on the navigable waters of the Lower Colorado River, Laughlin, NV, in support of a fireworks show in the navigation channel of the Lower Colorado River, Laughlin, NV. The fireworks show is being sponsored by AVI Resort and Casino. The safety zone will be set at a 980-foot radius around the anchored firing barge. This temporary safety zone is necessary to provide for the safety of the show's crew, spectators, participants of the event, participating vessels, and other vessels and users of the waterway.

Discussion of Proposed Rule

The event involves one anchored barge, which will be used as a platform for launching of fireworks. The safety zone is required because the barge's planned firing location is in the navigation channel. This safety zone would be enforced from 8 p.m. through 9:45 p.m. on May 27, 2007.

The limits of this temporary safety zone include all areas within 980 feet of the firing location adjacent to the AVI Resort and Casino centered in the navigational channel between Laughlin Bridge and the northwest point of the AVI Resort and Casino Cove in position: 35°00′45″ N., 114°38′16″ W. Persons and vessels would be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

U.S. Coast Guard personnel would enforce this safety zone. Other Federal, State, or local agencies may assist the Coast Guard, including the Coast Guard Auxiliary. Vessels or persons violating this rule would be subject to both criminal and civil penalties.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although the safety zone will restrict boating traffic within the navigable waters of the Lower Colorado River, Laughlin, NV, the effect of this regulation will not be significant as the safety zone will encompass only a small portion of the waterway and will be very short in duration. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing. As such, the Coast Guard expects the economic impact of this rule to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities.

The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Lower Colorado River, Laughlin, NV, from 8 p.m. to 9:45 p.m. on May 27, 2007.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone only encompasses a small portion of the waterway, it is short in duration at a late hour when commercial traffic is low, and the Captain of the Port may authorize entry into the zone, if necessary.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Eric Carroll, Waterways Management, U.S. Coast Guard Sector San Diego at telephone (619) 278–7277.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we would be establishing a safety zone. A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T11–170 to read as follows:

§ 165.T11–170 Safety Zone; Fireworks, Lower Colorado River, Laughlin, NV.

(a) *Location*. The limits of this temporary safety zone include all areas within 980 feet of the anchored firing barge. The firing barge will be anchored adjacent to the AVI Resort and Casino, centered in the navigational channel

between Laughlin Bridge and the northwest point of the AVI Resort and Casino Cove, Lower Colorado River, Laughlin, NV in position 35°00′45″ N, 114°38′16″ W.

(b) *Enforcement Period*. This safety zone will be enforced from 8 p.m. until the end of the fireworks show on May 27, 2007. The event is scheduled to conclude no later than 9:45 p.m. However, if the display concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations*. In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the U.S. Coast Guard Patrol Commander. The U.S. Coast Guard Patrol Commander may be contacted via VHF–FM Channel 16.

(d) *Enforcement*. All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel can be comprised of commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: February 20, 2007.

C.V. Strangfeld,

Captain, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. E7–4114 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2001–0004; FRL–8284–1]

RIN 2060–AN88

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reasonable Possibility in Recordkeeping

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes revisions to the regulations governing the major new source review (NSR) programs mandated by parts C and D of title I of the Clean Air Act (CAA). These proposed changes clarify the ''reasonable possibility'' recordkeeping and reporting standard of the 2002 NSR reform rules. The ''reasonable possibility'' standard identifies for sources and reviewing authorities the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records. The standard also specifies the recordkeeping and reporting requirements on such sources. Recently, the U.S. Court of Appeals for the DC Circuit in *New York* v. *EPA*, 413 F.3d 3 (DC Cir. 2005) (*New York*) remanded for the EPA either to provide an acceptable explanation for its ''reasonable possibility'' standard or to devise an appropriately supported alternative. To satisfy the Court's remand, we (the EPA) are proposing two alternative options to clarify what constitutes ''reasonable possibility'' and when the ''reasonable possibility'' recordkeeping requirements apply. The two options are the ''percentage increase trigger'' and the ''potential emissions trigger.''

DATES: *Comments.* Comments must be received on or before May 7, 2007.

Public Hearing. If anyone contacts EPA requesting a public hearing by March 22, 2007, we will hold a public hearing approximately 30 days after publication in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2001–0004 by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, *Mailcode:* 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* Environmental Protection Agency, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2001–0004. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public

Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

Public Hearing: If a public hearing is held, it will be held at 9 a.m. in EPA's Auditorium in Research Triangle Park, North Carolina, or at an alternate site nearby. Details regarding the hearing (time, date, and location) will be posted on EPA's Web site at *http://www.epa.gov/nsr* not later than 15 days prior to the hearing date. People interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Pam Long, Air Quality Planning Division, Office of Air Quality Planning and Standards (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–0641, fax number (919) 541–5509, e-mail address *long.pam@epa.gov,* at least 2 days in advance of the public hearing (*see* **DATES**. People interested in attending the public hearing must also call Ms. Long to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed action.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Sutton, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–3450; *fax number:* (919) 541–5509; *e-mail address: sutton.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply To Me?

Entities affected by this rule include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups:

Industry Group	SIC [a]	NAICS [b]
Electric Services	491	221111, 221112, 221113, 221119, 221121, 221122.
Petroleum Refining	291	324110.
Industrial Inorganic Chemicals	281	325181, 325120, 325131, 325182, 211112, 325998, 331311, 325188.
Industrial Organic Chemicals	286	325110, 325132, 325192, 325188, 325193, 325120, 325199.
Miscellaneous Chemical Products	289	325520, 325920, 325910, 325182, 325510.
Natural Gas Liquids	132	211112.
Natural Gas Transport	492	486210, 221210.
Pulp and Paper Mills	261	322110, 322121, 322122, 322130.
Paper Mills	262	322121, 322122.
Automobile Manufacturing	371	336111, 336112, 336211, 336992, 336322, 336312, 336330, 336340, 336350, 336399, 336212, 336213.
Pharmaceuticals	283	325411, 325412, 325413, 325414.

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

Entities affected by the rule also include States, local permitting authorities, and Indian tribes whose lands contain new and modified major stationary sources.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and provide substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Roberto Morales, U.S. Environmental Protection Agency, OAQPS Document Control Officer, 109 TW Alexander Drive, Room C404–02, Research Triangle Park, NC 27711. EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

C. Where Can I Obtain Additional Information?

In addition to being available in the docket, an electronic copy of this proposed rule is also available on the World Wide Web. Following signature

by the EPA Administrator, a copy of this proposed rule will be posted on the EPA's New Source Review (NSR) Web site, under Regulations & Standards, at *http://www.epa.gov/nsr*.

D. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

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II. Introduction

A. Purpose of Proposed Rulemaking

On December 31, 2002 (67 FR 80187), we promulgated final changes (variously, ''2002 NSR reform rules,'' ''NSR reform,'' or ''reform rules'') to the major NSR program contained in 40 CFR 51.165, 51.166, 52.21, and 52.24. Major elements of these NSR reform changes concerned baseline emissions, actual-to-projected-actual methodology, Clean Units, Plantwide Applicability Limitations (PALs), and Pollution Control Projects (PCPs). At that time we also added ''reasonable possibility'' recordkeeping requirements, to apply to projects at existing emissions units at a major stationary source (other than projects at a Clean Unit or at a source with a PAL). Further, the ''reasonable possibility'' requirements only apply if such a project relies on a projection of post-project actual emissions (as opposed to potential to emit) in order to demonstrate that the project is not part of a major modification.

It was our intent to finalize changes to another part of the major NSR program, at 40 CFR part 51, appendix S (''Appendix S''), precisely as we finalized the NSR reform changes. Appendix S provides NSR requirements applicable to nonattainment areas after EPA promulgates a new or revised NAAQS but before the area has an approved NSR SIP. However, in the *New York* case, the Court remanded the ''reasonable possibility'' recordkeeping and reporting provision of the 2002 NSR reform rules for the EPA either to provide an acceptable explanation or to devise an appropriately supported alternative. The *New York* case also vacated the Clean Unit provision and the PCP exemption in the 2002 NSR reform rules. In a separate **Federal Register** notice published on this date, we are finalizing changes to Appendix S to add the December 2002 NSR reform changes. These final changes also include an interim interpretation of the ''reasonable possibility'' standard based on the ''percentage increase trigger'' option as described later.

To reflect that the Court vacated the Clean Unit provision, this proposed rule omits reference to Clean Units in the description of projects to which the ''reasonable possibility'' provisions apply.

The purpose of this rulemaking is to address the Court's remand by clarifying the reasonable possibility standard and thus clarifying the circumstances under which records must be kept for projects that do not trigger major NSR. For purposes of 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51 appendix S, we are proposing two main options for clarifying the ''reasonable possibility'' standard.

B. Background

1. 2002 NSR Reform Rule

In our 2002 NSR reform rule, we revised the major NSR applicability test by promulgating an actual-to-projected-actual applicability test for projects involving existing emissions units. Under this test, sources base major NSR applicability determinations on projected actual emissions (not necessarily their future potential to emit).

Until promulgation of the 2002 NSR reform rules, sources that were not electric utility steam generating units (EUSGUs) were subject to the ''potential to emit'' test for determining emissions increases and therefore were not required to keep records of projected emissions. The 2002 NSR reform rules changed the applicability test for non-EUSGU sources and created certain recordkeeping requirements under what is referred to as the ''reasonable possibility'' standard. The NSR reform rules added the same ''reasonable possibility'' recordkeeping and reporting requirements for EUSGUs.

2. July 1992 Rule for EUSGUs

Primarily as a result of *Wisconsin Elec. Power Co.* v. *Reilly* (''WEPCO''), 893 F.2d 901 (7th Cir. 1990), we revised our NSR regulations in 1992 to apply an actual-to-future-actual test on all physical or operational changes at EUSGUs except those that are an addition of a new unit or constitute a replacement of an existing unit. The 1992 regulation (57 FR 32314, July 21, 1992) provides a ''representative actual annual emissions'' methodology that requires the EUSGU (other than a new unit or the replacement of an existing unit) to compare its baseline emissions with its estimated future actual emissions to determine how much the proposed change will increase actual emissions. A discussion of the WEPCO case is included in the preamble to the 1992 regulation.

In the 1992 regulation, EPA added a reporting provision as a safeguard to ensure that future actual emissions resulting from the change that exceeded the estimate would not go unnoticed or unreviewed. Under the reporting provision, sources that utilize the ''representative actual annual emissions'' methodology to determine that they are not subject to NSR must maintain and submit sufficient records to determine if the change results in an increase in representative actual annual emissions. The regulation generally required that the owner or operator submit records to the reviewing authority on an annual basis for a period of 5 years from the date the unit resumes regular operation after the change; however, it allowed for a longer tracking period, not to exceed 10 years, in cases where the permitting agency determined that such longer period was necessary to capture normal source operations. We expected that documentation of post-change actual annual emissions would not impose any additional data collection burden on the part of the EUSGUs, because the EUSGUs would submit the same data

normally used to report emissions or operational levels under other existing requirements. As we noted in the preamble to the 1992 regulations (57 FR at 32325), the purpose of the provision is ''to provide a reasonable means of determining whether a significant increase in representative actual annual emissions resulting from a proposed change at an existing utility occurs within the 5 years following the change.'' Prior to 1992, no sources were required to keep records of projected emissions under major NSR because only the actual-to-potentials test was used.

C. Reasonable Possibility Standard

Under the two-step applicability test of the 2002 NSR reform rules, a physical or operational change is a major modification for a regulated NSR pollutant if it causes both: (1) A significant emissions increase (*see, e.g.*, 40 CFR 52.21(b)(40)); and (2) a significant net emissions increase (as defined pursuant to, *e.g.*, 40 CFR 52.21(b)(3) and (b)(23)). Under the first step of this test, you compare baseline actual emissions before the change to projected actual emissions after the change to determine whether the change would result in a significant increase in emissions. The regulation defines ''projected actual emissions'' such that the owner or operator of the major stationary source projects the post-project maximum annual rate at which an existing emissions unit would emit a regulated NSR pollutant. *See*, *e.g.*, 40 CFR 52.21(b)(41)(i). This definition provides that an owner or operator may use the emissions unit's potential to emit, in tons per year, in lieu of a projection. Under the second step, which is referred to as netting, you net the contemporaneous emissions decreases and increases that occurred at the source against the emissions increase determined under the first step. If the net amount equals or exceeds the significant level, then the change triggers major NSR. (''Significant levels'' for regulated NSR pollutants are commonly called ''significance levels'' or ''significance thresholds,'' and these terms are used interchangeably for purposes of this proposed action.)

In the reform rules (*see* 40 CFR 51.165(a)(6), 40 CFR 51.166(r), and 40 CFR 52.21(r)), EPA determined that a source making a change need not keep records of its emissions (including data on which the source based its projections and data of actual emissions going forward) unless the source believes there is a ''reasonable possibility'' that the change may result in a significant emissions increase. *See*, *e.g.*, 40 CFR 52.21(r)(6).

> The provisions of this paragraph (r)(6) apply to projects at an existing emissions unit at a major stationary source (other than projects at * * * a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (b)(41)(ii)(a) through (c) of this section for calculating projected actual emissions.

To determine whether a change at an existing emissions unit will result in an emissions increase, you must use an actual-to-projected-actual applicability test. Note, however, that you may opt to use the source(s potential to emit as its projected actual emissions (*see*, *e.g.*, 40 CFR 52.21(b)(41)(ii)(*d*)).

The ''reasonable possibility'' standard requires that a source keep records if it meets the following three requirements: (i) The source projects post-change actual emissions and does not use the actual-to-potential test. (ii) The source determines that the change would not trigger major NSR. (iii) The source nevertheless believes that there is a reasonable possibility that the change may significantly increase emissions.[1] For subject sources, the ''reasonable possibility'' recordkeeping requirements apply to all regulated NSR pollutants, and they apply to each emissions unit that could be affected by the project. Further, if the project increases design capacity or PTE of any regulated NSR pollutant, the recordkeeping and reporting requirements apply for 10 years instead of 5 years. (For purposes of this proposed action, we refer to the physical or operational change as, interchangeably, a change or a project.)

More specifically, if your change or project has a reasonable possibility of resulting in a significant emissions increase, then you must: (1) Keep certain records that are created before construction (description of the project, identification of emissions units affected by the project, and a description of the applicability test); and (2) monitor emissions, calculate annual emissions, and maintain records of emissions for 5 years (or 10 years in certain cases) once the change is completed. If the change's annual emissions for a calendar year exceed the baseline by a significant amount and also differ from the projection, then you are additionally required to report emissions for the calendar year.

D. Court Remand of Reasonable Possibility Standard

In the *New York* case, the Court held, ''Because EPA has failed to explain how it can ensure NSR compliance without the relevant data, we will remand for it either to provide an acceptable explanation for its 'reasonable possibility' standard or to devise an appropriately supported alternative.'' 413 F.3d at 35–36. The Court explained:

> The problem is that EPA has failed to explain how, absent recordkeeping, it will be able to determine whether sources have accurately concluded that they have no 'reasonable possibility' of significantly increased emissions. We recognize that less burdensome requirements may well be appropriate for sources with little likelihood of triggering NSR, but EPA needs to explain how its recordkeeping and reporting requirements allow it to identify such sources.

413 F.3d at 34. The Court added:

> [T]he intricacies of the actual-to-projected-actual methodology will aggravate the enforcement difficulties stemming from the absence of data. The methodology mandates that projections include fugitive emissions, malfunctions, and start-up costs, and exclude demand growth unrelated to the change. * * *. Each such determination requires sources to predict uncertain future events. By understating projections for emissions associated with malfunctions, for example, or overstating the demand growth exclusion, sources could conclude that a significant emissions increase was not reasonably possible. Without paper trails, however, enforcement authorities have no means of discovering whether the exercise of such judgment was indeed ''reasonable.''

Id. at 35.

We are proposing options for determining the circumstances under which a change would have a reasonable possibility of significantly increasing emissions. With the final rulemaking, we intend to clarify the meaning of the ''reasonable possibility'' standard through the selected option(s) and thus fully address the Court's remand.

E. Interim Interpretation of Reasonable Possibility in Appendix S

As stated earlier, in a separate **Federal Register** notice published on this date, we are establishing an interim interpretation of the reasonable possibility provisions for purposes of implementing appendix S. In that rulemaking, EPA is revising the major NSR requirements that are applicable to major sources in a State after EPA

[1] The ''reasonable possibility'' standard covers both EUSGUs and non-EUSGUs. As noted above, prior to promulgation of the ''reasonable possibility'' standard, an EUSGU that made a change that did not result in a significant emissions increase (under the actual-to-projected-actual measure) was required to provide the permitting authority with at least 5 years of data to confirm the accuracy of the projection.

revises a NAAQS but before the State receives EPA approval of its NSR SIP. The purpose of these revisions is to reflect the requirements of the 2002 NSR reform rule, taking into account the decision in *New York*.

For purposes of Appendix S, we are providing an interim interpretation of ''reasonable possibility'' to apply during the period until we promulgate our clarification of the ''reasonable possibility'' standard. Under the interim interpretation, we conclude that there is a ''reasonable possibility'' that the change would result in a significant emissions increase if the change's projected actual emissions increase equals or exceeds 50 percent of the applicable NSR significance level for any pollutant. We base this conclusion on an assumption that the magnitude of projected actual emissions correlates positively to the likelihood of a significant emissions increase. This test may be termed the ''percentage increase trigger'' that we propose in this action, as described below.

III. Description of This Proposed Action

This action responds to the Court's remand by proposing two options for determining the circumstances under which a change or project must be considered to have a ''reasonable possibility'' of significantly increasing emissions. We explain our basis for why each option is enforceable and solicit input from the public.

In this section, we also solicit comment on how the ''reasonable possibility'' standard is generally applied and what is to be recorded and reported in the case of a change or project for which there is a reasonable possibility that the change will result in a significant emissions increase.

A. Application of ''Reasonable Possibility'' Standard

This proposed action makes clear that the requirements of the ''reasonable possibility'' standard are triggered on a pollutant-specific basis and apply on a project-wide basis. This approach is consistent with our 2002 NSR reform rules. In 40 CFR 52.21(r)(6)(iii), for example, we require the owner or operator to monitor ''emissions of any regulated NSR pollutant that could increase as a result of the project'' for which there is a reasonable possibility of a significant emissions increase.

Note that the ''reasonable possibility'' standard is specific to projects at a major stationary source (*see*, *e.g.*, 40 CFR 52.21(r)(6)). Therefore, the proposal to clarify this standard does not apply to existing minor sources. As a result, existing minor sources will not become subject to the ''reasonable possibility'' recordkeeping and reporting standard, even when they make changes that would, if they were major sources, trigger the applicability of those requirements. Minor sources remain subject to appropriate recordkeeping and reporting requirements in the State's minor NSR program.

Note further that ''synthetic minor modifications'' are also not subject to the ''reasonable possibility'' standard. When a major stationary source undertakes a project that would be a major modification (as defined at 40 CFR 52.21(b)(2) and elsewhere) except that the source accepts a practically enforceable restriction in order to limit the project's increase in emissions to less than significant emissions increase level, the project is termed a ''synthetic minor modification.'' Such a source must keep records as part of the practically enforceable restriction (*e.g.*, under a State's minor source NSR program) in order to demonstrate that the increase in potential emissions resulting from the project remains below the significance levels. However, these ''synthetic minor modifications'' are not subject to the ''reasonable possibility'' standard.

When we finalize this action to clarify the ''reasonable possibility'' standard, we intend to apply the clarification where we refer to ''reasonable possibility'' in 40 CFR 51.165(a)(6), 51.166(r)(6), 52.21(r)(6), and part 51 appendix S. Our final rule will supersede the interim interpretation of ''reasonable possibility'' that we are establishing for appendix S in a separate **Federal Register** notice published on this date.

B. Options for Circumstances Under Which ''Reasonable Possibility'' Standard Applies

We propose the following two options for identifying the circumstances under which the increase in emissions caused by a project triggers the ''reasonable possibility'' recordkeeping and reporting requirements. Our preferred option is the ''percentage increase trigger,'' and as an alternative we propose the ''potential emissions trigger.'' The amendatory rule language included in this proposed rule is specific to the ''percentage increase trigger'' option. We believe the ''potential emissions trigger'' option would be effective without need for amendatory rule language.

1. Percentage Increase Trigger

As our preferred option, we propose what we refer to as the ''percentage increase trigger'' option for applying the ''reasonable possibility'' standard. This ''percentage increase trigger'' is also our interim interpretation for Appendix S purposes, as described earlier. Under this proposed option, you would conclude there is a reasonable possibility that your change will result in a significant emissions increase if the change's projected actual emissions increase equals or exceeds a percentage of the applicable NSR significance level for any pollutant. We propose to use 50 percent of the significance level for the relevant regulated NSR pollutant as the trigger, but we solicit comment on use of a different percentage to trigger recordkeeping and reporting, such as 25, 33, 66 or 75 percent. The significance levels for regulated NSR pollutants are provided in 40 CFR 51.165(a)(1)(x), 51.166(b)(23)(i), 52.21(b)(23)(i), and paragraph II.A.10 in appendix S to part 51.

As noted earlier, the Court found that EPA had not explained how, under the ''reasonable possibility'' methodology, EPA can ensure NSR compliance without a source's maintaining relevant data. The Court explained that for each major NSR applicability determination, the methodology requires sources to:

> * * * predict uncertain future events. By understating projections for emissions associated with malfunctions, for example, or overstating the demand growth exclusion, sources could conclude that a significant emissions increase was not reasonably possible. Without paper trails, however, enforcement authorities have no means of discovering whether the exercise of such judgment was indeed ''reasonable.''

413 F.3d at 35.

We believe that the proposed ''percentage increase trigger'' option addresses these concerns. The Court observed, ''We recognize that less burdensome requirements may well be appropriate for sources with little likelihood of triggering NSR, but EPA needs to explain how its recordkeeping and reporting requirements allow it to identify such sources.'' *Id.* at 34. The ''reasonable possibility'' requirements apply only in the case of a change that the source considers small, in that the source believes it increases projected emissions by only a small amount. That is, the requirements apply only with respect to a change that may result in a ''significant emissions increase.''

The significance levels for most regulated NSR pollutants are on their face small. Thus, the projects associated with these amounts are relatively small. This is particularly so because under the ''reasonable possibility'' standard, the requirements are triggered only by projects that may result in the specified levels of increased emissions, without

taking into account netting. For the same reasons, very large sources are less likely to make changes that are covered by the ''reasonable possibility'' standard because virtually any change that a very large source makes may be expected to increase emissions above the significance levels and require a major NSR permit.

Moreover, under our proposal, a project would avoid triggering the ''reasonable possibility'' requirements only if the source believed that the emissions increase from the project would be no more than 50 percent of the significance levels. Therefore, our proposal considerably limits the number of projects that could avoid ''reasonable possibility'' requirements. By assuming that the magnitude of projected actual emissions correlates positively to the likelihood of a significant emissions increase, this ''percentage increase trigger'' option provides that you keep records for projects with a reasonable possibility of significant emissions increases but also takes into account the impracticality of your having to keep records when anticipating only a small increase in emissions. Thus, EPA believes this interpretation addresses the issues identified by the Court in the *New York* case, in that we are providing a clear distinction, prior to construction, between projects more and less likely to trigger NSR. Table 1 illustrates by example how the ''percentage increase trigger'' option would apply to two hypothetical projects at a major stationary source.

TABLE 1.—EXAMPLE APPLICATION OF PERCENTAGE INCREASE TRIGGER

	Project 1 example—smaller increase in actual emissions	Project 2 example—larger increase in actual emissions
Example pollutant's NSR significance level (tpy).	40.	
Trigger level, based on 50 percent of significance level (tpy).	20.	
Baseline actual emissions (tpy)	50	50.
Projected actual emissions after change (tpy)	60	90.
Increase in actual emissions (tpy)	10	40.
Does project trigger ''reasonable possibility'' requirements?	No, because ''increase in actual emissions'' (10 tpy) is less than ''trigger level'' (20 tpy).	Yes, because ''increase in actual emissions'' (40 tpy) is greater than ''trigger level'' (20 tpy).

Under the ''percentage increase trigger'' option, we acknowledge that a source with projected actual emissions below 50 percent (or some other percentage) of the NSR significance levels would be able to avoid ''reasonable possibility'' recordkeeping and reporting requirements. However, we believe that EPA has numerous means of enforcing the NSR provisions against such a source, even in the absence of records kept under the ''reasonable possibility'' standard. Two types of records a source owner or operator is generally expected to keep are: (1) Records to report emissions; and (2) records for business purposes. Records for business purposes could include corporate minutes, blueprints, plant manager logs, records of capital costs and purchases of materials, and other documents that would describe the types of changes made at the source (wholly apart from changes in emissions that result from the changes). Businesses also have incentives to maintain design parameter information for safety and maintenance reasons. We note that these records give EPA an adequate basis to bring to bear certain enforcement tools, such as the authority to compel document production, conduct inspections, and compel oral testimony, in order to enforce the ''reasonable possibility'' standard. We solicit comment on the types of records sources keep for business purposes.

We request comment on whether to adopt a percentage increase trigger for recordkeeping requirements under the ''reasonable possibility'' standard.

2. Potential Emissions Trigger

We propose an alternative interpretation, what we refer to as the ''potential emissions trigger'' option. Under this option, you would conclude there is a reasonable possibility that your change will result in a significant emissions increase if the post-change potential to emit equals or exceeds NSR significance levels (even though the source opts to base its determination as to whether NSR applies on projected actual emissions).

The EPA believes the ''potential emissions trigger'' approach would also resolve the issues identified by the Court in the *New York* case. The Court raised the concern that the ''reasonable possibility'' methodology, as it currently stands, fails to explain how EPA can ensure NSR compliance without the source's maintaining relevant data. We explain below that potential emissions represent the upper bound of post-change emissions, and so under the ''potential emissions trigger,'' records of projected actual emissions are unnecessary for the purpose of ascertaining whether post-change emissions increased beyond expectations. As long as a project's post-change potential emissions are at or above significance levels, then the source will either trigger major NSR or will be subject to recordkeeping and reporting requirements under the ''potential emissions trigger.'' If the project's post-change potential emissions are below significance levels, then clearly the project's projected actual emissions would also necessarily be below significance levels, and the ''reasonable possibility'' standard would not apply. Thus, short of requiring recordkeeping and reporting for all projects that do not trigger major NSR, the ''potential emissions trigger'' requires recordkeeping and reporting of the greatest number of projects under the ''reasonable possibility'' standard.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a significant regulatory action. The action was determined to be a ''significant regulatory action'' because it raises policy issues arising from the President's priorities. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been

documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. We are not promulgating any new paperwork requirements (*e.g.*, monitoring, reporting, recordkeeping) as part of this proposed action. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR parts 51 and 52) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0003, EPA ICR number 1230.17. A copy of the OMB approved Information Collection Request (ICR) EPA ICR number 1230.17 may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Analysis (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation as to why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan.

The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector.

Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposal rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA is soliciting comment on this proposal from State and local officials.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled (Consultation and Coordination with Indian Tribal Governments (65 FR 13175, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. There are no tribal authorities currently issuing major NSR and title V permits. Thus, Executive Order 13175 does not apply to this rule.

Although Executive Order 13175 does not apply to this proposed rule, EPA specifically solicits comment on this proposed rule from Tribal officials.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This proposed action does not establish an environmental standard intended to mitigate health or safety risks but rather provides explanation of an existing recordkeeping and reporting standard.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule provides explanation of an existing recordkeeping and reporting standard.

V. Statutory Authority

The statutory authority for this action is provided by sections 307(d)(7)(B), 101, 111, 114, 116, and 301 of the CAA as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601). This notice is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

Dated: February 28, 2007.

Stephen L. Johnson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart I—[Amended]

2. Section 51.165 is amended by revising paragraph (a)(6) introductory text and adding paragraph (a)(6)(vi) to read as follows:

§ 51.165 Permit requirements.

(a) * * *

(6) Each plan shall provide that the following specific provisions apply on a pollutant-by-pollutant basis with respect to any regulated NSR pollutant associated with projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph (a)(6)(vi) of this section, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (a)(1)(xxviii)(B)(*1*) through (*3*) of this section for calculating projected actual emissions. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (a)(6)(i) through (vi) of this section.

* * * * *

(vi) A ''reasonable possibility'' under paragraph (a)(6) of this section occurs when the owner or operator calculates the project to result in projected actual emissions increases of at least 50 percent of the significant level defined

in paragraph (a)(1)(x) of this section for the regulated NSR pollutant.

* * * * *

3. Section 51.166 is amended by revising paragraph (r)(6) introductory text and adding paragraph (r)(6)(vi) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

(r) * * *

(6) Each plan shall provide that the following specific provisions apply on a pollutant-by-pollutant basis with respect to any regulated NSR pollutant associated with projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph (r)(6)(vi) of this section, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (b)(40)(ii)(*a*) through (*c*) of this section for calculating projected actual emissions. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (r)(6)(i) through (vi) of this section.

* * * * *

(vi) A ''reasonable possibility'' under paragraph (r)(6) of this section occurs when the owner or operator calculates the project to result in projected actual emissions increases of at least 50 percent of the significant level defined in paragraph (b)(23)(i) of this section for the regulated NSR pollutant.

* * * * *

4. Appendix S to Part 51 is amended by revising paragraph IV.J introductory text and adding paragraph IV.J.6 to read as follows:

Appendix S to Part 51—Emission Offset Interpretative Ruling.

* * * * *

IV. * * *

J. *Provisions for projected actual emissions.* The provisions of this paragraph IV.J apply on a pollutant-by-pollutant basis with respect to any regulated NSR pollutant associated with projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph IV.J.6 of this Ruling, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs II.A.24(ii)(*a*) through (*c*) of this Ruling for calculating projected actual emissions.

* * * * *

6. A ''reasonable possibility'' under paragraph IV.J of this Ruling occurs when the owner or operator calculates the project to result in projected actual emissions increases of at least 50 percent of the significant level defined in paragraph II.A.10 of this section for the regulated NSR pollutant.

* * * * *

PART 52—[AMENDED]

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

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

Subpart A—[Amended]

6. Section 52.21 is amended by revising paragraph (r)(6) introductory text and adding paragraph (r)(6)(vi) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

(r) * * *

(6) The provisions of this paragraph (r)(6) apply on a pollutant-by-pollutant basis with respect to any regulated NSR pollutant associated with projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph (r)(6)(vi) of this section, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (b)(41)(ii)(*a*) through (*c*) of this section for calculating projected actual emissions.

* * * * *

(vi) A ''reasonable possibility'' under paragraph (r)(6) of this section occurs when the owner or operator calculates the project to result in projected actual emissions increases of at least 50 percent of the significant level defined in paragraph (b)(23)(i) of this section for the regulated NSR pollutant.

* * * * *

[FR Doc. E7–3897 Filed 3–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2006–1015; FRL–8284–9]

Approval and Promulgation of Implementation Plans; Iowa; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a revision to the Iowa State Implementation Plan (SIP) for the purpose of approving the Iowa Department of Natural Resources' (IDNR) actions to address the ''good neighbor'' provisions of the Clean Air Act Section 110(a)(2)(D)(i). These provisions require each state to submit a SIP that prohibits emissions that adversely affect another state's air quality through interstate transport. IDNR has adequately addressed the four distinct elements related to the impact of interstate transport of air pollutants. These include prohibiting significant contribution to downwind nonattainment of the National Ambient Air Quality Standards (NAAQS), interference with maintenance of the NAAQS, prevention of significant deterioration of air quality, and significant deterioration of visibility. The requirements for public notification were also met by IDNR.

DATES: Comments on this proposed action must be received in writing by April 9, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–1015 by one of the following methods:

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

2. *E-mail: Hamilton.heather@epa.gov.*

3. *Mail:* Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier.* Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule that is located in the Rules section of this **Federal Register** for detailed

instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *Hamilton.heather@epa.gov.*

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

Dated: February 27, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7–4178 Filed 3–7–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

RIN 1094–AA53

Interior Board of Land Appeals Procedures

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Hearings and Appeals (OHA) is proposing to amend several existing procedural regulations governing appeals to the Interior Board of Land Appeals (IBLA) and to adopt new regulations governing consolidation, extensions of time, intervention, and motions.

DATES: You should submit your comments by May 7, 2007.

ADDRESSES: You may submit comments, identified by the number 1094–AA53, by any of the following methods:

—*Federal rulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

—*Fax:* 703–235–9014.

—*E-mail: John_Strylowski@ios.doi.gov.* Include the number 1094–AA53 in the subject line of the message.

—*Mail:* Director, Office of Hearings and Appeals, Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203.

—*Hand delivery:* Director, Office of Hearings and Appeals, Department of the Interior, 801 N. Quincy Street, Suite 400, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Robert S. More, Director, Office of Hearings and Appeals, U.S. Department of the Interior, Phone 703–235–3750. Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comments

If you wish to comment on this proposed rule, you may submit your comments by any of the methods listed in the **ADDRESSES** section above. We will consider all comments received by the deadline stated in the **DATES** section above.

Please make your comments as specific as possible and explain the reason for any changes you recommend. Where possible, your comments should refer to the specific section or paragraph of the regulations you are addressing.

Our practice is to make comments, including the names of respondents and their home addresses, phone numbers, and e-mail addresses, available for public review during regular business hours. To review the comments, you may contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Individual respondents may request that we withhold their names and 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 that demonstrates that disclosure would constitute a clearly unwarranted invasion of personal privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documented 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.

II. Background

Based on its experience in recent years, OHA has determined that certain of its existing procedural regulations in 43 CFR part 4, subparts E and L, need to be updated, clarified, or otherwise revised to promote expeditious administrative review. (Subpart E contains regulations governing public land hearings and appeals; subpart L contains regulations governing surface coal mining hearings and appeals.) For example, we propose to amend the existing regulations governing service of documents, reconsideration, statements of reasons for appeal, answers, and requests for hearings.

In addition, OHA has decided to add regulations to subpart E to provide procedures governing motions for consolidation, extensions of time, and intervention, and for serving and responding to any other motions. These subjects are not currently covered in OHA's regulations, and questions have arisen about whether and how these procedures are conducted by IBLA. The amendments and additions are explained in the following section-by-section analysis.

III. Section-by-Section Analysis

A. Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

Section 4.400 Definitions

We propose to define ''BLM'' to mean ''Bureau of Land Management,'' and revise the definition of ''bureau'' to include the Minerals Management Service, because IBLA reviews some decisions of the Minerals Management Service under subpart E, *e.g.*, decisions concerning offshore minerals management and royalty management. *See* 30 CFR Sections 290.2, 290.8, 290.108. We propose to add IBLA's address to the definition of ''Board,'' so we do not have to repeat it in other sections of the regulations. And we would add a definition of ''last address of record'' because this phrase appears in proposed Sections 4.401(c)(1) and 4.422(c)(1), the regulations governing service of documents.

The regulations would specify that ''party'' includes a party's representative(s) where the context so requires, *e.g.*, in the service regulations where service must be made by or upon a party. The regulations would also specify that ''office'' or ''officer'' includes an administrative law judge or

the Board where the context so requires, *e.g.*, in Section 4.411(a)(1) requiring that a notice of appeal be filed in the office of the officer who made the decision being appealed.

Section 4.401 Documents

In 2003 we amended Section 4.401(c)(2) to allow a party to certify service of a document on other parties by signing a written statement at the end of a document that service has been or will be made, rather than requiring the party to file proof of service in the form of a written statement or a Postal Service return receipt. 68 FR 33794, 33803 (June 5, 2003). We did so as a step towards ''bringing IBLA's practice into line with current rules in Federal and state courts.'' 68 FR 33801 (June 5, 2003).

Existing Section 4.401(c)(1) provides that service ''may be made by delivering [a copy of a document] personally to [a person] or by sending the document by registered or certified mail, return receipt requested, to [the person's] address of record in the Bureau.'' We now propose to revise Section 4.401(c)(1) to allow service of a document, other than a notice of appeal that initiates a proceeding, by first-class mail to a person's last address of record or by delivery service to a person's last address of record if it is not a post office box. ''Last address of record'' is defined in Section 4.400 as the address provided in a person's most recent filing in an appeal or, if there has not been any filing, the person's address as provided in the bureau decision under appeal.

This change would make IBLA's service regulation more consistent with Rule 5(b)(2)(B) of the Federal Rules of Civil Procedure (FRCP). That rule permits service of a document (other than the complaint that commences a civil action) by mailing a copy of it to the last known address of the person to be served.

Under the proposed rule, it will remain a party's responsibility to assure that service is made, and to certify under Section 4.401(c)(3) when and how it was or will be made. One who chooses a means of delivery of a document must accept responsibility for and bear the consequences of delay or nondelivery, *National Wildlife Federation,* 162 IBLA 263, 266 (2004); and the presumption of regularity that officials have properly discharged their duties and have not lost or misplaced a document will prevail over the presumption that a properly addressed letter with sufficient postage will be delivered. *Marathon Oil Co.,* 128 IBLA 168, 172 (1994); *Robert J. King,* 72 IBLA 72, 75 (1983). However, it is not necessary to prescribe, except for a notice of appeal that initiates an appeal, that service occur only by personal delivery or by registered or certified mail. Because delivery services cannot deliver to post office boxes, we propose that service by a delivery service may not be made if the person's last address of record is a post office box.

This regulation governing service would apply to any document filed in a proceeding under subpart E. The regulation would also provide that service must occur concurrently with filing, *i.e.*, that copies of a document would be delivered, mailed, or given to a delivery service for delivery to adverse parties at the same time the document is delivered or mailed or given to a delivery service for delivery to the Board. These provisions are comparable to those in subpart L governing service in proceedings under the Surface Mining Control and Reclamation Act. *See* Section 4.1109.

Comparable to existing Section 4.401(c)(3), proposed Section 4.401(c)(4) states that service is complete when delivery takes place, whether by personal service, regular mail, registered or certified mail, or a delivery service. Service will also be complete when the Postal Service or a delivery service returns a document undelivered. A party should be able to rely on another party's address of record in the bureau; and if a document sent to that address comes back undelivered, the party has fulfilled its service obligation.

Proposed Section 4.401(c)(5) states that, in the absence of evidence to the contrary, delivery by regular mail, registered or certified mail, or a delivery service will be deemed to take place 3 business days after the document was sent. Contrary evidence could include a return receipt from the Postal Service or the delivery service, or a certification from a party's representative as to the actual date on which the party received a document sent by regular mail.

We propose corresponding revisions to existing Section 4.422(c).

Section 4.403 Finality of Decision; Reconsideration

The existing regulation provides that IBLA ''may reconsider a decision in extraordinary circumstances for sufficient reason.'' This language is not defined, and the preamble to the regulation explained only that ''the Board does not intend to enlarge the scope of its reconsideration practice to make it a routine feature of adjudication. This provision reinforces the Board's expectation that parties will make complete submissions in a timely manner during the appeal, not afterward on reconsideration.'' 52 FR 21307 (June 5, 1987). Although these statements are still true, IBLA has had sufficient experience with the regulation to enable it to identify circumstances that have frequently been found ''extraordinary,'' as well as those that have not. Because petitions for reconsideration are often granted by order rather than by published decision, and are therefore less available to the public, we propose to amend the regulation to provide guidance based on this experience.

We propose revising the language in paragraph (b) to state that the Board may reconsider a decision ''in extraordinary circumstances,'' rather than ''in extraordinary circumstances for sufficient reason,'' because ''for sufficient reason'' does not add any meaning. That is, IBLA may grant reconsideration if it finds extraordinary circumstances; it does not also need to determine whether the extraordinary circumstances provide sufficient reason to do so.

Paragraph (b)(1) would clarify that a party files a motion for reconsideration (rather than a ''petition'' for reconsideration, as in the existing regulation) with the Board.

Proposed paragraph (b)(3) is a revision of the language of the existing regulation, which states that ''[n]o answer to a petition is required unless so ordered by the Board.'' The proposed regulation would allow parties to file an answer if they wish and would provide 15 days for doing so. *See June I. Degnan (On Reconsideration),* 114 IBLA 373, 376 (1990).

Paragraph (b)(4) would add that the Board may stay the effectiveness of its decision, in response to a motion for reconsideration, ''for good cause.''

Paragraph (d) lists some of the circumstances that may warrant IBLA's granting a motion in its discretion.

For examples of cases in which reconsideration has been granted because of an error of fact, see *Joan Chorney (On Reconsideration),* 109 IBLA 96, 97 (1989); *State of Alaska (Elliot R. Lind) (On Reconsideration),* 104 IBLA 12, 15 (1988); and *Marathon Oil Co. (On Reconsideration),* 103 IBLA 138, 140 (1988).

For an example of IBLA's granting reconsideration based on a recent judicial development, see *Amoco Production Co.,* 143 IBLA 45, 54A–54E (1998).

For examples of the kind of change in Departmental policy that might warrant reconsideration under paragraph (d)(3), see *Conoco, Inc.,* 164 IBLA 237, 241 (2005); *Conoco, Inc.,* 115 IBLA 105, 106 (1990); and *Ladd Petroleum Corp.,* 107 IBLA 5, 8 (1989).

The second sentence of paragraph (d)(4) is intended to reinforce the expectation mentioned above that parties will make complete submissions during the appeal. A party that relies on newly-submitted evidence must explain why the evidence was not provided previously. If it does not, the Board may find the motion does not show extraordinary circumstances. *See Ulf Teigen (On Reconsideration),* 159 IBLA 142, 144 (2003); *Dugan Production Corp.,* 117 IBLA 153, 157–58 (1990).

Paragraph (e) is intended to discourage a party from re-arguing its reasons for appeal in a motion for reconsideration, in the absence of demonstrable error. *See, e.g., Dona Jeanette Ong (On Reconsideration),* 166 IBLA 65 (2005). Nor should a party file a motion for reconsideration when a statute or regulation prescribes consequences that IBLA has no authority to alter, *e.g.*, 43 U.S.C. 1744(c) or 30 U.S.C. 28i. *See, e.g., Lee H. and Goldie Rice,* 128 IBLA 137, 141 (1993).

Section 4.404 Consolidation

The Board does not have a regulation providing that it may consolidate appeals, so we propose to add one. If the facts or legal issues involved in two or more appeals are the same or substantially similar, it may be more efficient to consider them together. The Board may consolidate appeals on its own initiative or on motion of a party. It may do so at any time before the appeals are decided; thus, it is possible to consolidate recently-docketed appeals with those that have been pending longer. Parties would have 15 days after service of a motion to consolidate to file a response, in accordance with new Section 4.407(b).

For examples of cases that IBLA has consolidated, see *San Carlos Apache Tribe,* 149 IBLA 29, 30 (1999); *Murphy Exploration and Production Co.,* 147 IBLA 386, 387 (1999); *Elaine D. Berman,* 140 IBLA 173 (1997); and *Coastal Oil and Gas Corp.,* 108 IBLA 62, 63 (1989).

Section 4.405 Requests for Extension of Time

Several regulations require parties to file documents with the Board within specified times, *e.g.*, Section 4.412(a) (statement of reasons within 30 days after filing of the notice of appeal) and Section 4.414 (answer within 30 days after service of a notice of appeal or statement of reasons). *See also* Section 4.413(a) (service of a notice of appeal or a statement of reasons or other pleading within 15 days after filing the document). Failure to comply with Sections 4.412 and 4.413 may subject an appeal to summary dismissal. Section 4.402.

Although parties frequently request extensions of time for filing statements of reasons or answers, the only regulation governing how they do so is Section 4.22(f). IBLA's experience indicates a need for a regulation that establishes a standard for when such requests may be granted. As noted by the former Administrative Conference of the United States:

> Time extensions should be granted only upon strong, documented justification. While procedural fairness mandates that deadlines may be extended for good cause, presiding officers should be aware that casual, customary extensions have serious negative effects on an adjudicatory system, its participants, and those wishing access thereto. Stern warnings accompanying justified extensions have had good success in curtailing lawyers' requests for additional time.

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure, Recommendation No. 86–7, 51 FR 46985, 46990 (Dec. 30, 1986).

Accordingly, we propose a new regulation that would require a party to show good cause for requesting any extension. Consent of opposing counsel, standing alone, would not constitute good cause; but conducting settlement negotiations in good faith would constitute good cause for a reasonable extension of time. ''Good cause'' would be more difficult to show with additional requests or requests for longer extensions.

A party that foresees it will need an extension is strongly encouraged to file a motion requesting it as early as possible, in order to give the Board time to consider the motion. Under the proposed regulation, the deadline for filing a request for an extension is the day before the date the document is due, absent compelling circumstances. For example, if a document is due on a Friday, the motion requesting an extension would be due no later than Thursday; if it is due on Monday, the motion would be due on the previous Friday. *See* Section 4.22(e). A party may file and serve such a motion by facsimile.

Any party that objected to a motion requesting an extension would have to file its reasons for objection with the Board within 2 business days. A party may likewise file and serve such an objection by facsimile.

A Board order granting or denying a motion requesting an extension will state when the document must be filed. If the Board does not act on a motion before the document is due, the document must be filed no later than 15 days after the original due date, unless the Board orders otherwise. For example, if a document were due on the 10th of the month, a motion for extension of time is filed by the 9th, but the Board has not issued an order by the 10th, the document would be due on the 25th unless, after the 10th, the Board issued an order providing a different date. *See* Section 4.22(e). The Board fully intends to rule on all motions it receives for an extension of time. But since we are proposing to allow such motions to be filed up to the close of business on the day before a document is due and to allow objections to be filed within 2 business days thereafter, in many cases it will not be possible for the Board to rule on such motions before the original document due date. We are therefore proposing this 15-day automatic extension period, which can be either shortened or lengthened when the Board does rule on the motion, generally within 1 or 2 business days after the time for filing an objection has expired.

Section 4.406 Intervention; Amicus Curiae

There is currently no regulation governing intervention in appeals to IBLA under 43 CFR part 4, subpart E, although there is such a regulation in subpart L, Section 4.1110. As a result, there are no established standards for when a person may intervene. As a related matter, there is no regulation in subpart E governing when a person may appear as an amicus curiae, although there is a general regulation in Section 4.3(c). We are therefore proposing a regulation that would govern these matters.

IBLA decisions state that a person who ''could independently maintain the action in which he seeks to participate'' may intervene. *See*, *e.g.*, *Sierra Club—Rocky Mountain Chapter*, 75 IBLA 220, 221 n. 2 (1983); *United States* v. *United States Pumice Co.*, 37 IBLA 153, 157 (1978). Similarly, IBLA has granted intervention to a person who would be adversely affected if the agency decision were reversed or modified on appeal, *e.g.*, the proponent of a project approved by the agency. *See*, *e.g.*, *Las Vegas Valley Action Committee*, 156 IBLA 110, 112 (2001); *Bear River Land & Grazing* v. *BLM*, 132 IBLA 110, 113–14 (1995).

When the Board has denied a petition to intervene, it has often allowed the person to participate as an amicus curiae. *See*, *e.g.*, *Southern Utah Wilderness Alliance*, 161 IBLA 15, 18 n. 4 (2004); *Sanguine Limited*, 157 IBLA 277, 281 n. 4 (2001).

We propose that the Board may grant a motion to intervene that is timely filed by a person who would have a right of appeal under Section 4.410 or would be adversely affected if the decision under review were reversed, vacated, set aside, or modified by the Board on appeal. Whether a motion to intervene is timely would depend on the potential intervenor's relationship to the case.

Specifically, if the person would be adversely affected if the decision under review were reversed, vacated, set aside, or modified by the Board on appeal, a motion to intervene must be filed within 30 days after the person knew or should have known that the decision under review had been appealed. If, however, the person wishing to intervene would have a right of appeal under Section 4.410, the motion must be filed within 30 days after the person was served with the decision or, if not served, knew or should have known of the decision. See *Independent Petroleum Association of Mountain States*, 136 IBLA 279, 281 (1996) (Board will deny motion to intervene where granting it would circumvent the requirement in Section 4.411(a) that an appeal be filed within 30 days after service of a decision).

The burden of showing a motion to intervene is timely filed is on the person filing the motion. The motion must state the basis for the proposed intervention.

The Board could deny the motion if granting it would disadvantage the rights of the existing parties or unduly delay adjudication of the appeal, *e.g.*, if the motion is filed after all briefs have been submitted and the appeal is ripe for adjudication. Alternatively, the Board could grant the motion but limit the extent of the person's participation in the appeal.

Under the proposed regulation, any person could file a motion to file a brief as an amicus curiae. The motion must state what interest the person has in the appeal and how its brief would be relevant to the issues involved. The Board could grant or deny the motion in its discretion. The Board may also allow a person whose motion to intervene is denied to file a brief as an amicus curiae.

Section 4.407 Motions

There is currently no regulation that deals with motions filed with the Board, *e.g.*, that states when the parties may file responses or provides when the Board is to act. In order to standardize practice and facilitate prompt rulings, we are proposing a regulation requiring a party that files a motion with the Board to support it with reasons. The regulation would allow other parties to respond within 15 days and states that the Board would rule ''as expeditiously as possible.''

The 15-day response time in Section 4.407(b) would apply to any motion filed in a proceeding under this subpart, unless another regulation or the Board by order sets a different response deadline. For example, Section 4.407(b) would normally apply to a motion under Sections 4.403, 4.404, or 4.406, discussed above, or to a motion to dismiss, to refer for hearing (Section 4.415), to suspend consideration or expedite consideration, to file a further pleading or exceed page limits (see amended Sections 4.412 and 4.414, discussed below), to request a remand, etc. Section 4.407(b) would not apply to a motion requesting an extension of time, since Section 4.405(d) sets a shorter response time for such motions.

If a party needs more than 15 days to file a response, it may request an extension of time under Section 4.405.

Section 4.411 Appeal; How Taken, Mandatory Time Limit

IBLA does not have jurisdiction over an appeal unless a notice of appeal is timely filed with the office of the officer who made the decision. Under Section 4.22(a), a document is filed when it is received, not when it is sent. Recently, cases have arisen in which an appellant has transmitted a notice of appeal via facsimile. Although the appellant attempted to transmit the notice so that it would be filed within 30 days, the office either did not receive it or did not receive it on time. *See*, *e.g.*, *National Wildlife Federation*, 162 IBLA 263, 264–66 (2004) (affirming dismissal of a request for State Director review because, although the appellant submitted the log of transmissions from its facsimile machine, there was no evidence that the request was received by the State Director by the time it was due). *See also Underwood Livestock, Inc.*, 165 IBLA 128, 130–31 (2005). In order to avoid such issues, we propose to amend existing Section 4.411(a) to clarify that transmitting a notice of appeal by facsimile would not constitute filing. The Board generally considers any document it receives by facsimile only a courtesy or advance copy; it does not consider the document filed until the original is received by the Board. (As noted above with respect to Section 4.405(b), however, we are proposing to make an exception for motions for extension of time and objections to such motions.)

We propose to amend Section 4.411(b) to reflect IBLA decisions that require authorization for a person to represent more than one party, *e.g.*, *The Friends and Residents of Log Creek*, 150 IBLA 44, 48 (1999) (''Proper application of the Department's rules of practice requires an affirmative showing that a representative of a named appellant is qualified and authorized to represent any other purported appellant or appellants, if single representation for multiple parties is intended.''); *The Wilderness Society*, 109 IBLA 175, 176 (1989) (''[A] party that wishes to join in another's appeal is well advised to file its own notice of appeal and statement of reasons, sign the appeal documents along with the other party, or authorize the other party's attorney, in advance, to represent it as well.'') *See also Klamath Siskiyou Wildlife Center*, 155 IBLA 347, 350–51 (2001). If an attorney or other person eligible under Section 1.3(b) to practice before the Department wishes to represent more than one appellant, the notice of appeal must state that he or she is authorized to do so.

Section 4.412 Statement of Reasons, Statement of Standing

Section 4.412(a) requires an appellant to file a statement of reasons for appeal with the Board within 30 days after the notice of appeal is filed if the notice of appeal did not include a statement of reasons. The next sentence states: ''In any case, the Board will permit the appellant to file additional statements of reasons and written arguments or briefs within the 30-day period after the notice of appeal was filed.'' This sentence, together with existing Section 4.414 (which requires an answer be filed within 30 days after service of a statement of reasons and then again if additional reasons are filed by the appellant) means a party that wishes to participate in the appeal potentially must file two answers.

We propose to allow an appellant to file a statement of reasons within 30 days after filing the notice of appeal (as it may under the existing regulation), but to revise Section 4.414 to state that any party that is served with a notice of appeal and that wishes to participate will have 60 days after service of the statement of reasons to file a single answer. We also propose that an appellant's statement of reasons may not exceed 30 pages (excluding exhibits, declarations, or other attachments) unless the appellant files a motion under Section 4.407 to obtain leave of the Board by showing good cause. We propose that an appellant must also show good cause for leave to file any additional pleading, e.g., a reply to an answer. We propose the same page limit on answers.

In IBLA's experience, because the agency's decision should contain a supporting rationale (*see Larry Brown &*

Associates, 133 IBLA 202, 205 (1995)), it is sufficient for the Board's purposes to receive a statement of reasons for appeal and an answer. More than this becomes costly and time-consuming to the parties and delays ripeness of the appeal for adjudication by the Board without providing additional useful argument.

These proposals provide adequate opportunity for all parties to state their arguments and authorize the Board to allow longer or additional pleadings if a need for them is shown.

We expect these pleadings will generally conform to the form requirements of Federal Rule of Appellate Procedure 32, *e.g.*, be double-spaced, have adequate margins, and be in a standard type style.

Section 4.413 Service of Notice of Appeal

We propose to revise Section 4.413(a) to require service of a notice of appeal in accordance with Section 4.401(c)(2)(i), *i.e.*, by personal delivery or by registered mail or certified mail, return receipt requested. Under Section 4.401(c), all other documents filed with the Board must also be served.

Several of the addresses of the Office of the Solicitor on which a copy of a notice of appeal and statement of reasons must be served under existing Section 4.413(c)(2) are out of date. The regulation would be revised to provide the current addresses.

Section 4.414 Answers

43 CFR 4.414 currently provides that a party served with a notice of appeal that wishes to participate in an appeal must file an answer to an appellant's statement of reasons within 30 days after service of the statement. In its second sentence, the regulation provides, ''If additional reasons, written arguments, or briefs are filed by the appellant, the adverse party shall have 30 days after service thereof on him within which to answer them.''

As discussed above under Section 4.412, we believe it is normally sufficient for each party to file only one brief unless it can show good cause for a further brief. We therefore propose to revise this regulation to require filing of a single answer (or motion, if appropriate, *e.g.*, a motion to dismiss) within 60 days of service of the statement of reasons for appeal. The time for answer would be increased from 30 to 60 days to make it the same as the total length of time that an appellant has to file a statement of reasons from the date of service of the decision being appealed (30 days under Section 4.411(a)(3) plus 30 days under Section 4.412(a)).

If settlement negotiations promise to extend beyond 60 days, a person wishing to participate could file a motion requesting an extension of time to file an answer or motion under Section 4.405. An answer must respond to the statement of reasons for appeal and, if a person is representing more than one party, must state that the person is authorized to do so. Like an appellant, a party may not file a further pleading unless the Board grants a motion showing good cause to do so. Nor may an answer or motion exceed 30 pages (excluding exhibits, declarations, or other attachments) unless the Board grants a motion showing good cause.

Section 4.415 Motion for a Hearing on an Appeal Involving Questions of Fact

Existing 43 CFR 4.415 authorizes the Board, in its discretion, to refer a case to an administrative law judge (ALJ) for a hearing on an issue of fact, either on its own initiative or in response to a request from an appellant or an adverse party. The regulation provides that such a request must be filed within 30 days after an answer is due, and that, if the Board orders a hearing, it will specify the issues upon which the hearing is to be held.

IBLA has found that the requirement in Section 4.415 that a request for a hearing be filed within 30 days after an answer is due is neither necessary nor advisable. Sometimes the need for a hearing does not become apparent until later. Because it is not necessary that a hearing be requested within 30 days after an answer is due, we propose to delete this requirement.

When a party has requested a hearing without specifying the issues of fact involved or the reasons why a hearing is necessary, IBLA has found it helpful to issue an order requesting the party to list what specific material issues of fact require a hearing, what evidence concerning these issues must be presented by oral testimony, what witnesses need to be examined, and what evidence could be presented in documentary form, e.g., by affidavit, rather than by oral testimony. *See*, *e.g.*, *W.J. and Betty Lo Wells*, 122 IBLA 250, 252 (1992).

We propose to amend Section 4.415 to require a party that requests a hearing to specify in a motion what the material issues of fact are, what evidence must be presented, what witnesses need to be examined, and what documentary evidence needs to be explained, if any.

Although IBLA has established standards for exercising its discretion in favor of granting such a request, they are not set forth in 43 CFR 4.415. The IBLA has regularly stated that a hearing is not necessary in the absence of a material issue of fact that, if proven, would alter the disposition of the appeal. *Kim C. Evans*, 82 IBLA 319, 323 (1984).

> A hearing is necessary only where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required. *See United States* v. *Consolidated Mines & Smelting Co.*, 455 F.2d 432, 453 (9th Cir. 1971).

Ben Cohen (On Judicial Remand), 103 IBLA 316, 321 (1988). The Board has also said it '' 'should grant a hearing when there are significant factual or legal issues remaining to be decided and the record without a hearing would be insufficient for resolving them.' '' *Woods Petroleum Co.*, 86 IBLA 46, 55 (1985), quoting *Stickelman* v. *United States*, 563 F.2d 413, 417 (9th Cir. 1977).

We propose to include the standards for referral for a hearing in the regulation: that there is a material issue of fact which, if proven, would alter the outcome of the appeal or that there are significant factual or legal issues remaining to be decided and the record without a hearing would not be sufficient for resolving them. ''Material'' means ''tending to prove or disprove a matter in issue.'' B. Garner, *A Dictionary of Modern Legal Usage*, (Oxford University Press, 1987), at 354.

The existing regulation provides that the hearing will be held in accordance with Sections 4.430 to 4.439 and the general rules in subpart B of 43 CFR Part 4. Section 4.439 in turn states that, upon completion of the hearing, the ALJ will send the Board the record and proposed findings of fact on the issues presented at the hearing. Thus, Section 4.415 does not in terms authorize IBLA to refer a case to an ALJ either for a recommended decision or for a decision that would be final unless appealed to IBLA, although IBLA has long done both. *See, e.g., Samedan Oil Corp.*, 163 IBLA 63, 71 (2004); *Elizabeth B. Archer*, 102 IBLA 308, 310 (1988); *Hondoo River and Trails*, 91 IBLA 296, 304 (1986). In recent years, IBLA's prevailing practice has been to refer the case to an ALJ for a hearing and issuance of a decision that will be final in the absence of an appeal.

Another of OHA's appeals boards, the Interior Board of Indian Appeals (IBIA), also has regulations providing for the referral of a case to an ALJ for an evidentiary hearing. Those regulations specify that, following the hearing, the ALJ is to issue recommended findings of fact and conclusions of law. 43 CFR 4.337, 4.338 (2004). IBIA does not refer cases to an ALJ for a hearing and issuance of a final decision.

Recently, the OHA Director issued a decision which concluded that IBLA's regulations at Sections 4.415 and 4.430 through 4.439 provide authority only

> for the Board to refer a case for a hearing on one or more issues of fact that the Board is required to specify, and for the ALJ to conduct a hearing and make proposed findings of fact on the issues so referred. The Board is not authorized to refer a case to an ALJ for a recommended decision on the merits or for a decision that will be final in the absence of an appeal. If considerations of judicial economy favor expanding the authority of the Board and the ALJs to dispose of cases that involve disputed issues of fact, the solution is to amend the regulations.

Samedan Oil Corp., 32 OHA 61, 70 (2005)

Accordingly, we propose to make explicit the Board's authority to refer a matter for a hearing followed by (1) proposed findings of fact on specified issues, (2) a recommended decision, or (3) a decision that will be final in the absence of an appeal. As discussed below, 43 CFR Sections 4.433 and 4.439 would be revised to give ALJs the corresponding authority. We welcome comments on the appropriateness and relative advantages of the three options, and whether the final regulations should include all three.

Finally, the proposed regulation would provide that the Board may suspend the effectiveness of the decision under review pending a final decision on the appeal if, considering factors including those set forth in Section 4.21(b), it finds good cause to do so.

Section 4.421 Definitions

Because ''administrative law judge,'' ''Board,'' ''bureau,'' and ''Secretary'' are defined in Section 4.400, it is not necessary to repeat them in this regulation, and we propose to remove those definitions. We would alphabetize the remaining definitions and revise them to reflect the revisions to the definitions in Section 4.400.

Section 4.422 Documents

As discussed above under Section 4.401, we propose to revise existing Section 4.422(c) to allow service by first-class mail and by a delivery service and to provide that service will be complete when a document is delivered or returned undelivered.

Section 4.433 Authority of the Administrative Law Judge

As discussed above under Section 4.415, we propose to revise Section 4.433 to provide authority to an administrative law judge to issue a recommended decision or a decision that would be final for the Department absent an appeal to the Board, in addition to proposed findings of fact on the issues presented at the hearing. This authority is set forth in proposed Section 4.433(a)(4).

Section 4.434 Conduct of Hearing

We propose to revise this regulation to substitute ''administrative law judge'' for ''examiner'' and to substitute ''bureau,'' as defined in Section 4.400, for ''Bureau of Land Management.''

Section 4.438 Summary of Evidence

We propose to remove this regulation because the procedure described has not been used for many years and is unnecessary, since all hearings are transcribed. We would redesignate existing Section 4.439 as Section 4.438.

Section 4.438 Action by Administrative Law Judge

As discussed above under Section 4.415, we propose to revise this regulation to authorize an administrative law judge to issue a recommended decision or decision that would be final for the Department absent an appeal to the Board, in addition to proposed findings of fact on the issues presented at the hearing. An administrative law judge's decision that would be final for the Department absent appeal would not, however, be precedential.

> [D]ecisions of Administrative Law Judges, while certainly worthy of respectful consideration, are not Departmental precedents and are not binding on this Board nor are they binding upon other Administrative Law Judges, unless they are adopted by the Board in adjudication of an appeal.

McLean v. *BLM*, 133 IBLA 225, 235 n. 16 (1995); *see also United States* v. *Mansfield*, 35 IBLA 95, 100 (1978).

We propose to delete the second sentence of the regulation, and to require the administrative law judge to serve on the parties the proposed findings, recommended decision, or decision that would be final absent appeal. We also propose to add a provision that the parties may file exceptions to proposed findings or a recommended decision with the Board.

Section 4.478 Appeals to the Board of Land Appeals; Judicial Review

OHA recently published amendments to its regulations that authorized an administrative law judge to issue an order granting or denying a petition for stay of a BLM grazing decision. 43 CFR 4.474(c), 68 FR 68765, 68771 (Dec. 10, 2003). The amendments also provided for an appeal to IBLA from such an order in Section 4.478(a), but did not specify a time or place for filing the appeal. *See Western Watersheds Projects* v. *Bureau of Land Management*, 166 IBLA 30, 37 (2005). We propose to amend Section 4.478(a) to provide that an appeal may be filed with the administrative law judge in accordance with Section 4.411(a).

B. Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals

Section 4.1117 Reconsideration

In subpart L, 43 CFR 4.1276(a) provides that a party may ''move for reconsideration under Section 4.21(d); however, the motion shall be filed with the Board within 30 days after the date of the decision'' (rather than ''filed promptly,'' as provided in Section 4.21(d)). Because Section 4.1276 is in the part of subpart L headed ''Appeals to the Board from Decisions or Orders of Administrative Law Judges,'' the question has arisen whether Section 4.1276(a) governs reconsideration of other Board decisions under subpart L, *e.g.*, in appeals of decisions of the Director of the Office of Surface Mining Reclamation and Enforcement under Section 4.1280 *et seq*.

In order to provide a regulation governing reconsideration of any Board decision under subpart L and to make that regulation consistent with the revisions to Section 4.403, discussed above, we propose to add a regulation to the general provisions of subpart L stating that a petition for reconsideration may be filed within 60 days after the date of the decision and that the provisions of Section 4.403 will apply.

Section 4.1270 Petition for Discretionary Review of a Proposed Civil Penalty

When Section 4.1270(f) was amended recently, 67 FR 61506, 61511 (Oct. 1, 2002), the first sentence mistakenly referred to ''the rules in Sections 4.1273 through 4.1277.'' There is no Section 4.1277, so we are correcting the amendment of Section 4.1270(f) to refer to 4.1273 through 4.1275.

Section 4.1276 Reconsideration

This regulation will be removed because of the addition of Section 4.1117, discussed above.

Section 4.1286 Motion for a Hearing

Like Section 4.415, Section 4.1286 provides that a party may request a hearing before an administrative law judge ''to present evidence on an issue of fact,'' and that the Board, either in

response to a request or on its own motion, may refer a case to an administrative law judge ''for a hearing on an issue of fact.'' Also like Section 4.415, Section 4.1286 provides that the Board ''will specify the issues upon which the hearing will be held.'' In Section 4.415, this language is followed by the statement that ''the hearing will be held in accordance with Sections 4.430 to 4.439 and the general rules in subpart B of this part.''

As discussed above in connection with the proposed amendment to Section 4.415, Section 4.439 provides that after a hearing the administrative law judge will send the Board the record and proposed findings of fact; therefore, Section 4.415 has been construed as authorizing the Board to refer a matter for a hearing only for proposed findings of fact, not for a recommended decision or a decision that will be final in the absence of an appeal. *Samedan Oil Corp.*, 32 OHA 61, 70 (2005).

Unlike Section 4.415, there is no statement in Section 4.1286 referring to the authority under which a hearing will be conducted. To ensure there is no ambiguity in the Board's authority under Section 4.1286 in light of the decision in *Samedan*, we are proposing an amendment similar to that proposed for Section 4.415.

Paragraph (e) would provide that hearings under Section 4.1286 will be conducted under the regulations of subpart L that provide specific standards, deadlines, and procedures for other proceedings under the Surface Mining Control and Reclamation Act, including regulations governing discovery and the conduct of evidentiary hearings. In the absence of such a provision, those regulations would not apply, since hearings under Section 4.1286 are not required to be conducted under 5 U.S.C. 554 (2000).

IV. Review Under Procedural Statutes and Executive Orders

A. Regulatory Planning and Review (E.O. 12688)

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget has determined that this document is not a significant rule. The Office of Management and Budget has not reviewed this rule under Executive Order 12866.

1. This rule would not have an annual economic effect of $100 million or more or adversely affect in a material way an economic sector, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. A cost-benefit and economic analysis is not required. These proposed regulations would have virtually no effect on the economy because they would only revise existing procedural regulations governing appeals and add new regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention.

2. This rule would not create inconsistencies with or interfere with other agencies' actions because only OHA provides regulations that govern procedures for appeals of decisions concerning the use and disposition of public lands and their resources and concerning surface coal mining.

3. This rule would not materially alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These proposed regulations have to do only with procedures governing appeals, not with entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

4. This rule does not raise novel legal or policy issues. The proposed regulations would merely revise existing procedures and add regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention, which are all familiar administrative procedures.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed regulations only revise or add procedural regulations governing appeals. A Small Entity Compliance Guide is not required.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act:

1. It would not have an annual effect on the economy of $100 million or more. The proposed rule only revises procedural regulations governing appeals and adds regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention. The rule should have no effect on the economy.

2. It would not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. Revising OHA's procedural regulations governing appeals and adding regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention would not affect costs or prices for citizens, individual industries, or government agencies.

3. It would 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. Revising OHA's procedural regulations governing appeals and adding regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention should have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we find that:

1. This rule would not have a significant or unique effect on state, local, or tribal governments or the private sector. Revising OHA's procedural regulations governing appeals and adding regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention would neither uniquely nor significantly affect these governments.

2. This rule would not produce an unfunded Federal mandate of $100 million or more on state, local, or tribal governments in the aggregate or the private sector in any year, *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1532, is not required.

E. Takings (E.O. 12630)

In accordance with Executive Order 12630, we find that the rule would not have significant takings implications. A takings implication assessment is not required. Revising OHA's procedural regulations governing appeals and adding regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention should have no effect on property rights.

F. Federalism (E.O. 13132)

In accordance with Executive Order 13132, we find that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. There is no foreseeable effect on states from revising

OHA's procedural regulations governing appeals and adding regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention. A Federalism Assessment is not required.

G. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Because these regulations would improve OHA's procedural regulations governing appeals and add regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention, they would not burden either administrative or judicial tribunals.

H. Paperwork Reduction Act

This proposed rule would not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. The proposed rule is an administrative and procedural rule that revises OHA's procedural regulations governing appeals and adds regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention.

I. National Environmental Policy Act

The Department has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500, and the Department of the Interior Departmental Manual (DM). CEQ regulations, at 40 CFR 1508.4, define a ''categorical exclusion'' as a category of actions that do not individually or cumulatively have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions. 40 CFR 1507.3.

The Department has determined that this proposed rule is categorically excluded from further environmental analysis under NEPA in accordance with 516 DM 2, Appendix 1, which categorically excludes ''[p]olicies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature . . . .'' In addition, the Department has determined that none of the extraordinary circumstances listed in 516 DM 2, Appendix 2, applies to the proposed rule.

The proposed rule is an administrative and procedural rule that revises OHA's procedural regulations governing appeals and adds regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention. Therefore, neither an environmental assessment nor an environmental impact statement under NEPA is required.

J. 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), E.O. 13175, and 512 DM 2, the Department of the Interior has evaluated potential effects of these regulations on Federally recognized Indian tribes and has determined that there are no potential effects. These regulations would not affect Indian trust resources; they would only revise OHA's procedural regulations governing appeals and add regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention.

K. Effects on the Nation's Energy Supply (E.O. 13211)

In accordance with Executive Order 13211, we find that this regulation does not have a significant effect on the nation's energy supply, distribution, or use. Revising OHA's procedural regulations governing appeals and adding regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention would not affect energy supply or consumption.

L. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (and shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading; for example, *§ 4.403 Finality of decision; reconsideration.*) (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? (6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

List of Subjects in 43 CFR Part 4

Administrative practice and procedure; Mines; Public lands; Surface mining.

Dated: February 16, 2007.

R. Thomas Weimer,

Assistant Secretary—Policy, Management and Budget.

For the reasons set forth in the preamble, the Office of Hearings and Appeals proposes to amend 43 CFR part 4 as set forth below:

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

1. Revise the authority citation for part 4, subpart E, to read as follows:

Authority: Sections 4.470 to 4.480 are also issued under authority of 43 U.S.C. 315a.

2. Revise § 4.400 to read as follows:

§ 4.400 Definitions.

As used in this subpart:

Administrative law judge means an administrative law judge in the Office of Hearings and Appeals, Office of the Secretary, appointed under 5 U.S.C. 3105.

BLM means the Bureau of Land Management.

Board means the Interior Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary. The address of the Board is 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203.

Bureau means BLM or the Minerals Management Service, as appropriate.

Last address of record means the address in a person's most recent filing in an appeal or, if there has not been any filing, the person's address as provided in the bureau decision under appeal.

Party includes a party's representative(s) where the context so requires.

Office or officer includes ''administrative law judge'' or ''Board'' where the context so requires.

Secretary means the Secretary of the Interior, or an authorized representative.

3. In § 4.401, revise paragraph (c) to read as follows:

§ 4.401 Documents.

* * * * *

(c) *Service of documents.* (1) A party that files any document under this subpart must serve a copy of it concurrently on:

(i) Each adverse party named in the decision, at the last address of record; and

(ii) The appropriate official of the Office of the Solicitor under § 4.413(c) and (d).

(2) Service may be made as shown in the following table:

If the document is . . .	Service may be made by . . .
(i) A notice of appeal	(A) Personal delivery; or (B) Registered or certified mail, return receipt requested.
(ii) Not a notice of appeal	(A) Personal delivery; (B) Registered or certified mail, return receipt requested; (C) First-class mail; or (D) Delivery service, if the last address of record is not a post office box.

(3) At the conclusion of any document that a party must serve under the regulations in this part, the party must sign a written statement that:

(i) Certifies that service has been or will be made in accordance with the applicable rules; and

(ii) Specifies the date and manner of service.

(4) Service is complete as shown in the following table:

If service is made by . . .	Service is complete when the document is . . .
(i) Personal delivery	Delivered to the party or its agent.
(ii) Registered or certified mail, return receipt requested	Delivered to the party or returned by the Postal Service unclaimed.
(iii) First-class mail	Delivered to the party or returned by the Postal Service undelivered.
(iv) Delivery service	Delivered to the party or returned by the delivery service undelivered.

(5) In the absence of evidence to the contrary, delivery under paragraphs (c)(4)(ii) through (iv) of this section is deemed to take place 3 business days after the document was sent.

4. Revise § 4.403 to read as follows:

§ 4.403 Finality of decision; reconsideration.

(a) The Board's decision is final agency action and is effective on the date it is issued, unless the decision itself provides otherwise.

(b) The Board may reconsider a decision in extraordinary circumstances.

(1) A party that wishes to request reconsideration of a Board decision must file a motion for reconsideration with the Board within 60 days after the date of a decision.

(2) The motion may include a request that the Board stay the effectiveness of its decision.

(3) Any other party to the original appeal may file a response to a motion for reconsideration with the Board within 15 days after service of the motion, unless the Board orders otherwise.

(4) A motion for reconsideration will not stay the effectiveness or affect the finality of the Board's decision unless so ordered by the Board for good cause.

(5) A party does not need to file a motion for reconsideration in order to exhaust its administrative remedies.

(c) A motion for reconsideration must:

(1) Specifically describe the extraordinary circumstances that warrant reconsideration; and

(2) Include all arguments and supporting documents.

(d) Extraordinary circumstances that may warrant granting reconsideration include, but are not limited to:

(1) Error in the Board's interpretation of material facts;

(2) Recent judicial development;

(3) Change in Departmental policy; or

(4) Evidence that was not before the Board at the time the Board's decision was issued and that demonstrates error in the decision.

(e) If the motion cites extraordinary circumstances under paragraph (d)(4) of this section, it must explain why the evidence was not provided to the Board during the course of the original appeal.

(f) The Board will not grant a motion for reconsideration that:

(1) Merely repeats arguments made in the original appeal, except in cases of demonstrable error; or

(2) Seeks to alter legally binding consequences.

5. Add §§ 4.404 through 4.407 to subpart E to read as follows:

§ 4.404 Consolidation.

If the facts or legal issues in two or more appeals pending before the Board are the same or similar, the Board may consolidate the appeals, either on motion by a party or at the initiative of the Board.

§ 4.405 Extensions of time.

(a) If a document other than a notice of appeal is required to be filed or served within a definite time, a party may seek additional time by filing with the Board a motion requesting an extension of time.

(b) The deadline for filing a motion requesting an extension is the day before the date the document is due. The motion may be filed and served by facsimile. Section 4.401(a) does not apply to a motion requesting an extension of time.

(c) The party must support its motion requesting an extension of time by showing there is good cause to grant it.

(d) Any party that objects to a motion requesting an extension must file with the Board its reasons for objection within 2 business days after service of the motion. The objection may be filed and served by facsimile.

(e) A Board order granting or denying a motion requesting an extension will state when the document must be filed. If the Board does not act on a motion before the document is due, the document must be filed no later than 15 days after the original due date, unless the Board orders otherwise.

§ 4.406 Intervention; amicus curiae.

(a) A person who wishes to intervene in an appeal must file a motion to intervene within the time shown in the following table:

If the person . . .	The person must file the motion within 30 days after the person . . .
(1) Would have a right to appeal under § 4.410 and was served with the decision.	Was served with the decision.
(2) Would have a right to appeal under § 4.410 and was not served with the decision.	Knew or should have known that the bureau had issued the decision.
(3) Would be adversely affected if the Board reversed, vacated, set aside, or modified the decision.	Knew or should have known that the decision had been appealed to the Board.

(b) A timely motion to intervene must set forth the basis under paragraph (a) of this section for the proposed intervention.

(c) The Board may:

(1) Deny the motion to intervene if granting it would disadvantage the rights of the existing parties or unduly delay adjudication of the appeal; or

(2) Grant the motion to intervene but limit the person's participation in the appeal.

(d) A person may file a motion at any time to file a brief as an amicus curiae.

(1) The motion must state the person's interest in the appeal and how its brief will be relevant to the issues involved.

(2) The Board may grant or deny the motion in its discretion. The Board may also allow a person to file a brief as amicus curiae if it denies the person's motion to intervene.

§ 4.407 Motions.

(a) Any motion filed with the Board must provide a concise statement of the reasons supporting the motion.

(b) When a person or party files a motion, any other party has 15 days after service of the motion to file a written response, unless a provision of this subpart, *e.g.*, § 4.405(d), or the Board by order provides otherwise.

(c) The Board will rule on any motion as expeditiously as possible.

6. In § 4.411, revise paragraphs (a) and (b) to read as follows:

§ 4.411 Appeal; how taken, mandatory time limit.

(a) A person who wishes to appeal to the Board must file a notice that the person wishes to appeal.

(1) The notice of appeal must be filed in the office of the officer who made the decision (not the Board).

(2) A person served with the decision being appealed must transmit the notice of appeal in time for it to be filed in the appropriate office within 30 days after the date of service.

(3) If a decision is published in the **Federal Register**, a person not served with the decision must transmit the notice of appeal in time for it to be filed in the appropriate office within 30 days after the date of publication.

(4) Transmitting a notice of appeal by facsimile does not constitute filing.

(b) The notice of appeal must give the serial number or other identification of the case. A person representing more than one appellant must state that he or she is authorized to do so. The notice of appeal may include a statement of reasons for the appeal, and a statement of standing if required by § 4.412(b).

* * * * *

7. In § 4.412, revise paragraph (a) to read as follows:

§ 4.412 Statement of reasons, statement of standing.

(a) An appellant must file a statement of reasons for appeal with the Board within 30 days after the notice of appeal was filed. Unless the Board orders otherwise, upon motion for good cause shown:

(1) The text of a statement of reasons may not exceed 30 pages (double-spaced, using standard margins and font size); and

(2) An appellant may not file any further pleading.

* * * * *

8. Revise §§ 4.413 through 4.415 to read as follows:

§ 4.413 Service of notice of appeal.

(a) The appellant must serve a copy of the notice of appeal on each adverse party named in the decision from which the appeal is taken and on the Office of the Solicitor as identified in paragraphs (c) and (d) of this section. Service must be accomplished and certified as prescribed in § 4.401(c)(2)(i).

(b) Failure to serve a notice of appeal will subject the appeal to summary dismissal as provided in § 4.402.

(c) The appellant must serve a copy of the notice of appeal as shown in the following table.

If the appeal is taken from a decision of. . .	Then the appellant must serve the notice on. . .
(1) The Director, Minerals Management Service	Associate Solicitor, Division of Mineral Resources, U.S. Department of the Interior, Washington, DC 20240.
(2) The Director, BLM	(i) If the decision concerns use and disposition of public lands, including land selections under the Alaska Native Claims Settlement Act, as amended: Associate Solicitor, Division of Land and Water Resources, U.S. Department of the Interior, Washington, DC 20240; or (ii) If the decision concerns use and disposition of mineral resources: Associate Solicitor, Division of Mineral Resources, U.S. Department of the Interior, Washington, DC 20240.
(3) A BLM State Office (including all District, Field, and Area Offices within that State Office's jurisdiction).	the appropriate office identified in paragraph (d) of this section.
(4) An Administrative Law Judge	the persons identified in paragraph (e) of this section.

(d) This paragraph applies to any appeal taken from a decision of a BLM State Office, including all District, Field, and Area Offices within that State Office's jurisdiction. The appellant must serve documents in accordance with the following table, unless the decision identifies a different official:

BLM state office	Mailing address
(1) Alaska	Regional Solicitor, Alaska Region, U.S. Department of the Interior, 4230 University Drive, Suite 300, Anchorage, AK 99508–4626.

BLM state office	Mailing address
(2) Arizona	Field Solicitor, U.S. Department of the Interior, U.S. Courthouse, Suite 404, 401 W. Washington St. SP 44, Phoenix, AZ 85003.
(3) California	Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E–1712, Sacramento, CA 95825–1890.
(4) Colorado	Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215.
(5) Eastern States	(i) If the decision concerns the use and disposition of public lands: Associate Solicitor, Division of Land and Water Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240. (ii) If the decision concerns the use and disposition of mineral resources: Associate Solicitor, Division of Mineral Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240.
(6) Idaho	Field Solicitor, U.S. Department of the Interior, University Plaza, 960 Broadway Avenue, Suite 400, Boise, ID 83706.
(7) Montana	(i) Deliveries by U.S. Mail: Field Solicitor, U.S. Department of the Interior, P.O. Box 31394, Billings, MT 59107–1394. (ii) All other deliveries: Field Solicitor, U.S. Department of the Interior, 316 North 26th Street, Room 3005, Billings, MT 59101.
(8) Nevada	Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E–1712, Sacramento, CA 95825–1890.
(9) New Mexico	(i) Deliveries by U.S. Mail: Field Solicitor, U.S. Department of the Interior, P. O. Box 1042, Santa Fe, NM 87504–1042. (ii) All other deliveries: Field Solicitor, U.S. Department of the Interior, Paisano Building, 2968 Rodeo Plaza Drive West, Room 2070, Santa Fe, NM 87505.
(10) Oregon	Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, Lloyd 500 Building, Suite 607, 500 NE Multnomah Street, Portland, OR 97232.
(11) Utah	Regional Solicitor, Intermountain Region, U.S. Department of the Interior, 6201 Federal Building, 125 South State Street, Salt Lake City, UT 84138–1180.
(12) Wyoming	Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215.

(e) This paragraph applies to any appeal taken from a decision of an administrative law judge.

(1) The appellant must serve either:

(i) The attorney from the Office of the Solicitor who represented the bureau at the hearing; or

(ii) If there was no hearing, the attorney who was served with a copy of the decision by the administrative law judge.

(2) If the decision involved a mining claim on national forest land, the appellant must serve either:

(i) The attorney from the Office of General Counsel, U.S. Department of Agriculture, who represented the U.S. Forest Service at the hearing; or

(ii) If there was no hearing, the attorney who was served with a copy of the decision by the administrative law judge.

(f) Parties must serve the Office of the Solicitor as required by this section until a particular attorney of the Office of the Solicitor files and serves a Notice of Appearance or Substitution of Counsel. Thereafter, parties must serve the Office of the Solicitor as indicated by the Notice of Appearance or Substitution of Counsel.

(g) The appellant must certify service as provided in § 4.401(c)(3).

§ 4.414 Answers.

Any person or party served with a notice of appeal that wishes to participate in the appeal must file an answer or appropriate motion with the Board within 60 days after service of the statement of reasons for appeal.

(a) The answer must respond to the statement of reasons for appeal and, if a person is representing more than one party, must state that he or she is authorized to do so.

(b) Unless the Board orders otherwise, upon motion for good cause shown:

(1) The text of the answer or motion may not exceed 30 pages (double-spaced, using standard margins and font size); and

(2) The party may not file any further pleading.

(c) Failure to file an answer or motion will not result in a default. If an answer or motion is filed or served after the time required, the Board may disregard it in deciding the appeal, unless the delay in filing is waived as provided in § 4.401(a).

§ 4.415 Motion for a hearing on an appeal involving questions of fact.

(a) Any party may file a motion that the Board refer a case to an administrative law judge for a hearing. The motion must state:

(1) What specific material issues of fact require a hearing;

(2) What evidence concerning these issues must be presented by oral testimony, or be subject to cross-examination;

(3) What witnesses need to be examined; and

(4) What documentary evidence requires explanation, if any.

(b) In response to a motion under paragraph (a) of this section or on its own initiative, the Board may order a hearing if:

(1) There are any material issues of fact which, if proven, would alter the disposition of the appeal; or

(2) There are significant factual or legal issues remaining to be decided and the record without a hearing would be insufficient for resolving them.

(c) If the Board orders a hearing, it must:

(1) Specify the issues of fact upon which the hearing is to be held; and

(2) Request the administrative law judge to issue:

(i) Proposed findings of fact on the issues presented at the hearing;

(ii) A recommended decision that includes findings of fact and conclusions of law; or

(iii) A decision that will be final for the Department unless a notice of appeal is filed in accordance with § 4.411.

(d) If the Board orders a hearing, it may:

(1) Suspend the effectiveness of the decision under review pending a final Departmental decision on the appeal if it finds good cause to do so;

(2) Authorize the administrative law judge to specify additional issues; or

(3) Authorize the parties to agree to additional issues that are material, with the approval of the administrative law judge.

(e) The hearing will be conducted under §§ 4.430 to 4.439 and the general rules in subpart B of this part.

9. Revise § 4.421 to read as follows:

§ 4.421 Definitions.

In addition to the definitions in § 4.400, as used in this subpart:

Director means the Director of BLM, the Associate Director, or an Assistant Director.

District manager means the supervising BLM officer of the grazing district in which a particular range lies, or an authorized representative.

Person named in the decision means any of the following persons identified in a final BLM grazing decision: an affected applicant, permittee, lessee, or agent or lienholder of record, or an interested public as defined in § 4100.0–5 of this title.

State Director means the supervising BLM officer for the State in which a particular range lies, or an authorized representative.

10. In § 4.422, revise paragraphs (c) and (d) and add new paragraphs (e) through (g) to read as follows:

§ 4.422 Documents.

* * * * *

(c) *Service of documents.* A party filing a document under this subpart must serve a copy of it concurrently on:

(1) Each adverse party named in the decision, at the last address of record; and

(2) The appropriate official of the Office of the Solicitor under § 4.413(c) through (e).

(d) *Acceptable methods of service.* Service may be made in any of the following ways:

If the document is . . .	Service may be made by . . .
(1) A notice of appeal	(i) Personal delivery; or (ii) Registered or certified mail, return receipt requested.
(2) Not a notice of appeal	(i) Personal delivery; (ii) Registered or certified mail, return receipt requested; (iii) First-class mail; or (iv) Delivery service, if the last address of record is not a post office box.

(e) *Required statement.* At the conclusion of any document that a party must serve under this subpart, the party must sign a written statement that:

(1) Certifies that service has been or will be made in accordance with the applicable rules; and

(2) Specifies the date and manner of service.

(f) *Completion of Service.* (1) Service is complete as shown in the following table:

If service is made by . . .	Service is complete when the document is . . .
(i) Personal delivery	Delivered to the party or its agent.
(ii) Registered or certified mail, return receipt requested	Delivered to the party or returned by the Postal Service unclaimed.
(iii) First-class mail	Delivered to the party or returned by the Postal Service undelivered.
(iv) Delivery service	Delivered to the party or returned by the delivery service undelivered.

(2) In the absence of evidence to the contrary, delivery under paragraphs (f)(1)(ii) through (iv) of this section is deemed to take place 3 business days after the document was sent.

(g) *Extensions of time.* The Manager or the administrative law judge, as the case may be, may extend the time for filing or serving any document in a contest.

11. Revise §§ 4.433 and 4.434 to read as follows:

§ 4.433 Authority of the administrative law judge.

(a) The administrative law judge has general authority to conduct the hearing in an orderly and judicial manner, including authority to:

(1) Administer oaths;

(2) Call and question witnesses;

(3) Subpoena witnesses as specified in paragraph (b) of this section;

(4) Issue findings and decisions as specified in paragraph (c) of this section; and

(5) Take any other actions that the Board may prescribe in referring the case for hearing.

(b) The administrative law judge has authority to subpoena witnesses and to take and cause depositions to be taken for the purpose of taking testimony but not for discovery. This authority must be exercised in accordance with the Act of January 31, 1903 (32 Stat. 790; 43 U.S.C. 102 through 106).

(c) The administrative law judge has authority to issue any of the following, as specified by the Board under § 4.415(c)(2):

(1) Proposed findings of fact on the issues presented at the hearing;

(2) A recommended decision that includes findings of fact and conclusions of law; or

(3) A decision that will be final for the Department unless a notice of appeal is filed in accordance with § 4.411 within 30 days of receipt of the decision.

(d) The issuance of subpoenas, the attendance of witnesses, and the taking of depositions are governed by §§ 4.423 and 4.26.

§ 4.434 Conduct of hearing.

(a) The administrative law judge may seek to obtain stipulations as to material facts.

(b) Unless the administrative law judge directs otherwise:

(1) The appellant will first present its evidence on the facts at issue; and

(2) The other parties and the bureau will then present their evidence on such issues.

§ 4.438 [Removed]

12. § 4.438 is removed.

13. Redesignate § 4.439 as § 4.438 and revise it to read as follows:

§ 4.438 Action by administrative law judge.

(a) Upon completion of the hearing and the incorporation of the transcript in the record, the administrative law judge will issue and serve on the parties, as specified by the Board under § 4.415(c)(2):

(1) Proposed findings of fact on the issues presented at the hearing;

(2) A recommended decision that includes findings of fact and conclusions of law; or

(3) A decision that will be final for the Department unless a notice of appeal is filed in accordance with § 4.411.

(b) The administrative law judge will promptly send to the Board the record and:

(1) The proposed findings;

(2) The recommended decision; or

(3) The final decision if a timely notice of appeal is filed.

(c) The parties will have 30 days from service of proposed findings or a recommended decision to file exceptions with the Board.

14. Revise § 4.478(a) to read as follows:

§ 4.478 Appeals to the Board of Land Appeals; judicial review.

(a) Any person who has a right of appeal under § 4.410 or other applicable regulation may appeal to the Board from an order of an administrative law judge granting or denying a petition for a stay in accordance with § 4.411.

* * * * *

Subpart L—Special Rules Applicable to Surface Mining Hearings and Appeals

15. The authority citation for Part 4, Subpart L, continues to read as follows:

Authority: 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301

16. Add § 4.1117 to subpart L to read as follows:

§ 4.1117 Reconsideration.

A party may file a petition for reconsideration of any decision of the Board under this subpart within 60 days after the date of the decision. The provisions of § 4.403 apply to a petition filed under this paragraph.

17. Revise § 4.1270(f) to read as follows:

§ 4.1270 Petition for discretionary review of a proposed civil penalty.

* * * * *

(f) If the petition is granted, the rules in §§ 4.1273 through 4.1275 are applicable, and the Board must use the point system and conversion table contained in 30 CFR part 723 or 845 in recalculating assessments. However, the Board has the same authority to waive the civil penalty formula as that granted to administrative law judges in § 4.1157(b)(1). If the petition is denied, the decision of the administrative law judge is final for the Department, subject to § 4.5.

§ 4.1276 [Removed]

18. Remove § 4.1276.

19. Revise § 4.1286 to read as follows:

§ 4.1286 Motion for a hearing on an appeal involving issues of fact.

(a) Any party may file a motion that the Board refer a case to an administrative law judge for a hearing. The motion must state:

(1) What specific material issues of fact require a hearing;

(2) What evidence concerning these issues must be presented by oral testimony, or be subject to cross-examination;

(3) What witnesses need to be examined; and

(4) What documentary evidence requires explanation, if any.

(b) In response to a motion under paragraph (a) of this section or on its own initiative, the Board may order a hearing if:

(1) There are any material issues of fact which, if proven, would alter the disposition of the appeal; or

(2) There are significant factual or legal issues remaining to be decided and the record without a hearing would be insufficient for resolving them.

(c) If the Board orders a hearing, it must:

(1) Specify the issues of fact upon which the hearing is to be held; and

(2) Request the administrative law judge to issue:

(i) Proposed findings of fact on the issues presented at the hearing;

(ii) A recommended decision that includes findings of fact and conclusions of law; or

(iii) A decision that will be final for the Department unless a notice of appeal is filed in accordance with § 4.411 within 30 days of the date of receipt of the decision.

(d) If the Board orders a hearing, it may:

(1) Suspend the effectiveness of the decision under review pending a final Departmental decision on the appeal if it finds good cause to do so;

(2) Authorize the administrative law judge to specify additional issues; or

(3) Authorize the parties to agree to additional issues that are material, with the approval of the administrative law judge.

(e) The hearing will be conducted under §§ 4.1100, 4.1102 through 4.1115, 4.1121 through 4.1127, and 4.1130 through 4.1141.

[FR Doc. E7–3774 Filed 3–7–07; 8:45 am]

BILLING CODE 4310–79–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7710]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

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

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet

the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 13132, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform

This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The table published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Del Norte County, California and Incorporated Areas				
Middle Fork Smith River	At the Confluence with Smith River	None	+360	Del Norte County (Unincorporated Areas).
	Approximately 1.8 miles Upstream of Horace Gasquet Memorial Bridge.	None	+432	
Smith River (Gasquet Reach)—North Fork Smith River.	Approximately 300 feet Upstream of Mary Adams Memorial Road/US Highway 99.	None	+304	Del Norte County (Unincorporated Areas).
	Approximately 4000 feet Upstream of Confluence With Middle Fork Smith River.	None	+379	
Smith River (Hiouchi Reach)	Approximately 2000 feet Upstream of U.S. Highway 101.	None	+47	Del Norte County (Unincorporated Areas).
	Approximately 100 feet Downstream of South Fork Road.	None	+152	

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

ADDRESSES

Del Norte County (Unincorporated Areas)

Maps are available for inspection at 981 H Street, Suite 110, Crescent City, CA 95531.
Send comments to The Honorable David Finigan, Chairperson, 981 H Street, Suite 200, Crescent City, CA 95531.

Hopkins County, Kentucky and Incorporated Areas				
Clear Creek	Approximately 1450 feet downstream of KY 2171	None	+399	City of Earlington, Hopkins County (Unincorporated Areas).
	Approximately 140 feet upstream of West Thompson Avenue.	None	+418	
Clear Creek Tributary	Confluence with Clear Creek	None	+405	City of Earlington.
	Approximately 50 feet downstream of Loch Mary Reservoir.	None	+422	
Elk Creek	Confluence with Pond River	None	+387	Hopkins County (Unincorporated Areas).
	Approximately 8600 feet downstream of Brown Road	None	+387	
	Approximately 750 feet downstream of Island Ford Road.	None	+406	
	Approximately 320 feet downstream of Fowler Road	None	+412	
Tributary 10.5	Approximately 100 feet upstream of confluence with Elk Creek Tributary 5.1.	None	+403	City of Madisonville, Hopkins County (Unincorporated Areas).
	Approximately 450 feet upstream of Island Park Drive	None	+425	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary 4	Confluence with Elk Creek	None	+412	City of Madisonville, Hopkins County (Unincorporated Areas).
	Approximately 120 feet downstream of Stagecoach Road.	None	+439	
Tributary 5.1	Approximately 1660 feet downstream of McGrew Lane.	None	+400	City of Madisonville, Hopkins County (Unincorporated Areas).
	Approximately 170 feet upstream of Edward T. Breathitt Parkway.	None	+426	
Otter Creek	Confluence with Pond River	None	+387	Hopkins County (Unincorporated Areas).
	Approximately 5300 feet upstream of Vandetta Road	*386	+387	
Pleasant Run	Approximately 580 feet downstream of North Hopkinsville Street.	None	+406	City of Nortonville.
	Approximately 1550 feet upstream of Seaboard System Railroad.	None	+411	
Pond River	Confluence with Otter Creek	None	+387	Hopkins County (Unincorporated Areas).
	Approximately 14,570 feet upstream of Anton Road	None	+387	

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

ADDRESSES

City of Earlington

Maps are available for inspection at 56 North Main Street, Madisonville, KY 42431.
Send comments to The Honorable Michael Seiber, Mayor, City of Earlington, 103 West Main Street, Earlington, KY 42410.

City of Madisonville

Maps are available for inspection at 56 North Main Street, Madisonville, KY 42431.
Send comments to The Honorable William Cox, Jr., Mayor, City of Madisonville, 37 East Center Street, Madisonville, KY 42431.

City of Nortonville

Maps are available for inspection at 56 North Main Street, Madisonville, KY 42431.
Send comments to The Honorable James Noel, Mayor, City of Nortonville, 199 South Main Street, Nortonville, KY 42442.

Hopkins County (Unincorporated Areas)

Maps are available for inspection at 56 North Main Street, Madisonville, KY 42431.
Send comments to The Honorable Donald Carroll, Judge Executive, Hopkins County, Hopkins County Government Building, P.O. Box 523, Madisonville, KY 42431.

Webb County, Texas and Incorporated Areas

Chacon Creek	Confluence with Rio Grande	*387	+394	City of Laredo, Webb County (Unincorporated Areas).
	Approximately 2000 feet downstream from confluence with Casa Blanca Lake.	None	+453	
Tributary 1	Confluence with Chacon Creek	*387	+394	City of Laredo.
	Approximately 250 feet upstream from intersection with Chestnut.	*429	+422	
Tributary 2	Confluence with Chacon Creek	*396	+394	City of Laredo, Webb County (Unincorporated Areas).
	Approximately 1500 feet downstream from Loop 20	None	+398	
Tributary 3	Confluence with Chacon Creek	None	+436	City of Laredo, Webb County (Unincorporated Areas).
	Approximately 2500 feet upstream from the intersection with Highway 59.	None	+444	
Deer Creek	Confluence with Rio Grande	None	+411	City of Laredo.
	Intersection with Logistic Road	None	+476	
Dellwood Tributary (Previously Las Manadas Creek Tributary 1).	Confluence with Las Manadas Creek	*402	+410	City of Laredo, Webb County (Unincorporated Areas).
	Approximately 2000 feet upstream from intersection with FM 3464.	None	+486	
Las Manadas Creek	Confluence with Rio Grande	*402	+408	City of Laredo, Webb County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1750 feet upstream from intersection with Loop 20.	None	+552	
Tributary 1	Confluence with Las Manadas Creek	*403	+412	City of Laredo, Webb County (Unincorporated Areas).
	Approximately 200 feet upstream from Springfield Drive.	None	+468	
Tributary 1A	Confluence with Las Manadas Creek Tributary 1	None	+430	City of Laredo.
	Approximately 1200 feet upstream from Dover/Stratford.	None	+464	
Tributary 2 (Formerly Las Manadas Creek Tributary 3).	Confluence with Las Manadas Creek	*411	+418	City of Laredo, Webb County (Unincorporated Areas).
	Approximately 5050 feet upstream from intersection with FM 3464.	None	+489	
Tributary 2A	Confluence with Las Manadas Creek Tributary 2	None	+447	City of Laredo.
	Approximately 3225 feet upstream from confluence with Las Manadas Creek Tributary 2.	None	+459	
Rio Grande	Approximately 1750 feet upstream from intersection with Riverhill Road.	None	+391	City of Laredo, Webb County (Unincorporated Areas).
	Confluence with Deer Creek	None	+411	
Tex-Mex Railroad Tributary	Confluence with Chacon Creek	*402	+400	City of Laredo, Webb County (Unincorporated Areas).
	Approximately 1250 feet upstream from intersection with Tex-Mex Railroad.	None	+423	
Zacate Creek	Approximately 250 feet downstream from the intersection with Mexican Railroad.	*395	+396	City of Laredo.
	Confluence with Rio Grande	*388	+399	

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

ADDRESSES

City of Laredo

Maps are available for inspection at 1120 San Bernardo, Laredo, TX 78042.
Send comments to The Honorable Raul G. Salinas, Mayor, City of Laredo, 1110 Houson Street, Laredo, TX 78040.

Webb County (Unincorporated Areas)

Maps are available for inspection at 1110 Washington Street, Suite 302, Laredo, TX 78040.
Send comments to The Honorable Danny Valdez, County Judge, 1000 Houston, 3rd Flood, Webb County Courthouse, Laredo, TX 78040.

Clark County, Washington and Incorporated Areas

Burnt Bridge Creek	Just upstream of Interstate 205	*189	+192	Clark County (Unincorporated Areas).
	Approximately 1200 feet upstream of NE 152nd Avenue.	*196	+200	City of Vancouver.
China Ditch	Just upstream of NE Ward Road	None	+252	Clark County (Unincorporated Areas).
	Approximately 2200 feet upstream of NE 144th Street	None	+275	
Curtin Creek (Glenwood Creek).	At confluence with Salmon Creek	None	+172	Clark County (Unincorporated Areas).
	Just upstream of Anderson Road	None	+260	
Dead Lake	Near NE Everett Street/WA State Hwy 500	None	+191	Clark County (Unincorporated Areas).
	Near NE Lake Road	None	+191	
Fifth Plain Creek	Upstream side of NE 4th Plain Boulevard	None	+215	Clark County (Unincorporated Areas).
	About 0.7 mile above NE Davis Road	None	+342	City of Vancouver.
Gee Creek	About 0.14 mile upstream of Main Street, at N Main Avenue in Ridgefield.	*25	+27	Clark County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Interstate 5	None	+315	Town of Ridgefield.
Lacamas Creek	At confluence with Washougal River	None	+35	Clark County (Unincorporated Areas).
	Just downstream of NE Goodwin Road	None	+193	City of Camas.
Lacamas Lake	At SE Everett Road/WA State Hwy 500	None	+191	Clark County (Unincorporated Areas).
	At NE 232nd Avenue/NE Leadbetter Road	None	+191	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Mill Creek	At confluence with Salmon Creek	None	+137	Clark County (Unincorporated Areas).
	Just downstream of NW 20th Avenue	None	+279	City of Battle Ground.
Weaver Creek	At confluence with Salmon Creek	None	+210	Clark County (Unincorporated Areas).
	Approximately 400 feet west of NE 167th Avenue	None	+345	City of Battle Ground.

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

ADDRESSES

City of Battle Ground

Maps are available for inspection at 109 Southwest First Street, Suite 127, Battle Ground, WA 98604–2818.
Send comments to The Honorable John Idsinga, Mayor, City of Battle Ground, 109 Southwest First Street, Suite 220, Battle Ground, WA 98604.

City of Camas

Maps are available for inspection at 616 Northeast Fourth Avenue, Camas, WA 98607.
Send comments to The Honorable Paul Dennis, Mayor, City of Camas, 616 Northeast Fourth Avenue, Camas, WA 98607.

City of Vancouver

Maps are available for inspection at c/o Chad Eiken, 313 Main Street, Vancouver, WA 98665.
Send comments to The Honorable Royce Pollard, Mayor, City of Vancouver, 210 East 13th Street, Vancouver, WA 98668.

Town of Ridgefield

Maps are available for inspection at 127 North Main Avenue, Ridgefield, WA 98642.
Send comments to The Honorable Gladys Doriot, Mayor, City of Ridgefield, P.O. Box 608, Ridgefield, WA 98642.

Clark County (Unincorporated Areas)

Maps are available for inspection at 1300 Franklin Street, Third Floor, Vancouver, WA 98666–8810.
Send comments to The Honorable Bill Barron, County Administrator, Clark County, P.O. Box 5000, Vancouver, WA 98666–5000.

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

Dated: March 1, 2007.

David I. Maurstad,

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

[FR Doc. E7–4153 Filed 3–7–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7709]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

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

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 13132, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform

This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Sandoval County, New Mexico and Incorporated Areas				
Tributary A (southern split) ...	Approximately 130 feet upstream from the convergence with Tributary A.	None	+5417	City of Rio Rancho.
	Approximately 115 feet upstream from 11th street	None	+5436	

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

ADDRESSES

City of Rio Rancho

Maps are available for inspection at 3900 Southern Blvd, Rio Rancho, NM 87124.
Send comments to The Honorable Kevin Jackson, Mayor, City of Rio Rancho, 3900 Southern Blvd, PO Box 15550, Rio Rancho, NM 87124.

Bell County, Texas and Incorporated Areas				
Acorn Creek	Approximately 300 feet upstream from confluence with Trimmier Creek.	None	+678	City of Killeen.
	Approximately 1.33 miles from Stagecoach Road	None	+807	
Caprice Ditch (Formerly Site Tributary 7).	Confluence with Nolan Creek	None	+740	City of Harker Heights.
	Intersection with Schwald Road	None	+854	City of Killeen Bell County (Unincorporated Areas).
Chaparral Creek	Approximately 300 feet upstream from the confluence with Trimmier Creek.	None	+727	City of Killeen Bell County (Unincorporated Areas).
	Approximately 960 feet upstream from the Chaparral Road.	None	+839	
Edgefield Creek	Approximately 936 feet upstream from the confluence with South Nolan Creek.	None	+912	City of Killeen.
	Approximately 700 feet upstream from Edgefield Street.	None	+944	
Embers Creek	Confluence with Trimmier Creek	None	+774	City of Killeen.
	Approximately 2060 feet upstream from Stagecoach Road.	None	+807	
Fryers Creek	Approximately 100 feet upstream from Waters Dairy Road.	*591	+590	City of Temple.
	Approximately 500 feet downstream from State Highway 363.	*623	+622	
Harker Heights Tributary 4 ...	Confluence with Nolan Creek	*740	+746	City of Harker Heights.
	Approximately 300 feet upstream from Stillwood Drive	*774	+773	City of Killeen.
Hilliard Creek	Confluence with Long Branch Ditch	None	+801	City of Killeen.
	Approximately 440 feet upstream from Transverse Drive.	None	+839	
Hilliard Tributary 1	Confluence with Hilliard Creek	None	+830	City of Killeen.
	Approximately 1300 feet upstream from confluence with Hilliard Creek.	None	+845	
Hog Pen Creek	Approximately 1000 feet upstream from Poison Oak Road.	None	+547	City of Temple.
	Approximately 1150 feet upstream from FM2305	None	+619	
Tributary 1	Confluence with Hog Pen Creek	None	+575	City of Temple.
	Approximately 1500 feet upstream from the confluence with Hog Pen Creek.	None	+592	
Tributary 2	Confluence with Hog Pen Creek	None	+561	City of Temple.
	Approximately 1000 feet upstream from Tarver Drive	None	+596	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Liberty Ditch (Formerly Nolan Creek Tributary 3).	Confluence with Nolan Creek	+779	+783	City of Killeen.
	Approximately 740 feet upstream from Poage Avenue	None	+845	
Little Nolan Creek	Confluence with Nolan Creek	*747	+751	City of Killeen.
	West Trimmier Drive	*904	+908	
Long Branch Ditch (Formerly Long Branch).	Confluence with Nolan Creek	*762	+765	City of Killeen.
	County Boundary	*826	+827	
North Reese Creek	Approximately 625 feet downstream from Reese Creek Highway.	None	+873	City of Killeen, Bell County (Unincorporated Areas).
	Approximately 4125 feet upstream from Laura Drive	None	+939	
Tributary 1	Approximately 400 feet downstream from Maxdale Street.	None	+885	City of Killeen Bell County (Unincorporated Areas).
	Approximately 920 feet upstream from Bunny Trail	None	+953	
Tributary 1A	Approximately 178 feet upstream from confluence with North Reese Creek Tributary 1.	None	+944	Bell County (Unincorporated Areas).
	Approximately 1638 feet upstream from the confluence with North Reese Creek Tributary 1.	None	+965	
Tributary 3	Approximately 1630 feet upstream from confluence with North Reese Creek.	None	+867	City of Killeen Bell County (Unincorporated Areas).
	Approximately 2700 feet upstream from Stagecoach Road.	None	+916	
Tributary 4	Approximately 960 feet upstream from confluence with North Reese Creek.	None	+877	City of Killeen.
	Approximately 1620 feet upstream from confluence with North Reese Creek.	None	+890	
Old Florence Ditch (Formerly Little Nolan Creek Tributary 2).	Confluence with Little Nolan Creek	*822	+825	City of Killeen.
	Approximately 220 feet upstream from Trimmier Road	None	+897	
Rainforest Creek	Approximately 515 feet upstream from confluence with South Nolan Creek.	None	+901	City of Killeen.
	Approximately 1740 feet upstream from Waterfall Road.	None	+935	
Robinette Creek	Approximately 324 feet upstream from confluence with South Nolan Creek.	None	+935	City of Killeen.
	Approximately 920 feet upstream from Robinette Road.	None	+949	
Rock Creek	Approximately 3000 feet downstream from Chaparral Road.	None	+824	City of Killeen, Bell County (Unincorporated Areas).
	Approximately 3500 feet upstream from Chaparral Road.	None	+877	
Tributary 1	Approximately 268 feet upstream from confluence with Rock Creek.	None	+827	City of Killeen, Bell County (Unincorporated Areas).
	Approximately 1740 feet upstream from Chaparral Road.	None	+862	
Tributary 1A	Approximately 450 feet upstream from confluence with Rock Creek Tributary 1.	None	+835	Bell County (Unincorporated Areas).
	Approximately 1140 feet upstream from dam	None	+856	
South Nolan Creek	Approximately 2550 feet downstream from Watercrest Road.	None	+903	City of Killeen.
	Approximately 2340 feet upstream from Stan Schlueter Road.	None	+981	
Steward Ditch (Formerly Nolan Creek Tributary 4).	Confluence with Nolan Creek	*796	+803	City of Killeen.
	Approximately 1360 feet upstream from Duncan Ave.	*855	+852	
Trimmier Creek	Approximately 630 feet downstream from confluence with Acorn Creek.	None	+686	City of Killeen.
	Approximately 2900 feet upstream from Stagecoach Road.	None	+834	
Trimmier Road Ditch (Formerly Little Nolan Creek Tributary 1).	Confluence with Little Nolan Creek	*793	+800	City of Killeen.
	Approximately 2400 feet upstream from Old FM 440	None	+965	
Yowell Creek	Approximately 5180 feet upstream from confluence with Chaparral Creek.	None	+793	City of Killeen.
	Approximately 1250 feet upstream from Featherline Road.	None	+878	
Yowell Creek Tributary	Confluence with Yowell Creek	None	+788	City of Killeen.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1250 feet upstream from Featherline Road.	None	+863	

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

ADDRESSES

City of Harker Heights

Maps are available for inspection at City Hall, 305 Miller's Crossing, Harker Heights, TX 76548.

Send comments to The Honorable Ed Mullen, Mayor, City of Harker Heights, 305 Miller's Crossing, Harker Heights, TX 76548.

City of Killeen

Maps are available for inspection at City Hall, 101 North College Street, Killeen, TX 76540.
Send comments to The Honorable Timothy Hancock, Mayor, City of Killeen, P.O. Box 1329, Killeen, TX 76540.

City of Temple

Maps are available for inspection at City Hall, 2 North Main Street, Temple, TX 76501.
Send comments to The Honorable Bill Jones, III, Mayor, City of Temple, 2 North Main Street, Temple, TX 76501.

Bell County (Unincorporated Areas)

Maps are available for inspection at Bell County Courthouse, 101 E. Central Ave., Belton, TX 76513.
Send comments to The Honorable Jon Burrows, Judge, Bell County, P.O. Box 768, Belton, TX 76513.

Henrico County, Virginia and Incorporated Areas

Allens Branch	Approximately at the confluence with Chickahominy River..	None	+197	Henrico County (Unincorporated Areas).
	Approximately 250 feet downstream from the I–295 Ramp..	None	+214	
Chickahominy River	Approximately at Creighton Road	None	+77	Henrico County (Unincorporated Areas).
	Approximately 1900 feet downstream from Shady Grove Road.	None	+218	
Copperas Creek	Approximately at the confluence with Tuckahoe Creek	None	+144	Henrico County (Unincorporated Areas).
	Approximately 150 feet downstream from Waterford Way East.	None	+219	
Tributary 2	Approximately at the confluence with Copperas Creek	None	+160	Henrico County (Unincorporated Areas).
	Approximately 2000 feet upstream from Ridgefield Parkway/Cambridge Drive.	None	+206	
Fourmile Creek	Approximately at the confluence with James River	None	+11	Henrico County (Unincorporated Areas).
	Approximately 2000 feet upstream from Doran Road	None	+92	
Tributary 7	Approximately at the confluence with Fourmile Creek	None	+85	Henrico County (Unincorporated Areas).
	Approximately 775 feet upstream from the Footbridge	None	+88	
Gillies Creek Tributary 1	Approximately at the confluence with Gillies Creek	None	+121	Henrico County (Unincorporated Areas).
	Approximately 250 feet downstream from South Kalmia Avenue.	None	+154	
Harding Branch	Approximately at the confluence with Tuckahoe Creek	None	+148	Henrico County (Unincorporated Areas).
	Approximately 2000 feet upstream from Park Terrace Drive.	None	+241	
Tributary 1	Approximately at the confluence with Harding Branch	None	+168	Henrico County (Unincorporated Areas).
	Approximately 1000 feet upstream from the confluence with Harding Branch.	None	+171	
Heckler Village Tributary 1	Approximately at the confluence with Gillies Creek	None	+109	Henrico County (Unincorporated Areas).
	Approximately 1100 feet upstream of Wynfield Terrace.	None	+145	
Tributary 2	Approximately at the confluence with Gillies Creek	None	+138	Henrico County (Unincorporated Areas).
	Approximately 1600 feet upstream from Wynfield Terrace.	None	+158	
Horsepen Branch	Approximately at the confluence with Upham Brook	None	+174	Henrico County (Unincorporated Areas).
	Approximately 300 feet upstream from Devers Road	None	+218	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
James River	Approximately 5550 feet southeast of the intersection of Osborne Landing and Kingsland Road.	None	+16	Henrico County (Unincorporated Areas).
	Approximately 1250 feet Northwest of the intersection of Stancraft Way and Old Osborne Turnpike.	None	+32	
Jordans Branch	Approximately at 2550 feet downstream of Interstate 64.	None	+160	Henrico County (Unincorporated Areas).
	Approximately at 710 feet upstream of the Monument Avenue.	None	+208	
Meredith Branch	Approximately at the confluence with Chickahominy River.	None	+186	Henrico County (Unincorporated Areas).
	Approximately 500 feet downstream from Broad Meadows Road.	None	+230	
North Run	Approximately at the confluence with Upham Brook	+117	+120	Henrico County (Unincorporated Areas).
	Approximately 400 feet upstream from the confluence with Upham Brook.	+119	+120	
Rooty Branch	Approximately 600 feet downstream from Yates Lane	None	+221	Henrico County (Unincorporated Areas).
	Approximately 1800 feet upstream from Nuckols Road.	None	+233	
Tributary A To Gillies Creek Tributary 1.	Approximately at the confluence with Gillies Creek Tributary 1.	None	+145	Henrico County (Unincorporated Areas).
	Approximately 1200 feet upstream from Yates Lane	None	+158	
Tributary A to Gillies Creek Tributary 1.	Approximately at the confluence with Tributary A to Gillies Creek Tributary 1.	None	+150	Henrico County (Unincorporated Areas).
Tributary	Approximately 750 feet south from Nine Mile Road	None	+160	

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

ADDRESSES

Henrico County (Unincorporated Areas)

Maps are available for inspection at Henrico West End Government Center, 4301 E. Parham Rd., Richmond, VA 23228.
Send comments to Mr. Robert Thompson, Director of Public Works, P.O. Box 27032, Richmond, VA 23273.

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

Dated: February 28, 2007.

David I. Maurstad,

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

[FR Doc. E7–4154 Filed 3–7–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7694]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

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

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 13132, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform

This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Livingston County, Illinois and Incorporated Areas				
Vermilion River	Approximately 4H Park Road.	None	+633	Livingston County (Unincorporated Areas).
	Approximately 1,550 feet above 4H Park Road	None	+633	
Vermilion River	Approximately Manlove Street extended	None	+641	Livingston County (Unincorporated Areas).
	Approximately 700 feet above Pearl Street extended	None	+642	
Indian Creek	Approximately 2,775 feet above Road 900N	None	+666	Livingston County (Unincorporated Areas).
	Approximately Third Street extended	None	+674	
Gooseberry Creek	Approximately East Livingston Road (Livingston/Grundy Co. Boundary).	None	+619	Livingston County (Unincorporated Areas).
	Approximately 1,050 feet downstream of Union Pacific Railroad.	None	+628	
Gooseberry Creek	Approximately Washington Street	None	+641	Livingston County (Unincorporated Areas).
	Approximately 150 feet above Fieldman Road (CR–3100N).			

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

ADDRESSES

Livingston County (Unincorporated Areas)

Maps are available for inspection at the Livingston County Regional Planning Commission, 110 West Water Street, Suite 3, Pontiac, IL 61764.

Send comments to The Honorable William Flott, County Board Chairman, Livingston County Courthouse, 112 W. Madison Street, Pontiac, IL 61764.

Randolph County, North Carolina and Incorporated Areas				
Betty McGees Creek	At the confluence with Uwharrie River	None	+397	Randolph County (Unincorporated Areas).
	Approximately 3.7 miles upstream of Lassiter Mill Road (State Road 1107).	None	+505	
Caraway Creek	At the confluence with Uwharrie River	None	+411	Randolph County (Unincorporated Areas), City of Archdale.
	Approximately 1.6 miles upstream of Roy Farlow Road (State Road 1534).	None	+715	
Hannahs Creek	At the confluence with Uwharrie River	None	+392	Randolph County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence of Robbins Branch.	None	+517	
Jackson Creek	At the confluence with Uwharrie River	None	+418	Randolph County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 0.7 mile upstream of Jackson Creek Road (State Road 1314).	None	+565	
Lakes Creek	At the confluence with Uwharrie River	None	+372	Randolph County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Uwharrie River.	None	+418	
Laniers Creek	At the confluence with Uwharrie River	None	+385	Randolph County (Unincorporated Areas).
	Approximately 150 feet downstream of Johnson Farm Road (State Road 1262).	None	+558	
Little Uwharrie River	At the confluence with Uwharrie River	None	+457	Randolph County (Unincorporated Areas), City of Trinity.
	Approximately 0.4 mile upstream of NC Highway 62	None	+891	
Mill Creek	At the confluence with Uwharrie River	None	+384	Randolph County (Unincorporated Areas).
	Approximately 390 feet upstream of Lassiter Mill Road (State Road 1107).	None	+400	
Narrows Branch	At the confluence with Uwharrie River	None	+371	Randolph County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Uwharrie River.	None	+460	
Second Creek	At the confluence with Uwharrie River	None	+396	Randolph County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Second Creek Tributary 3.	None	+505	
Tributary 1	At the confluence with Second Creek	None	+396	Randolph County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Second Creek.	None	+407	
Silver Run Creek	At the confluence with Uwharrie River	None	+394	Randolph County (Unincorporated Areas).
	Approximately 275 feet upstream of Lassiter Mill Road (State Road 1107).	None	+402	
Toms Creek	At the confluence with Uwharrie River	None	+402	Randolph County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Richey Road (State Road 1306).	None	+501	
Two Mile Creek	At the confluence with Uwharrie River	None	+394	Randolph County (Unincorporated Areas).
	Approximately 1,970 feet upstream of the confluence with Uwharrie River.	None	+398	
Uwharrie River	At the Montgomery/Randolph County boundary	None	+369	Randolph County (Unincorporated Areas), City of Trinity.
	Approximately 130 feet upstream of Old Mendenhall Road (State Road 1616).	None	+791	
Tributary 1	At the confluence with Uwharrie River	None	+372	Randolph County (Unincorporated Areas).
	Approximately 1,050 feet upstream of the confluence with Uwharrie River.	None	+380	
Tributary 2	At the confluence with Uwharrie River	None	+387	Randolph County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Uwharrie River.	None	+400	
Tributary 3	At the confluence with Uwharrie River	None	+388	Randolph County (Unincorporated Areas).
	Approximately 1,890 feet upstream of the confluence with Uwharrie River.	None	+403	
Tributary 6	At the confluence with Uwharrie River	None	+464	Randolph County (Unincorporated Areas).
	Approximately 335 feet upstream of Skeens Mill Road (State Road 1550).	None	+483	
Tributary 7	At the confluence with Uwharrie River	None	+520	Randolph County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Sumner Road (State Road 1546).	None	+540	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary 8	At the confluence with Uwharrie River	None	+557	Randolph County (Unincorporated Areas), City of Archdale.
	Approximately 190 feet upstream of Alexandria Drive	None	+663	
Walkers Creek	At the confluence with Uwharrie River	None	+376	Randolph County (Unincorporated Areas).
	Approximately 1,775 feet upstream of the confluence with Uwharrie River.	None	+385	

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

ADDRESSES

Randolph County (Unincorporated Areas)

Maps are available for inspection at the Randolph County Planning and Zoning Department, 725 McDowell Road, Asheboro, North Carolina.
Send comments to Mr. Richard T. Wells, Randolph County Manager, P.O. Box 4728, Asheboro, North Carolina 27204–4728.

City of Archdale

Maps are available for inspection at the Archdale City Hall, 307 Balfour Drive, Archdale, North Carolina.
Send comments to The Honorable Bert Lance Stone, Mayor of the City of Archdale, P.O. Box 14068, Archdale, North Carolina 27263.

City of Trinity

Maps are available for inspection at the Trinity City Hall, 6701 NC Highway 62, Trinity, North Carolina.
Send comments to The Honorable Fran Andrews, Mayor of the City of Trinity, P.O. Box 50, Trinity, North Carolina 27370.

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

Dated: February 28, 2007.

David I. Maurstad,

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

[FR Doc. E7–4155 Filed 3–7–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Monongahela River Basin Population of the Longnose Sucker as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Monongahela River Basin population of *Catostomus catostomus* (longnose sucker) as endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that listing *C. catostomus* may be warranted. This finding is based on our determination that there is insufficient evidence to indicate that the Monongahela River Basin population of *C. catostomus* represents a distinct population segment (DPS) and, therefore, it cannot be considered a listable entity under section 3(15) of the Act. Accordingly, we will not initiate a status review in response to this petition. However, the public may at any time submit to us information concerning whether the Monongahela River Basin population of *Catostomus catostomus* meets the DPS criteria for this otherwise widespread species.

DATES: The finding announced in this document was made on March 8, 2007.

ADDRESSES: The complete file for this finding is available for public inspection, by appointment, during normal business hours at the Pennsylvania Field Office, U.S. Fish and Wildlife Service, 315 South Allen Street, Suite 322, State College, PA 16801. Submit new information, materials, comments, or questions concerning the status of or threats to this taxon to us at the above address.

FOR FURTHER INFORMATION CONTACT: David Densmore, Supervisor, Pennsylvania Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES**) (telephone 814–234–4090; facsimile 814–234–0748).

SUPPLEMENTARY INFORMATION:

Background

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

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

In making this finding, we relied on information provided by the petitioners and otherwise available in our files at the time of the petition review and evaluated this information in accordance with 50 CFR 424.14(b). Our process of making a 90-day finding

under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold. Unless otherwise noted, the following summary regarding the species, its distribution, and taxonomy was provided in the petition.

Petition

On December 27, 2002, we received a formal petition from the Fisheries Technical Committee of the Pennsylvania Biological Survey to list a population of longnose sucker (*Catostomus catostomus*), that is restricted to the Monongahela River Basin, as an endangered species under section 4 of the Act. The petition also requested that subsequent to listing, the Service make a definitive determination of the population's taxonomic status, address direct and potential threats, investigate life history, and reintroduce the species within its historic range in the Monongahela River Basin.

Action on the petition was precluded by court orders and settlement agreements for other listing actions that required nearly all of our listing funds for fiscal year 2003. A letter was sent to the petitioners on January 17, 2003, acknowledging receipt of the petition and explaining the reasons for the delay in processing.

Species Information

Catostomus catostomus, or longnose sucker, is a member of the family *Catostomidae*, a group of freshwater, principally substrate foraging fishes. This species was described by Forster in 1773, based on specimens collected from tributaries to the Hudson Bay. The subject of the petition is a disjunct population that occurs in the Monongahela River drainage in West Virginia, western Maryland, and southwestern Pennsylvania. This southern population is geographically separated from the larger range of the fish. According to the petition, no other populations are known from the Ohio River drainage, or any other Mississippi River basin tributaries, excepting the Missouri River (Gilbert & Lee, 1980; Page and Burr, 1991).

The petition utilizes several references regarding longnose sucker life history and habitat (e.g., Harris 1962; Becker 1983; Cooper 1983; Geen et al., 1966; Smith 1985). None are specific to longnose suckers in the Monongahela River system, but present general information concerning longnose sucker habitats and life history. Longnose suckers occur in clear, cold waters throughout much of northern North America and parts of eastern Asia. Those in the Monongahela River Basin generally occur in small to medium-sized streams, most often in deeper pools with either boulder-rubble substrate or a significant amount of coarse, woody debris. These pools and runs (streams) are usually immediately below faster-flowing riffle areas. On the basis of available information, the Monongahela River population occurs primarily in clear, cool streams, which appear to be consistent with habitats utilized elsewhere throughout its range.

The petitioners do not reference specific studies regarding reproductive behavior of the longnose sucker population in the Monongahela River Basin, but the species has been documented to spawn in water temperatures ranging from 10 to 15 degrees Celsius (50 to 59 degrees Fahrenheit), with schools of the fish gathering over gravel substrates in stream riffles and lake shoals. Longnose suckers exhibit high fecundity, with egg counts ranging from 17,000 to more than 60,000 per female. Annual survival of eggs and fry is low, leading to low annual recruitment into juvenile age classes. The species has been documented to begin to reach maturity at 4 years of age for males and 5 years of age for females in western Lake Superior. Longnose suckers exhibit some variation in mature size across their range; the largest individual recorded was a 642 millimeter (mm) (25.3 inches) female estimated to be 19 years old from Great Slave Lake, Northwest Territories, Canada. Populations of apparently ''stunted'' individuals have also been reported in parts of the species' range. Whether environmentally influenced or genetic, the largest specimen recorded from the Monongahela River drainage is less than 250 mm.

Distribution

The longnose sucker is among the most widely distributed of North American freshwater fishes, ranging, in the east from western Labrador and Quebec; south to West Virginia; west to Nebraska, Colorado, and Washington; and north throughout most of Alaska and Canada, including the Arctic and extending into eastern Siberia. The Monongahela River drainage in West Virginia, western Maryland, and southwestern Pennsylvania supports the disjunct population that is the subject of the petition.

The petition reports 39 collection records for the longnose sucker from the Monongahela River Basin (with references including Jordon 1878, Goldsborough and Clark 1908, and Hendricks 1980). With the exception of a collection record from the Tygart Valley River, West Virginia, and the Youghiogheny River (a Monongahela River tributary), Allegheny County, Pennsylvania, longnose sucker collection records are restricted to a Youghiogheny River tributary drainage, the Casselman River Basin in Garrett County, Maryland and Somerset County, Pennsylvania. The most recent reported collection from Maryland was in 1978, and the species is considered to be extirpated from the State (Maryland Department of Natural Resources 2004). The petition concludes that since 2000, longnose suckers have only been collected in the Monongahela River Basin in Pennsylvania within reaches of four Casselman River tributary streams: Elklick Creek, Flaugherty Creek, Piney Creek, and Whites Creek.

Taxonomy

The petition references McPhail and Taylor (1990) in asserting that across the species' range, longnose suckers are morphologically variable, with some evidence of eastern and western divergence across North America. However, no such variation is described for the population in the Monongahela River Basin. The Monongahela River Basin is geographically separated from other waters supporting this species by a watershed divide; the closest population is the one that occurs in the Lake Erie Basin, more than 257 kilometers (km) (160 miles (mi)) to the north. The petitioners present information that theorizes that longnose suckers in the Monongahela River Basin became isolated from the main populations to the north through stream capture and changing flow patterns that occurred during the Wisconsin glacial retreat, and that this subpopulation may have persisted in the Monongahela River Basin for 15,000 years or more. The petitioners suggest that this period of isolation may have resulted in genetic differences from other longnose sucker populations. They indicate that the Salish sucker, a longnose sucker population native to the Frazier River and Puget Sound, Canada, appears to be genetically distinct from other northwestern longnose suckers. The petition uses this example to suggest that the Monongahela River population of the longnose sucker may also be genetically distinct from other longnose sucker populations. However, the petition does not present any genetic data or other specific information to support this hypothesis. Rather, the petition specifically requests that the

Service make a ''definitive determination of its taxonomic status.''

Distinct Vertebrate Population Segments

The petitioners have asked us to consider listing the longnose sucker in the Monongahela River Basin in Pennsylvania, Maryland, and West Virginia as endangered. Under the Act, we can consider for listing any species, subspecies, or distinct population segment (DPS) of any species of vertebrate fish or wildlife that interbreeds when mature, if information is substantial to indicate that such action may be warranted. To implement the measures prescribed by the Act and its Congressional guidance (see Senate Report 151, 96th Congress, 1st Session), we developed a joint policy with the National Oceanic and Atmospheric Administration entitled ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Act'' (61 FR 4725; February 7, 1996). According to the Service's policy on distinct vertebrate population segments, the three elements considered regarding the potential recognition of a DPS as endangered or threatened are: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (i.e., when treated as if it were a species, is the population segment endangered or threatened?). Following is our evaluation of these elements in relation to the petitioned entity, the longnose sucker in the Monongahela River Basin.

Discreteness: A population segment of a vertebrate species may be considered discrete if it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors, or if it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

The petition states that the longnose sucker population in the Monongahela River Basin is the only population of this species recorded from the Ohio River Basin, and is markedly separated from the rest of the species' range, with the nearest population occurring across a major watershed boundary in the Lake Erie Basin at least 265 km (160 mi) to the north (Gilbert and Lee 1980; Page and Burr 1991). The petition further hypothesizes that the population in the Monongahela River Basin appears to be a glacial relic and may have been separated from the larger range of the species as much as 15,000 years ago (Hendricks et al. 1983). On the basis of a review of the information centered within the petition, we find that the petition presents substantial evidence to indicate that the species is markedly separated from other populations of the same taxon by physical factors. Therefore, we conclude that the longnose sucker population in the Monongahela River Basin meets the ''discreteness'' criterion.

Significance: If a population segment is considered discrete under one or more of the conditions listed in the Service's DPS policy, its biological and ecological significance will then be considered in light of Congressional guidance that the authority to list DPS's be used ''sparingly'' while encouraging the conservation of genetic diversity. In carrying out this evaluation, the Service considers available scientific evidence of the potential DPS's importance to the taxon to which it belongs. This consideration may include, but is not limited to: (1) Persistence of the DPS in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the DPS would result in a significant gap in the range of a taxon; (3) evidence that the DPS represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) evidence that the DPS differs markedly from other populations of the species in its genetic characteristics. Each of these factors is discussed below, based on the information presented in the petition.

Persistence of the population segment in an ecological setting that is unique for the taxon. Longnose suckers in the Monongahela River Basin appear to use habitat that is similar to stream habitats used by the species throughout its range. Although situated geographically to the south, the ecological setting is consistent with habitats described elsewhere in the species' range (i.e., cool, clear streams with gravel and cobble substrates). Therefore, on the basis of information provided in the petition, it is our determination that the Monongahela River population does not appear to exist in either an unusual or unique setting for the species.

Loss of the population segment would result in a significant gap in the range of taxon. Both the historic, and current, range of longnose suckers in the Monongahela River Basin represents a very small percentage (less than one percent) of the species' overall global range. While the loss of this population would eliminate the species from the Monongahela River drainage, the species would continue to exist in over 99 percent of its range. As a result, we do not believe that a significant gap in the species' range would result. Furthermore, neither the petition nor information in our files indicates that loss of this population would result in a significant gap at the edge of the species range.

The population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range. The Monongahela River population of the longnose sucker does not represent the only surviving natural occurrence of this species. According to the petition, the longnose sucker survives naturally throughout much of northern North America. Therefore, we have determined that this criterion is not relevant to this evaluation.

The discrete population segment differs markedly from other populations of the species in its genetic characteristics. The petitioners speculate that longnose suckers from the Monongahela River Basin may be genetically distinct from longnose sucker populations to the north and west, and suggest that this population may be ''stunted.'' The petitioners suggest that because the Salish sucker (*Catostomus catostomus*), appears to be genetically distinct from longnose sucker populations elsewhere in the Frazier River and Puget Sound, Canada, that genetic differences may also exist between the Monongahela River Basin population of the longnose sucker and longnose suckers elsewhere. However, no data regarding quantitative or morphological analysis or literature citations were presented to support the genetic distinctiveness of the Monongahela River population of the longnose sucker, and the petition recommends that such studies be initiated. Therefore, on the basis of a review of the information provided in the petition, we have determined that there is insufficient evidence to suggest that the Monongahela River population of the longnose sucker differs markedly from other populations of the longnose sucker.

Based on an evaluation of each of the criteria identified in the Service's DPS policy under significance relative to the information provided in the petition, we have determined that the Monongahela River Basin population of the longnose sucker does not meet the ''significance'' criterion under the Service's DPS policy. Because the Monongahela River Basin population of the longnose sucker

fails to meet one of the first two criteria for a distinct vertebrate population segment per our policy (i.e., the significance criterion), we have determined that it is not a listable entity under the Act. We note that the petition also fails to present substantial information that the range of the longnose sucker within the Monongahela River Basin may be a significant portion of the range of the species. Therefore, we are not proceeding with an evaluation of its conservation status relative to the Act's standards for listing as endangered or threatened.

The petition presented information for the five listing factors in section 4 of the Act in an effort to identify threats that may be leading to the decline of the Monongahela River population of the longnose sucker. These factors are pertinent only in cases where the organism being proposed for listing is a listable entity as defined by section 3(15) of the Act. Because the Monongahela River basin population does not meet the significance criterion for a DPS, and therefore not a listable entity, the five threat factors are not analyzed for that population here.

Finding

We have reviewed the information presented in the petition, and evaluated that information in relation to information readily available in our files. Based on this review, we find the petition does not present substantial information indicating that listing the Monongahela River population of *C. catostomus* may be warranted. This finding is based on the lack of evidence to indicate that the Monongahela River population of *C. catostomus* meets the criteria for being classified as a DPS. Although it is geographically and reproductively isolated, scientific evidence was not provided to document this population's biological or ecological significance under the Service's DPS policy. Therefore, we have concluded that the Monongahela River population of the longnose sucker is not a listable entity under section 3(15) of the Act. We will not commence a status review in response to this petition. We encourage interested parties to monitor the Monongahela River population's status and trends, and potential threats, and to implement actions that will contribute to this species' conservation. We also encourage interested parties to continue to gather data that will assist with these conservation efforts. New information regarding this population's potential consideration as a DPS should be submitted to the Field Supervisor, Pennsylvania Field Office (see **ADDRESSES**).

References Cited

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

Author

The primary author of this notice is Robert M. Anderson, Pennsylvania Field Office (see **ADDRESSES**).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 23, 2007.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E7–4081 Filed 3–7–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 070302052–7052–01; I.D. 021307B]

RIN 0648–AV09

Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would establish the 2007 second and third trimester season quotas for large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks based on over- or underharvests from the 2006 second and third trimester seasons. In addition, this rule proposes the opening and closing dates for the LCS fishery based on adjustments to the trimester quotas. The intended effect of these proposed actions is to provide advance notice of quotas and season dates for the Atlantic commercial shark fishery.

DATES: Written comments will be accepted until March 28, 2007.

Public hearings will be held from 6–8 p.m. on March 22 and March 28, 2007.

ADDRESSES: Written comments on the proposed rule may be submitted to LeAnn Southward Hogan, Highly Migratory Species Management Division via:

- E-mail: SF1.021307B@noaa.gov.
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark on the outside of the envelope ''Comments on Proposed Rule for 2007 2nd & 3rd Trimester Season Lengths and Quotas.''
- Fax: 301–713–1917.
- Federal e-Rulemaking portal: *http://www.regulations.gov*. Include in the subject line the following identifier: I.D. 021307B.

The hearing locations are:

1. March 22, 2007 from 6–8 p.m. Orlando Public Library, 101 E. Central Blvd., Orlando, FL 32801.
2. March 28, 2007 from 6–8 p.m. Town Hall, 407 Budleigh Street, Manteo, NC 27954.

Copies of the draft Environmental Assessment (EA) and other relevant document are available from the HMS website (*http://www.nmfs.noaa.gov/sfa/hms/*), or by contacting LeAnn Southward Hogan (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: LeAnn Southward Hogan or Karyl Brewster-Geisz by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS recently finalized a Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) that consolidated and replaced previous FMPs for Atlantic Billfish and Atlantic Tunas, Swordfish, and Sharks. The HMS FMP is implemented by regulations at 50 CFR part 635.

Currently, the Atlantic shark annual quotas, with the exception of pelagic sharks, are split among three regions based on historic landings (1999–2003). Consistent with 50 CFR 635.27(b)(1)(iii) and (iv), the annual LCS quota (1,017 mt dw) is split among the three regions as follows: 52 percent to the Gulf of Mexico, 41 percent to the South Atlantic, and 7 percent to the North Atlantic. The annual SCS quota (454 mt dw) is split among the three regions as follows: 10 percent to the Gulf of Mexico, 87 percent to the South Atlantic, and 3 percent to the North Atlantic. The regional quotas for LCS and SCS are divided equally between the trimester seasons in the South Atlantic and the Gulf of Mexico, and according to historical landings in the North Atlantic.

Consistent with 50 CFR 635.27(b)(1)(vi), any over- or underharvest in a given region from the 2006 second and third trimester seasons will be carried over to the 2007 second and third trimester seasons in that region.

Second and Third Trimester 2006 Landings

Shark landings data for the second and third trimesters of 2006 are provided in Table 1. As a result of the over- and underharvests that occurred in the second and third trimester seasons of 2006, NMFS analyzed alternatives to adjust the 2007 second and third trimester seasons and quotas for the LCS and SCS fishery.

TABLE 1- LANDINGS IN METRIC TONS DRESSED WEIGHT (MT DW) FOR THE 2ND AND 3RD TRIMESTER SEASONS OF 2006.

Landings estimates are based on dealer reports received as of January 16, 2007.

Second Trimester Season 2006				
Species Group (Annual Quota)	Region (Allocation)	Quota (mt dw)	Estimated Landings	Percent Quota Taken
Large Coastal Sharks (1,017)	Gulf of Mexico (52 %)	201.1	343.9	171%
	South Atlantic (41 %)	151.7	207.4	136.7%
	North Atlantic (7 %)	66.3	59.9	90.3%
Small Coastal Sharks (454)	Gulf of Mexico (10 %)	38.9	80.1	205.9%
	South Atlantic (87 %)	333.5	74.8	22.4%
	North Atlantic (3 %)	35.9	0	0
Blue Sharks (273)	No regional quotas	91	0.2	0.2%
Porbeagle sharks (92)		30.7	0.3	1.0%
Pelagic Sharks other than those above(488)		162.7	24.5	15.1%

Third Trimester Season 2006				
Species Group (Annual Quota)	Region (Allocation)	Quota (mt dw)	Estimated Landings	Percent Quota Taken
Large Coastal Sharks (1,017)	Gulf of Mexico (52 %)	225.6	351.8	155.9%
	South Atlantic (41 %)	50.3	108.7	216.1%
	North Atlantic (7 %)	3.3	5.8	175.8%
Small Coastal Sharks (454)	Gulf of Mexico (10 %)	30.8	23	74.7%
	South Atlantic (87 %)	263.7	40.3	15.3%
	North Atlantic (3 %)	28.2	0	0%
Blue Sharks (273)	No regional quotas	91	0	0.0%
Porbeagle sharks(92)		30.7	0.8	2.6%
Pelagic Sharks other than those above(488)		162.7	21.4	13.2%

Quota Adjustments in the LCS and SCS Fishery

The Agency conducted an Environmental Assessment (EA) to analyze three LCS and four SCS alternatives for adjusting regional trimester quotas and other management measures based on the over- and underharvests that occurred in the LCS and SCS fisheries in the South Atlantic and Gulf of Mexico regions during the 2006 second and third trimester seasons.

These measures are necessary to ensure that over- and underharvests from 2006 are accounted for and any impacts are analyzed. The base quotas established in Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks and maintained in the Consolidated HMS FMP would not be affected by this rulemaking. Rather, the base quotas would be changed via an amendment to the Consolidated HMS FMP. The Agency is preparing, in a separate action, an amendment to the 2006 Consolidated HMS FMP to implement management measures particularly for sandbar, dusky, and porbeagle sharks that address the results of recent stock assessments, including the need for rebuilding plans and other modifications to the management program. Therefore, the Agency is not proposing any modifications to fishing seasons or LCS quotas beyond the second and third trimesters of 2007, at this time.

LCS Quota Adjustments

The current regulations state that NMFS will adjust the next year's fishing season (2007) and quotas for LCS to reflect actual landings during the previous fishing season (2006) in any particular region. Due to the extensive overharvest of LCS in the 2006 second and third trimester seasons in the South Atlantic and Gulf of Mexico regions, limited quota would be available resulting in a short season in the South Atlantic region and no season in the Gulf of Mexico region for the 2007 second trimester. If NMFS were to not change the current regulations, then in the 2007 third trimester, both regions would experience short seasons. Moreover, under the current regulatory scheme, NMFS would open the mid-Atlantic shark closed area from July 6 - 20, 2007. As described in the rulemaking for the 2007 first trimester (71 FR 75122; December 14, 2006), re-opening the mid-Atlantic shark closed area in the month of July would likely have slightly negative ecological impacts because potential interactions with protected resources and other bycatch would be increased due to the displacement of fishing effort to an area that had been previously closed. Also, under the current regulatory scheme, NMFS would open the North Atlantic region for the month of July in the 2007 second trimester and close this region during the 2007 third trimester season due to overharvest during the 2006 third trimester season.

Under this proposed rule, NMFS would combine the second trimester season quota with the third trimester season quota in the South Atlantic and Gulf of Mexico regions. NMFS would open the South Atlantic region for six weeks beginning August 1, 2007. This would close the entire South Atlantic region for the month of July and maintain any ecological benefits of the mid-Atlantic shark closure. NMFS is proposing to delay the start of the merged seasons until August 1, 2007, to allow for a longer season than was previously allowed, based on slower catch rates in August versus July. NMFS believes that an August start date would still provide opportunities for all fishermen in the South Atlantic to fish for LCS. Under this proposed rule, NMFS would open the Gulf of Mexico region for three weeks beginning September 1, 2007. This accommodates comments received by NMFS stating the desire for the Gulf of Mexico region to be open at a different time than the South Atlantic region. The proposed rule would provide for longer seasons than the current regulations thereby increasing fishing opportunities consistent with available quota. Under this proposed rule, NMFS would keep in place the North Atlantic regional quotas and opening dates. Under alternatives 2 and 3, the LCS season would be open at different times in different regions, which would prevent market gluts.

SCS Quota Adjustments

Under current regulations, NMFS would subtract the overharvest accrued (41.2 mt dw) in the Gulf of Mexico region during the 2006 second trimester season from the baseline quota (15.1 mt dw) for this region during the 2007 second trimester. Because the overharvest was greater than the baseline quota, NMFS would close the SCS fishery in the Gulf of Mexico during the 2007 second trimester. Under this proposed rule, NMFS would open the North Atlantic and South Atlantic regions on May 1, 2007, and would keep these regions open as long as quota was available in each region. Under existing regulations, NMFS would close the LCS and SCS commercial fishery in the Gulf of Mexico for the entire second trimester of 2007.

Under 635.27(b)(1)(vi)(A)(*1*), NMFS may transfer up to 10 percent of the underharvested quota from the South Atlantic region to the Gulf of Mexico region. However, this would result in a Gulf of Mexico quota of -0.23 mt dw and was not further analyzed because it does not address the entire overharvest that occurred in the Gulf of Mexico region and would result in the same impacts as the existing regulations.

Under this proposed rule, NMFS would change the SCS regional quota percentages in the South Atlantic and Gulf of Mexico regions due to recent overharvests in the Gulf of Mexico region and continued underharvest of the available quota in the South Atlantic region. Currently, the regional quota percentages are 87 percent in the South Atlantic region and 10 percent in the Gulf of Mexico region, which gives each of the regions 395 mt dw, and 45.4 mt dw, of the base quota, respectively. The change in regional quota percentages would allocate the SCS base quota of 454 mt dw based on recent landings in both the South Atlantic and Gulf of Mexico regions and split the available quota between the two regions. Therefore, under this proposed rule, the 2007 regional SCS quotas would be 3 percent in the North Atlantic (13.6 mt dw, 29,983 lb dw), 49 percent (222.5 mt dw, 490,524 lb dw) in the South Atlantic, and 48 percent (217.9 mt dw, 480,382 lb dw) in the Gulf of Mexico. The rule also includes a quota transfer, which would cover the 41.2 mt dw overharvest of SCS that occurred in the Gulf of Mexico region during 2006. Redistributing the quota among regions would more equally allocate the total SCS quota, and is expected to have little impact on SCS mortality in each respective region or status of SCS stocks in general. As the total SCS quota has to date never been fully harvested, the impacts of a slight increase in fishing effort would not significantly affect these stocks, and should prevent future overharvest in the Gulf of Mexico region while not leading to an overharvest in the South Atlantic region.

Annual Landings Quotas

Pursuant to Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks, and the Final Consolidated HMS FMP, the 2007 annual base landings quotas are 1,017 mt dw (2,242,078 lb dw) for LCS and 454 mt dw (1,000,888.4 lb dw) for SCS. The 2007 quota levels for pelagic, blue, and porbeagle sharks are 488 mt dw (1,075,844.8 lb dw), 273 mt dw (601,855.8 lb dw), and 92 mt dw (202,823.2 lb dw), respectively. This proposed rule does not propose any changes to these overall base landings quotas. Table 2 describes the proposed adjusted quotas for LCS, and Table 3 describes the proposed adjusted quotas for SCS and pelagic sharks for the various regions (if applicable) for the second and third trimester seasons of 2007 adjusted for over- and underharvests that occurred during the second and third trimester seasons of 2006 (Table 1).

Existing regulations do not allow underharvests of pelagic sharks to be carried forward to the next fishing management period. As of January 16, 2007, approximately 47.2 mt dw had been reported landed in the 2006 second and third trimester fishing seasons in total for pelagic, blue, and porbeagle sharks combined. Thus, the pelagic shark quota does not need to be reduced consistent with the current regulations 50 CFR 635.27(b)(1)(vi)(B). The 2007 second and third trimester seasons quotas for pelagic, blue, and porbeagle sharks are proposed to be 162.7 mt dw (358,688 lb dw), 91 mt dw (200,619 lb dw), and 30.7 mt dw (67,681 lb dw), respectively.

Proposed Regional Quotas for LCS

Consistent with 50 CFR 635.27(b)(1)(iii), the annual LCS quota (1,017 mt dw) is split among the regions as follows: 52 percent to the Gulf of Mexico, 41 percent to the South Atlantic, and 7 percent to the North Atlantic.

Consistent with 50 CFR 635.27(b)(1)(vi)(A)(*3*), the LCS quota for the Gulf of Mexico and South Atlantic regions is further split equally (33.3 percent/season) between the three trimester fishing seasons, and the quota for the North Atlantic is further split according to historical landings of 4, 88, and 8 percent for the first, second, and third trimester seasons, respectively.

Under the proposed rule, the South Atlantic LCS regional quota for the 2007 second trimester (83.2 mt dw) would be combined with the 2007 third trimester quota (80.5 mt dw) for a total quota of 163.7 mt dw (360,893 lb dw). Under this rule, the Gulf of Mexico regional LCS quota for the 2007 second trimester (33.2 mt dw) would be merged with the 2007 third trimester quota (49.9 mt dw) for a total of 83.1 mt dw (183,202 lb dw). The North Atlantic LCS quota for the 2007 second trimester would be 69.0 mt dw (152,117 lb dw) and there would be a closure in the North Atlantic region during the 2007 third season (Table 2).

Proposed Regional Quotas for SCS

Consistent with 50 CFR 635.27(b)(1)(iv), the annual SCS quota (454 mt dw) is split among the regions as follows: 10 percent to the Gulf of Mexico region, 87 percent to the South Atlantic region and 3 percent to the North Atlantic region.

Also consistent with 50 CFR 635.27 (b)(1)(vi)(A)(*3*), the SCS quota for the Gulf of Mexico and South Atlantic regions is further split equally (33.3 percent/season) between the three trimester fishing seasons in each of the regions, and the quota for the North Atlantic is further split of 4, 88 and 8 percent for the first, second, and third trimester seasons, respectively.

This rule proposes a change to the SCS regional quota percentages in the South Atlantic and Gulf of Mexico regions for 2007 and in the future. The new SCS quota percentage allocations would be 49 percent in the South Atlantic and 48 percent in the Gulf of Mexico. This change would give the South Atlantic an 2007 annual base quota of 222.5 mt dw (490,524 lb dw) (454 mt dw x .49%) and a trimester quota of 74.1 mt dw (163,361 lb dw) (222.5 mt dw x .333). The Gulf of Mexico would have an annual base quota of 217.9 mt dw (480,382 lb dw) (454 mt dw x .48%) and a trimester quota of 72.6 mt dw (160,054 lb dw) (217.9 mt dw x .333).

Proposed Fishing Season Notification for the Second and Third Trimester Seasons 2007

The 2007 LCS second trimester season in the North Atlantic region is proposed to open on July 6, 2007, and would close on July 31, 2007, at ll:30 pm local time. The 2007 third trimester in the North Atlantic region would be closed (Table 2).

The 2007 LCS fishery in the South Atlantic would have a merged second and third trimester season that is proposed to open on August 1, 2007, and would close September 15, 2007, at 11:30 pm local time (Table 2). NMFS is proposing to delay the start of the merged season until August 1, 2007, to allow for a longer season based on slower catch rates in August versus July.

The 2007 LCS fishery in the Gulf of Mexico would also have a merged second and third trimester season that is proposed to open on September 1, 2007, and would close on September 22, 2007, at 11:30 p.m. local time (Table 2). NMFS is proposing to delay the start of the merged season until September 1, 2007, to accommodate comments received by NMFS stating the desire for the South Atlantic region to be open at a different time than the Gulf of Mexico region. The September 1, 2007, open date would also allow for a longer season based on slower catch rates in September versus July.

The second and third trimester fishing seasons of 2007 for SCS, pelagic sharks, blue sharks, and porbeagle sharks in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, are proposed to open on May 1, 2007, and September 1, 2007, respectively (Table 3). When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle sharks, the Assistant Administrator (AA) will file notification of closures at the Office of the **Federal Register** at least 14 days before the effective date, consistent with 50 CFR 635.28(b)(2).

TABLE 2. LCS PROPOSED SEASON LENGTHS AND QUOTAS FOR THE SECOND AND THIRD TRIMESTER SEASONS OF 2007

LCS	Proposed merged 2nd and 3rd trimester opening dates	Proposed merged 2nd & 3rd trimester Closing Dates	Proposed merged 2nd & 3rd trimester Quotas
South Atlantic	August 1, 2007	September 15, 2007	163.70 mt dw 360,893 lb dw
Gulf of Mexico	September 1, 2007	September 22, 2007	83.1 mt dw 183,202 lb dw
North Atlantic	July 6, 2007	July 31, 2007	69.0 mt dw 152,117 lb d
	Closed 3rd Season	Closed 3rd Season	CLOSED

TABLE 3. SCS AND PELAGIC SHARKS PROPOSED SEASON LENGTHS AND QUOTAS FOR THE SECOND AND THIRD TRIMESTER SEASONS OF 2007

2007 2nd Trimester	Opening Dates	Closing Dates	2007 2nd Tri. Adjusted Quota
SCS South Atlantic (49%)	May 1, 2007	To be determined as necessary	291.6 mt dw 642,861 lb dw
SCS Gulf of Mexico (48%)	May 1, 2007	To be determined as necessary	72.6 mt dw 160,054 lb dw
SCS North Atlantic (3%)	May 1, 2007	To be determined as necessary	36.2 mt dw 79,807 ld dw

TABLE 3. SCS AND PELAGIC SHARKS PROPOSED SEASON LENGTHS AND QUOTAS FOR THE SECOND AND THIRD TRIMESTER SEASONS OF 2007—Continued

2007 2nd Trimester	Opening Dates	Closing Dates	2007 2nd Tri. Adjusted Quota
Blue Sharks	May 1, 2007	To be determined as necessary	91.0 mt dw 200,619 lb dw
Porbeagle	May 1, 2007	To be determined as necessary	30.7 mt dw 67, 681 lb dw
Pelagic Sharks	May 1, 2007	To be determined as necessary	162.7 mt dw 358,688 lb dw

2007 3rd Trimester	Opening Dates	Closing Dates	2007 3rd Tri. Adjusted Quota
SCS South Atlantic (49%)	September 1, 2007	To be determined as necessary	297.5 mt dw 655,869 lb dw
SCS Gulf of Mexico (48%)	September 1, 2007	To be determined as necessary	80.4 mt dw 177,250 lb dw
SCS North Atlantic (3%)	September 1, 2007	To be determined as necessary	29.4 mt dw 64,815 lb dw
Blue Sharks	September 1, 2007	To be determined as necessary	91.0 mt dw 200,619 lb dw
Porbeagle	September 1, 2007	To be determined as necessary	30.7 mt dw 67, 681 lb dw
Pelagic Sharks	September 1, 2007	To be determined as necessary	162.7 mt dw 358,688 lb dw

Request for Comments

Comments on this proposed rule may be submitted at public hearings, via email, mail, or fax by March 28, 2007. NMFS will hold two public hearings to receive comments from fishery participants and other members of the public regarding this proposed rule. These hearings will be physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to LeAnn Southward Hogan at (301) 713–2347 at least 5 days prior to the hearing date. The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each meeting, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they register to speak; the attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending member of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do no, they will be asked to leave the meeting. For individuals unable to attend a hearing, NMFS also solicits written comments on this proposed rule (see **DATES** and **ADDRESSES**).

Classification

NMFS has preliminarily determined that this action is consistent with section 304(b)(1) of the Magnuson-Stevens Fishery Conservation and Management Act, including the National Standards, and other applicable law.

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

In compliance with Section 603 of the Regulatory Flexibility Act, an Initial Regulatory Flexibility Analysis was prepared for this rule. The IRFA analyzes the anticipated economic impacts of the preferred actions and any significant alternatives to the proposed rule that could minimize economic impacts on small entities. A summary of the IRFA is below. The full IRFA and analysis of economic and ecological impacts, are available from NMFS (see **ADDRESSES**).

In compliance with section 603 (b)(1) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the Magnuson-Stevens Act, to adjust the LCS and SCS regional and trimester quotas and propose season lengths for LCS, SCS, and pelagic sharks for the second and third trimesters of 2007 based on under- and overharvests that occurred during the second and third trimesters of 2006. This rule does not change the overall annual base quotas.

In compliance with section 603 (b)(2) of the Regulatory Flexibility Act, the objective of the proposed rulemaking is, to ensure that the season lengths and quotas for the second and third trimester of 2007 for LCS, SCS, and pelagic sharks are in place by the end of the first trimester of 2007 consistent with the regulations established in the 2003 Amendment to the 1999 FMP for Atlantic Tunas, Swordfish and Sharks.

Section 603 (b)(3) requires Agencies to provide an estimate of the number of small entities to which the rule would apply. This rule could directly affect commercial shark fishermen on the Atlantic Ocean in the United States. There are approximately 549 (235 directed and 314 incidental) shark permit holders. Additionally, approximately 253 commercial shark dealers could be indirectly affected by this proposed rule. All of these permit holders and dealers are considered small entities according to the Small Business Administration=s standard for defining a small entity. Other small entities involved in HMS fisheries such as processors, bait houses, and gear manufacturers might also be indirectly affected by the proposed regulations.

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603 (b)(4)). Similarly, this proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)).

One of the requirements of an IRFA, under Section 603 of the Regulatory Flexibility Act, is to describe any alternatives to the proposed rule that accomplish the stated objectives and that minimize any significant economic impacts (5 U.S.C. 603 (c)). Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c)(1)–(4)) lists four categories for alternatives that must be considered. These categories are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage for small entities.

In order to meet the objectives of this proposed rule, consistent with Magunson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting or compliance requirements (category two above). NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. As described below, NMFS analyzed seven different alternatives in this proposed rulemaking and provides justification for selection of the preferred alternative to achieve the desired objective.

The alternatives include: maintain existing procedures for LCS quota management (alternative 1, No Action), merge the second trimester season quota with the third trimester season quota in the South Atlantic and open the combined season August 1, 2007 (alternative 2), merge the second trimester season quota with the third trimester season quota in the Gulf of Mexico region and open the combined season September 1, 2007 (alternative 3), maintain existing procedures for SCS quota management (alternative 4, No Action), transfer a portion of the South Atlantic's regional 2007 second trimester SCS underharvest to the Gulf of Mexico region (alternative 5), transfer a portion of the South Atlantic's regional 2007 second trimester SCS underharvest to the Gulf of Mexico region as well as give the Gulf of Mexico region additional SCS quota for the 2007 second trimester season (alternative 6), and reallocate the SCS regional quota percentages in the South Atlantic region from 87 percent to 49 percent and in the Gulf of Mexico region from 10 percent to 48 percent and transfer a portion of the South Atlantic's regional 2007 second trimester SCS underharvest to the Gulf of Mexico region (alternative 7). Merging the second and third trimester seasons for LCS for both the South Atlantic (alternative 2) and the Gulf of Mexico (alternative 3) regions and also reallocating the SCS regional quota percentages between the South Atlantic and Gulf of Mexico regions for the second and third trimesters while also transferring a portion of the South Atlantic's regional second trimester underharvest to the Gulf of Mexico (alternative 7) are the preferred alternatives.

Alternatives Considered for LCS

Alternative 1 is considered the no action alternative since it would maintain existing procedures for addressing regional trimester over and underharvests of LCS when establishing the regional quotas and seasons for the second and third trimesters of 2007 and it would also open the mid Atlantic shark closed area in July, subject to available quota for the second trimester in 2007. This alternative is not preferred in part because it would result in negative economic impacts for the South Atlantic region and Gulf of Mexico region, compared to the preferred alternative.

The no action alternative does not create any new economic burdens on the shark commercial industry that was not included in previous rulemaking. Regardless, the unexpected magnitude of the 2006 second trimester overharvest would result in no commercial fishing for LCS in the entire Gulf of Mexico region during the second trimester of 2007 since the available adjusted quota would be taken in approximately two days. Furthermore, overharvest during the second trimester in 2006 in the South Atlantic region would result in a reduced second trimester quota of 83.2 mt dw and therefore the fishing season would be adjusted and shortened to last only from July 6 to July 20, 2007.

If not for the overharvest in 2006, the second trimester quota allocation would have been 138.9 mt of LCS in the South Atlantic region. Instead, the adjusted quota under this alternative would be 83.2 mt dw, which is 55.7 mt dw less than it would have been under the base quota allocation. To estimate the value of changes in revenues from the 2007 available quota, the median ex vessel prices from 2003 to 2006 for each region reported in Table 6.6 of the draft EA were used to forecast 2007 shark prices since this multi year average smoothes out temporary market volatility. Using a median ex vessel price of $0.48 per pound dressed weight of LCS and $12.28 per pound for shark fin reported via HMS dealer reports from 2003 to 2006 for the South Atlantic region and adjusted for inflation, the value of the 55.7 mt dw reduction from the baseline quote allocation would have been approximately $55,996 for LCS flesh (95 percent of the quota weight) and $75,398 for shark fins (based on the 5 percent shark fin to carcass regulation). Therefore, the 2006 overharvest is estimated to have a direct revenue impact on South Atlantic regional commercial shark fishing activity of approximately $131,393. However, it should be noted that due to the overharvest, fishermen received more revenue in the 2006 second trimester than previously expected. Since the actual prices received for the 2006 second trimester are available, those prices were used to calculate the ''extra'' revenues generated from the overharvest in the second trimester of 2006. Using the median ex vessel prices for the second trimester of 2006 of $0.40 and $10.00 for LCS flesh and shark fins, respectively, for the South Atlantic region the estimated revenue for the second trimester in 2006 from the 55.7 mt dw in overharvest was $108,162. Due to this extra revenue in 2006, a shortened second trimester for 2007 would result in disrupted revenue flows and result in negative economic impacts.

If not for the overharvest in the second trimester of 2006 in the Gulf of Mexico region, the second trimester quota available would have been 176.1 mt of LCS in the Gulf of Mexico region. However, due to the overharvest, the adjusted quota is 33.2 mt for LCS. Because of the small size of this quota, no fishing season is feasible due to safety at sea concerns and potential derby fishing conditions. Using a median ex vessel price of $0.44 for LCS and $17.05 for shark fin reported HMS dealer reports from 2003 to 2006 for the Gulf of Mexico region and adjusted for inflation, the value of the 176.1 mt dw baseline quota for the second trimester of 2007 is approximately $162,282 for LCS flesh (95 percent of the quota weight) and $330,969 for shark fins (based on the 5 percent shark fin to

carcass regulation). Therefore, the 2006 overharvest is estimated to have a direct revenue impact on Gulf of Mexico regional commercial shark fishing activity of approximately $493,251. Using the median ex vessel prices for the second trimester of 2006 of $0.40 and $13.00 for LCS flesh and shark fins, respectively, for the Gulf of Mexico region, the estimated revenue for the second trimester in 2006 from the 142.9 mt dw (176.1 33.2 mt dw) in overharvest was $324,491. However, a closure during the second trimester of 2007 would result in disrupted revenue flows and result in negative economic impacts.

The quota for the second trimester of 2007 is not impacted by overharvests in the North Atlantic region. However, in the 2007 third trimester, the North Atlantic region would be closed to fishing because of overharvest in the third trimester of 2006. The base quota allocation for the third trimester would have been 5.7 mt dw if not for the overharvest. Using an average between the median ex vessel price in the South Atlantic and the Gulf of Mexico regions from 2003 to 2006 adjusted for inflation, the approximate value of this quota allocation would have been $14,709. This minor economic impact is offset by the extra revenue received in 2006 as a result of the 2.5 mt dw overharvest in the third trimester worth $6,451. However, it should also be noted that the third season was closed in 2006.

During the third trimester of 2006, there was also an overharvest in the South Atlantic region. This resulted in the base quota allocation being reduced from 138.9 mt dw to an adjusted quota of 80.5 mt dw for the third trimester. Using a similar calculation as above, the economic impact of the overharvest would be a reduced third quarter value of revenues of approximately $137,762. However, it should be noted that fishermen received revenue sooner under the 2006 third trimester overharvest than they normally would have received. Using the median ex vessel prices for the third trimester of 2006 of $0.45 and $8.00 for LCS flesh and shark fins, respectively for the South Atlantic region, the estimated revenue for the third trimester in 2006 from the 58.4 mt in overharvest was $100,425.

During the third trimester of 2006, there was also an overharvest in the Gulf of Mexico region. This resulted in the base quota allocation being reduced from 176.1 mt dw to an adjusted quota of 49.9 mt dw for the third trimester. Using a similar calculation as above, the economic impact of the overharvest would be a reduced third quarter value of revenues of approximately $353,482. However, it should be noted thatdue to the overharvest, fishermen received more revenue in the 2006 third trimester than previously expected. Using the median ex vessel prices for the third trimester of 2006 of $0.40 and $17.00 for LCS flesh and shark fins, respectively for the Gulf of Mexico region, the estimated revenue for the third trimester in 2006 from the 126.2 mt in overharvest was $342,214. Despite this extra revenue in 2006, a shortened third trimester for 2007 would result in disrupted revenue flows and result in negative economic impacts.

Overall, the economic impact of reduced 2007 LCS quota for the South Atlantic, Gulf of Mexico, and North Atlantic regions for the second and third trimesters of 2007 would result in a total economic impact of $1,130,597 in reduced revenues. However, this is partially offset by the extra revenues generated in the second and third trimesters of 2006 estimated to be worth $881,644. Some of the impacts from these reduced revenues might be mitigated somewhat for vessels that can fish in other regions or fisheries. However, these opportunities will likely be limited and result in additional costs associated with adjusting current fishing practices.

Alternative 2, the preferred alternative, which would merge the second trimester season in the South Atlantic region with the third trimester season quota in the South Atlantic region, could minimize the economic costs associated with the South Atlantic regional overharvest. The 83.2 mt dw adjusted quota for the second trimester would be combined with the 80.5 mt dw adjusted quota for the third trimester in the South Atlantic to provide a combined 163.7 mt dw season starting on August 1, 2007, that is proposed to last until September 15, 2007.

There does not appear to be any significant seasonality to LCS and shark fin ex vessel prices. Therefore, revenues under this alternative would likely be at least the same as having two separate seasons. The combined seasons would provide for a total of six weeks to fish the LCS quota in the South Atlantic region versus only five weeks (split into two seasons) under the no action alternative. This would afford more flexibility in addressing market conditions for LCS, and thus potentially allow for greater profits. However, there could be negative impacts on business planning as a result of the season starting in August versus the expected July start date. Fishing operations may face cash flow problems covering their fixed costs as they wait for the later starting combined season, unless they are able to generate cash flows in other fisheries in the interim. Starting the season in August essentially extends the Mid Atlantic closure to the whole region from July to August. This could have negative economic impacts, especially since catch rates have been historically higher in July than in August. The positive aspects of merging the two seasons include reduced operating costs since fishermen would only need to prepare the vessel once instead of twice and they are more likely to have a viable market for LCS given the season would be longer.

Alternative 3 is similar to Alternative 2 in that it would merge the second trimester season with the third trimester season quota, but is instead for the Gulf of Mexico region. The merged season would combine the second trimester season quota of 33.2 mt dw with the third trimester season quota of 49.9 mt dw to create a three week long season starting September 1, 2007, that would have 83.1 mt dw of quota. This preferred alternative would have the benefit of extending the third season by one week versus under Alternative 1. Since Alternative 3 has the same start date as Alternative 1, there would not be any impact on that portion of the Gulf of Mexico region. Alternative 3 also allows the 33.2 mt dw quota of the second season to be fished. Under Alternative 1, the season for that 33.2 mt dw of quota would have been closed. Using a median ex vessel price of $0.44 for LCS and $17.05 for shark fin reported HMS dealer reports from 2003 to 2006 for the Gulf of Mexico region and adjusted for inflation, the value of harvesting this 33.2 mt dw of quota would be approximately $92,992 in revenue. In addition, by providing for a three week combined fishing season, this alternative would afford more flexibility in addressing market conditions for LCS.

Alternatives Considered for SCS

Alternative 4 is considered the no action alternative since it would maintain existing procedures for addressing regional trimester over and underharvests for SCS when establishing the regional quotas and seasons for the second and third trimesters of 2007. No change in economic impacts would be realized in the North Atlantic and South Atlantic regions since those regions would be open, with ample quota, throughout the entire second and third trimesters of 2007 under the status quo. This alternative is not preferred, as it would result in greater negative economic

impacts for the Gulf of Mexico region, compared to the preferred alternative.

The no action alternative would not create any new economic burdens on the SCS commercial industry that were not included in previous rulemaking. Regardless, the size of the 2006 second trimester overharvest in the Gulf of Mexico region would result in no commercial fishing for SCS in the entire Gulf of Mexico region during the second trimester of 2007. Even after a ten percent quota transfer from the South Atlantic second season underharvest, the 25.87 mt dw of transferred quota is not sufficient to address the 41.2 mt dw of overharvest in the Gulf of Mexico region during the second trimester season of 2006.

If not for the overharvest in 2006, the 2007 second trimester quota allocation would have been 15.1 mt dw of SCS in the Gulf of Mexico region. Instead, the adjusted quota under Alternative 4 would be negative 26.1 mt dw resulting in a closed fishing season. Using a median ex vessel price of $0.44 per pound dress weight for SCS and $17.05 per pound for shark fin reported in HMS dealer reports from 2003 to 2006 for the Gulf of Mexico region and adjusted for inflation, the value of this harvest (15.1 mt dw) would have been approximately $13,915 for SCS flesh (95 percent of the quota weight) and $28,380 for shark fins (based on the 5 percent shark fin to carcass regulation). Therefore, the 2006 overharvest is estimated to have a direct revenue impact on Gulf of Mexico regional commercial shark fishing activity of approximately $42,295. However, it should be noted that due to the overharvest, fishermen received more revenue in the 2006 second trimester than previously expected.

Alternative 5 would transfer a portion of the South Atlantic's regional 2007 second trimester SCS underharvest (41.2 mt dw) to the Gulf of Mexico region to cover the Gulf of Mexico's regional 2006 second trimester overharvest. The Gulf of Mexico would then have the equivalent of their base quota of 15.1 mt dw for the 2007 second trimester. This would eliminate the economic impact of a closure in the Gulf of Mexico region in 2007 unlike under the no action alternative. The South Atlantic region would still have an adjusted third trimester quota of 349 mt dw, which is much greater than the amount that region actually harvested in the second season of 2006. The only economic impacts would come from potential future impacts to the South Atlantic region as a result of the 41.2 mt dw transfer of their underhavest to the Gulf of Mexico region if in the future the South Atlantic harvests more SCS than is accommodated by their lowered final adjusted quota.

Alternative 6 would transfer a portion of the South Atlantic's regional 2007 second trimester SCS underharvest (41.2 mt dw) to the Gulf of Mexico region to cover the Gulf of Mexico's regional 2006 second trimester SCS overharvest as well as give the Gulf of Mexico region additional SCS quota of 15.1 mt dw from the South Atlantic region for a total of 30.2 mt dw for the 2007 second trimester. This additional quota transfer would likely not provide enough quota to prevent an overharvest during the 2007 second trimester. However, this additional quota (15.1 mt dw) would provide the Gulf of Mexico region with an additional $42,294 in potential revenue from SCS. It would also further reduce the underharvest carry forward of SCS in the South Atlantic as a result of the larger transfer. There could be future economic impacts in the South Atlantic region if one day they need that quota.

Alternative 7 would take a different approach. Under Alternative 7, NMFS would reallocate the SCS regional quota percentages in the South Atlantic region from 87 percent to 49 percent and in the Gulf of Mexico region from 10 percent to 48 percent for both the 2007 second and third trimester seasons and in the future. In addition, there would also be transfer of underharvest in the South Atlantic regional 2007 second trimester quota to cover the Gulf of Mexico's regional second trimester overharvest. This alternative is the preferred alternative.

There would be no change in the total base quota available for all regions in the second and third trimester season under this alternative versus alternative 4 (No Action). In addition, the adjusted 2007 second and third trimester regional quota would stay the same for the North Atlantic region. The key change would involve the quota amounts for South Atlantic and Gulf of Mexico regions. The 2007 second trimester quota in the South Atlantic region would decrease from 390.2 mt dw (Alternative 4) to 291.6 mt dw of SCS and the 2007 third trimester quota would decrease from 354.9 mt dw (Alternative 4) to 297.5 mt dw. Using the 2003 to 2006 median ex vessel prices of $0.67 lbs dw for flesh and the 2003 to 2006 median ex vessel prices for shark fin of $12.28 for SCS in the South Atlantic region, there would be a decrease of $200,425 in potential revenues for the second trimester season and $158,245 decrease in potential revenues in the third trimester season. However, it should be noted that the South Atlantic region has not harvested SCS in amounts approaching even these lowered trimester quota levels in the past few years.

The 2007 second trimester quota in the Gulf of Mexico region would go from -26.1 mt dw (which would close this region) under the alternative 4 (No Action) scenario in the second trimester season to 72.6 mt dw of SCS under this alternative. In addition, the 2007 third trimester quota would increase from 22.9 mt dw to 80.4 mt dw. Using the 2003 to 2006 median ex vessel prices of $0.44 lbs dw for flesh and the 2003 to 2006 median ex vessel prices for shark fins of $17.05 for SCS in the Gulf of Mexico region, there would be an increase of $203,350 in potential revenues for the second trimester season and $161,506 increase in potential revenues in the third trimester season. This reallocation of quota would allow the SCS fishery to remain open in the Gulf of Mexico region and would prevent future overharvest of quota in that region while not leading to an overharvest in the South Atlantic region.

Overall, Alternative 7 would increase revenues for SCS by transferring quota from a region of underharvest to a region that is currently overharvesting their SCS quota. The reallocation of regional quota percentages would provide greater regional equity in future base quota allocations. This would help mitigate overharvesting of the quota in the Gulf of Mexico region. However, there could be future impacts to the South Atlantic region as a result of the reallocation of the SCS regional quota percentage to the Gulf of Mexico region if in the future the South Atlantic harvests more than this proposed lower regional quota allocation percentage.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: March 5, 2007.

Samuel D. Rauch III,

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

For reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.27, paragraphs (b)(1)(i), (b)(1)(iv), (b)(1)(vi)(A) introductory text, are revised to read as follows:

§ 635.27 Quotas.

* * * * *

(b) * * *

(1) * * *

(i) *Fishing seasons*. The commercial quotas for large coastal sharks, small coastal sharks, and pelagic sharks will be split among three fishing seasons: January 1 through April 30, May 1 through August 31, and September 1 through December 31. NMFS may consider merging any of the fishing seasons pursuant to paragraph (b)(1)(vi) of this section.

* * * * *

(iv) *Small coastal sharks*. The annual commercial quota for small coastal sharks is 454 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section. This annual quota is split among the regions as follows: 48 percent to the Gulf of Mexico, 49 percent to the South Atlantic, and 3 percent to the North Atlantic.

* * * * *

(vi) *Annual adjustments*. (A) NMFS will adjust the next year's fishing season quotas for large coastal, small coastal, and pelagic sharks to reflect actual landings during any fishing season in any particular region. For example, a commercial quota underharvest or overharvest in the fishing season in one region that begins January 1 will result in an equivalent increase or decrease in the following year's quota for that region for the fishing season that begins January 1. NMFS may consider merging any of the fishing seasons and relevant quotas in any region when there is limited available quota in one or more seasons.

* * * * *

[FR Doc. 07–1085 Filed 3–5–07; 2:13 pm]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 72, No. 45
Thursday, March 8, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Selkirk Mountain Range Winter Travel Plan, Idaho Panhandle National Forests, Bonner and Boundary Counties, ID and Pend Oreille County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to document and disclose the potential environmental effects of a proposed winter travel plan for the Selkirk Mountain Range on the Bonners Ferry, Priest Lake and Sandpoint Ranger Districts, Idaho Panhandle National Forests (IPNF). The Selkirk Mountain Range is located immediately northwest of Sandpoint, Idaho. The geographic area for this travel plan is defined as the National Forest System lands on the INPF that are bounded by US Highway 2 on the south, the Pend Oreille Divide on the west, the international border with Canada on the north, and US Highway 95 on the east. The proposal was designed using science from assessments including the Situation Summary and Management Strategy for caribou and winter recreation prepared by the IPNF in 2004. The proposal will result in a Selkirk Mountain Range winter travel plan reflecting designated areas and routes of travel, and applicable restrictions and types of use for each route or area by:

(1) Responding to court direction relating to winter recreation use within the woodland caribou recovery area.

(2) Adapting management actions and land uses to changed information and conditions in wildlife management, particularly for threatened, endangered and sensitive species.

(3) Providing for public access and motorized winter recreation travel in the Selkirk Mountain Range considering both the quantity and quality of opportunities provided.

(4) Establishing objectives and/or restrictions to prevent and/or correct any unacceptable resource impacts that are occurring.

Activities would include: (1) Developing a winter motorized travel plan for public access and recreation use considering both the quantity and quality of experiences provided, in balance with resource management objectives, (2) identifying the types of use and restrictions associated with each resource management objective, and (3) developing a new travel map reflecting winter motorized use, designated areas and routes of travel, and applicable restrictions and types of use for each route or area. Specifically the proposal will allow winter motorized travel on 46 miles of designated routes, 90,028 acres will be closed to winter motorized use based on existing yearlong closures, 13,639 acres would be closed seasonally to winter motorized use from 4/1 until 6/30, and 40,404 acres would be added as closed to winter motorized use. Under the proposal the remaining 434,760 acres of National Forest Lands within the project area would be open to winter motorized use.

The Idaho Panhandle National Forests in Bonner and Boundary Counties, Idaho and Pend Oreille County, Washington will administer these activities. The EIS will tier to the Idaho Panhandle National Forests Forest Plan. (September 1987).

DATES: Comments should be postmarked within 30 days after publication of this notice. Please include your name and address and the name of the project you are commenting on.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or request to be placed on the project mailing list by writing to: Selkirk Mountains Winter Travel Plan, Attn: Greg Hetzler, Sandpoint Ranger District, 1500 Hwy 2, Suite 110, Sandpoint, ID 83864.

FOR FURTHER INFORMATION CONTACT: Greg Hetzler, Project Team Leader, Sandpoint Ranger District at 208–263–5111 or by e-mail at *ghetzler@fs.fed.us.*

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. For persons requesting such confidentiality, it may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied; the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

SUPPLEMENTARY INFORMATION: More information about the Selkirk Mountain Range Winter Travel Plan can be found on the internet at *http://www.fs.fed.us/ipnf/kaniksu/wintertravelplan/.* The purpose of the EIS will be to analyze and disclose a range of appropriate winter motorized recreational opportunities, while ensuring that these recreational activities are in an appropriate setting and do not impair or irreparably harm national forest resources or values. Alternatives to be considered in the EIS will respond to the purpose and need. Specifically, the Forest Service will include alternatives allowing varying amounts and types of winter motorized use. Major issues to be addressed in the EIS include the environmental effects of motorized winter use on wildlife, providing appropriate levels and types of motorized use, visitor experience, and socioeconomics.

Two periods are specifically designated for comments on this analysis: (1) During the scoping period which is 30 days from the date of this notice in the **Federal Register** and (2) during the draft EIS comment period. In accordance with 36 CFR 215.5, as published in the **Federal Register**, Volume 68 No. 107, June 4, 2003, the draft EIS comment period will be the designated time in which comments will be considered. The mailing list for this project will include those individuals who have expressed interest

in this project as well as adjacent landowners and those responding to this NOI or to the Idaho Panhandle National Forests Quarterly Schedule of Proposed Actions. In addition, the public is encouraged to contact or visit with Forest Service officials during the analysis and prior to the decision. The Forest Service will continue to seek information, comments, and assistance from Federal, Tribal, State, and local agencies and other individuals or organizations that may be interested in or affected by the proposed actions. The United States Fish and Wildlife Service will be consulted concerning any effects to threatened and endangered species. The agency invites written comments and suggestions on this action, particularly in terms of identification of issues and alterative development.

Comments from the public and other agencies will be used in preparation of the Draft EIS to identify potential issues and concerns, potential alternatives to the proposed action and to promote communications with members of the public or other agencies. The draft environmental impact statement (DEIS) will be field with the Environmental Protection Agency (EPA) and made available for public review in the summer of 2007. The final environmental impact statement is expected to be completed in winter of 2008. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental review of the proposal so that it is meaningful and alerts and agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F 2d 1016, 1022 (9th Cir. 1986 and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues related to the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental quality Regulations for implementing the procedural provisions of the National environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means of communication of program information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20250, or call 1–800–245–6340 (voice) or 202–720–1127 (TDD). USDA is an equal employment opportunity employer.

The Idaho Panhandle National Forests Supervisor is the Deciding Officer on this project. The decision will be made after considering comments and responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations and policies. The decision and supporting reasons will be documented in a Record of Decision upon release of the Final EIS.

Dated: March 2, 2007.

Ranotta K. McNair,

Forest Supervisor, Idaho Panhandle National Forests.

[FR Doc. 07–1082 Filed 3–7–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Roadless Area Conservation National Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Roadless Area Conservation National Advisory Committee (RACNAC) will meet in Washington, DC. The purpose of the meeting is to discuss the status of the state specific rulemaking for inventoried roadless area management in the State of Idaho and to discuss temporary roads and other related issues.

DATES: The meeting will be held March 28 and March 29, 2007, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Forest Service's Yates Building at 201 14th Street, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Jessica Call, RACNAC Coordinator, at *jessicacall@fs.fed.us* or (202) 205–1056, USDA Forest Service, 1400 Independence Avenue, SW., Mailstop 1104, Washington, DC 20250.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and interested parties are invited to attend; building security requires you to provide your name to the RACNAC Coordinator (contact information listed above) by March 23, 2007. You will need photo identification to enter the building.

While meeting discussion is limited to Forest Service staff and Committee members, the public will be allowed to offer written and oral comments for the Committee's consideration. Attendees wishing to comment orally will be allotted a specific amount of time to speak during a public comment period at the end of the first day's agenda. To offer oral comment, please contact the RACNAC Coordinator at the contact number above.

Dated: March 2, 2007.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. E7–4143 Filed 3–7–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Earth Resources Inc.; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), an agency that administers the U.S. Department of Agriculture's Rural Development Utilities Programs, has made a finding of no significant impact (FONSI) with respect to a request from Earth Resources Inc. for assistance from RUS to finance the construction and operation of a twenty (20) MW power generating station utilizing chicken litter and woody biomass as fuel. The proposal would be constructed on a 140-acre property in Franklin County, Georgia.

FOR FURTHER INFORMATION CONTACT: Stephanie A. Strength, Environmental Protection Specialist, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, *telephone:* (202) 720–0468 or *e-mail: Stephanie.strength@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Earth Resources Inc. is proposing to install a twenty (20) MW GE ID # 8287108 and 114939 steam driven turbine generation station and accessory structures, fuel storage and handling areas, traffic circulation and parking areas, waste holding areas, zero discharge system, and stormwater management features. A new 85-foot tall stack will be required. The proposal is located in Franklin County, Georgia. The generating station will be sited on a previously graded five-(5) acre portion of a 139-acre property. The remaining acres will be maintained as natural area buffers.

Alternatives considered by the USDA Rural Development and ERI included: (a) No action, (b) alternate locations, (c) alternate methods to provide service, (d) alternate construction methods and materials, (e) alternate designs, (f) load management and energy conservation options, and (g) alternate generation technologies.

Copies of the Environmental Assessment and FONSI are available at, or can be obtained from, RUS at the address provided herein, or from Mr. Billy Jones (706) 384–4933, at Earth Resources Inc.'s headquarters office located at 774 Highway 320, Carnesville, Georgia 30521.

Dated: March 2, 2007.

James R. Newby,

Assistant Administrator—Electric Program, Rural Development—Utilities Programs.

[FR Doc. E7–4110 Filed 3–7–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

[Docket No. 070215037–7038–01]

Department of Commerce FY 2007–2012 Strategic Plan

AGENCY: Department of Commerce.

ACTION: Request for comment.

SUMMARY: The Department is updating its current FY 2004–2009 Strategic Plan. As part of this process, the Department is inviting comments on its draft FY 2007–2012 Strategic Plan.

DATES: Public comments on this document must be received at the appropriate mailing or e-mail address (see **ADDRESSES**) on or before April 9, 2007.

ADDRESSES: Please send comments to Mr. Stephen Shapiro, Chief, Systems, Policy, and Performance Division, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 5312, Washington, DC 20230. Comments may be submitted via e-mail to *sshapiro@doc.gov.* Commerce's draft Strategic Plan is posted at *http://www.osec.doc.gov/bmi/budget/.*

FOR FURTHER INFORMATION CONTACT: Mr. William Tatter, phone 202–482–5979, fax 202–482–2903, e-mail *btatter@doc.gov.*

SUPPLEMENTARY INFORMATION: Under the Government Performance and Results Act of 1993, each Federal agency must develop a Strategic Plan describing the agency's mission, strategic goals, and those means and strategies that will be used to achieve the agency's mission for the current and next five years. The plan must, additionally, describe the relationship between annual performance goals and the agency's strategic goal framework. These Strategic Plans must be updated and reviewed at least every three years, a key part of which includes consultation with Congress and other interested and potentially affected parties.

The draft FY 2007–2012 Strategic Plan updates the key challenges, means, and strategies documented in the FY 2004–2009 Strategic Plan. It also revises the goals, objectives, and outcomes to reflect current emphasis and to achieve greater consistency in style and format across the Department. Finally, it updates the measures used to track and report attainment of goals and objectives.

Dated: March 2, 2007.

Neil K. Shapiro,

Deputy Director, Office of Budget.

[FR Doc. E7–4116 Filed 3–7–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE.

International Trade Administration

A–570–831

Fresh Garlic from the People's Republic of China: Notice of Partial Rescission of the 12th Administrative Review

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

EFFECTIVE DATE: March 8, 2007

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–2312.

Background

On December 27, 2006, the Department published a notice of initiation of an administrative review of fresh garlic from the People's Republic of China (''PRC''), covering the period November 1, 2005, through October 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 77720 (December 27, 2006).

On January 23, 2007, the Fresh Garlic Producers Association (the ''Petitioner'') withdrew its request for an administrative review for the following nine companies: Jinan Yipin Corporation, Ltd. (''Jinan Yipin''), Linshu Dading Private Agricultural Products Co., Ltd., (''Linshu Dading''), Qingdao Titan Shipping LLC (''Qingdao Titan''), Shandong Wonderland Organic Food Co., Ltd. (''Shandong Wonderland''), Shenzhen Xinboda Industrial Co., Ltd. (''Shenzhen Xinboda''), Taian Fook Huat Tong Kee Pte Ltd. (''Taian Fook Huat''), Weifang Hongqiao International Logistic Co., Ltd. (''Weifang Hongqiao''), Xuzhou Simple Garlic Industry Co., Ltd. (''Xuzhou Simple''), and Omni Decor China Ltd. (''Omni Decor'').

Partial Rescission

Pursuant to section 351.213(d)(1) of the Department's regulations, the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.

Therefore, because the Petitioner's withdrawal of requests for review was timely and no other party requested a review of the aforementioned companies, in accordance with section

351.213(d)(1) of the Department's regulations, we are rescinding this review with respect to Jinan Yipin, Linshu Dading, Qingdao Titan, Shandong Wonderland, Shenzhen Xinboda, Taian Fook Huat, Weifang Hongqiao, Xuzhou Simple, and Omni Decor.

Assessment Rates

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For those companies for which this review has been rescinded and which have a separate rate, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice. For those companies for which this review has been rescinded but do not have a separate rate at this time (and thus remain part of the PRC–wide entity), the Department will issue assessment instructions upon the completion of this administrative review.

Notification to Importers

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

Notification Regarding APOs

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

This notice is issued and published in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: February 27, 2007.

Stephen J. Claeys

Deputy Assistant Secretary for Import Administration

[FR Doc. E7–4165 Filed 3–7–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results and Partial Rescission of the 2005–2006 Administrative Reviews

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

SUMMARY: The Department of Commerce (the Department) is currently conducting the 2005–2006 administrative review of the antidumping duty order on heavy forged hand tools, finished or unfinished, with or without handles, (heavy forged hand tools) from the People's Republic of China (PRC). We preliminarily determined to apply adverse facts available (AFA) with respect to four companies which failed to cooperate to the best of their ability and failed to demonstrate their eligibility for a separate rate, as follows: (a) Hammers/Sledges and Bars/Wedges exported by Shandong Machinery Import & Export Company (SMC); (b) Axes/Adzes, Bars/Wedges, Hammers/Sledges, and Picks/Mattocks (''all four classes or kinds'') exported by Jafsam Metal Products (Jafsam); (c) Picks/Mattocks exported by Tianjin Machinery Import and Export Corporation (TMC); and (d) Picks/Mattocks and Hammers/Sledges exported by Shandong Huarong Machinery Co. (Huarong).

We are also preliminarily rescinding the following 2005–2006 administrative reviews: (a) Axes/Adzes and Picks/Mattocks, with regard to SMC; (b) Axes/Adzes, Hammers/Sledges, and Picks/Mattocks, with regard to Iron Bull Industrial Co., Ltd. (Iron Bull); and (c) all four classes or kinds with regard to Shanghai Xinike Trading Company (Xinike).

If these preliminary results are adopted in our final results of these reviews, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of subject merchandise during the period of review (POR) for which the importer-specific assessment rates are above *de minimis*. Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* March 8, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1991, the Department published in the **Federal Register** four antidumping duty orders on heavy forged hand tools from the PRC. *See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China,* 56 FR 6622 (February 19, 1991). Imports covered by these orders comprise the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (Hammers/Sledges); (2) bars over 18 inches in length, track tools, and wedges (Bars/Wedges); (3) Picks/Mattocks; and (4) Axes/Adzes. *See* ''Scope of the Antidumping Duty Orders'' section below for the complete description of subject merchandise.

On February 1, 2006, the Department published in the **Federal Register** a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on heavy forged hand tools from the PRC for the POR covering February 1, 2005, through January 31, 2006. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 71 FR 5239 (February 1, 2006). On February 24, 2006, respondents SMC and TMC requested administrative reviews. On February 27, 2006, respondents Shanghai Machinery Import & Export Corp. (Shanghai Machinery), Huarong, and Shandong Jinma Industrial Group Co., Ltd. (Jinma), requested administrative reviews. On February 28, 2006, petitioner Council Tool Company requested administrative reviews of Huarong, SMC, TMC, Xinike, Iron Bull, and Jafsam. Also on February 28, 2006, another petitioner, Ames True Temper, requested administrative reviews of Huarong, SMC, TMC, Iron

Bull, and Truper Herramientas S.A. de C.V. (Truper).

On April 5, 2006, the Department initiated an administrative review of the antidumping duty orders listed below covering the POR, February 1, 2005, through January 31, 2006, with respect to the listed companies:

Axes/Adzes A–570–803

Iron Bull Industrial Co., Ltd.
Jafsam Metal Products
Shanghai Machinery Import & Export Corp.
Shanghai Xinike Trading Company
Shandong Huarong Machinery Co., Ltd.
Shandong Jinma Industrial Group Co., Ltd.
Shandong Machinery Import and Export Corporation
Tianjin Machinery Import and Export Corporation
Truper Herramientas S.A. de C.V.

Bars/Wedges A–570–803

Iron Bull Industrial Co., Ltd.
Jafsam Metal Products
Shanghai Machinery Import & Export Corp.
Shanghai Xinike Trading Company
Shandong Huarong Machinery Co., Ltd.
Shandong Jinma Industrial Group Co., Ltd.
Shandong Machinery Import and Export Corporation
Tianjin Machinery Import and Export Corporation
Truper Herramientas S.A. de C.V.

Hammers/Sledges A–570–803

Iron Bull Industrial Co., Ltd.
Jafsam Metal Products
Shanghai Machinery Import & Export Corp.
Shanghai Xinike Trading Company
Shandong Huarong Machinery Co., Ltd.
Shandong Jinma Industrial Group Co., Ltd.
Shandong Machinery Import and Export Corporation
Tianjin Machinery Import and Export Corporation

Picks/Mattocks A–570–803

Iron Bull Industrial Co., Ltd.
Jafsam Metal Products
Shanghai Machinery Import & Export Corp.
Shanghai Xinike Trading Company
Shandong Huarong Machinery Co., Ltd.
Shandong Jinma Industrial Group Co., Ltd.
Shandong Machinery Import and Export Corporation

See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews, 71 FR 17077 (April 5, 2006) (*Initiation Notice*).

Partial Rescission of Review

During the period specified in the Department's regulations, we received multiple withdrawals of requests for review by petitioners and respondents. *See* Memorandum from Mark Flessner to the Record entitled ''Administrative Review (02/01/2005–01/31/2006) of Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Adverse Facts Available and Corroboration,'' (*AFA and Corroboration Memo*), dated February 28, 2007. On September 11, 2006, we published a notice rescinding the administrative review, in accordance with 19 CFR 351.213(d)(1), with respect to Jinma (all four classes or kinds); Shanghai Machinery (all four classes or kinds); Truper (all four classes or kinds); TMC (Axes/Adzes, Hammers/Sledges, and Bars/Wedges); Huarong (Axes/Adzes and Bars/Wedges); and Iron Bull (Bars/Wedges). *See Administrative Review (02/01/2005–01/31/2006) of Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Reviews,* 71 FR 53403 (September 11, 2006) (Rescission Notice).

Preliminary Partial Rescission of 2005–2006 Administrative Review

We are preliminarily rescinding the review with respect to SMC for Axes/Adzes and Picks/Mattocks. SMC reported that it made no shipments of subject Axes/Adzes or Picks/Mattocks during the POR and the Department was able to review CBP data which support the claim that SMC did not export Axes/Adzes and/or Picks/Mattocks during the POR. Furthermore, no party has placed evidence on the record demonstrating that SMC exported the merchandise identified above during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are preliminarily rescinding the administrative reviews on Axes/Adzes and Picks/Mattocks with respect to SMC.

In addition, we are preliminarily rescinding the review with respect to Iron Bull for Axes/Adzes, Hammers/Sledges, and Picks/Mattocks for the same reason described above.

The questionnaires sent to Xinike were returned to the Department as undeliverable. Given that petitioners had requested this review, we requested that they provide an alternate address for this company, but they were unable to do so. *See* Memorandum to the File from Mark Flessner entitled, ''Administrative Review (02/01/2005–01/31/2006) of Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Attempts to Contact Party Shanghai Xinike Trading Company,'' dated May 22, 2006. Because the Department was unable to locate Xinike, we are also preliminarily rescinding the administrative review with respect to this company in all four classes or kinds.

Scope of Orders

The products covered by these orders are heavy forged hand tools from the PRC, comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds); (2) bars over 18 inches in length, track tools and wedges; (3) picks and mattocks; and (4) axes, adzes and similar hewing tools. Heavy forged hand tools include heads for drilling hammers, sledges, axes, mauls, picks and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. Heavy forged hand tools are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. Heavy forged hand tools are currently provided for under the following Harmonized Tariff System of the United States (HTSUS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00 and 8201.40.60. Specifically excluded from these orders are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. The HTSUS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

The Department has issued eight conclusive scope rulings regarding the merchandise covered by these orders: (1) On August 16, 1993, the Department found the ''Max Multi-Purpose Axe,'' imported by the Forrest Tool Company, to be within the scope of the Axes/Adzes order; (2) on March 8, 2001, the Department found ''18-inch'' and ''24-inch'' pry bars, produced without dies, imported by Olympia Industrial, Inc.

and SMC Pacific Tools, Inc., to be within the scope of the Bars/Wedges order; (3) on March 8, 2001, the Department found the ''Pulaski'' tool, produced without dies by TMC, to be within the scope of the Axes/Adzes order; (4) on March 8, 2001, the Department found the ''skinning axe,'' imported by Import Traders, Inc., to be within the scope of the Axes/Adzes order; (5) on December 9, 2004, the Department found the ''MUTT,'' imported by Olympia Industrial, Inc., under HTSUS 8205.59.5510, to be within the scope of the Axes/Adzes order; (6) on May 23, 2005, the Department found 8-inch by 8-inch and 10-inch by 10-inch cast tampers, imported by Olympia Industrial, Inc. to be outside the scope of the orders; (7) on September 22, 2005, following remand, the U.S. Court of International Trade affirmed the Department's determination that cast picks are outside the scope of the order; and (8) on October 14, 2005, the Department found the Mean Green Splitting Machine, imported by Avalanche Industries, under HTSUS 8201.40.60, to be within the scope of the Bars/Wedges order.

TMC, Jafsam, and Huarong

We issued our request for quantity and value data (Q&V), and sections A, C, and D antidumping questionnaire [1] to all respondents for which an administrative review had been requested. Although the Department confirmed delivery of the questionnaires and extended to each company another opportunity to respond, Jafsam did not submit a response. *See* Letter from Robert James, Program Manager, entitled ''Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: 02/01/2005–01/31/2006 Administrative Review,'' dated May 23, 2006.

As noted above, the administrative review with regard to TMC was rescinded for Axes/Adzes, Hammers/Sledges, and Bars/Wedges, leaving TMC subject to review for Picks/Mattocks. Nevertheless, TMC failed to submit a questionnaire response with respect to its exports of Picks/Mattocks. *See Rescission Notice.* Likewise, the administrative review with regard to Huarong was rescinded only for Axes/Adzes and Bars/Wedges, leaving Huarong subject to review for Hammers/Sledges and Picks/Mattocks. However, Huarong failed to submit a response with respect to the two remaining classes or kinds of merchandise. *See Rescission Notice.*

SMC

With respect to SMC, from April 2006 through January 2007, the Department issued its initial and supplemental questionnaires. Responses were received over the course of this period. In addition, parties were invited to submit comments on surrogate country selection and factors of production information. Parties submitted information with respect to these issues as well.

Non-Market Economy Country

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (NME) country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. *See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews,* 71 FR 54269 (September 14, 2006) (*Final Results of 14th Review*). None of the parties to this proceeding has contested such treatment.

Separate Rates

As discussed below, SMC (with respect to Hammers/Sledges and Bars/Wedges) failed to adequately respond to the Department's requests for information. TMC (with respect to the class or kind of merchandise Picks/Mattocks), Huarong (with respect to Hammers/Sledges and Picks/Mattocks), and Jafsam (with respect to all four classes or kinds) failed to respond to the Department's requests for information. *See AFA and Corroboration Memo; see also Facts Available* section below.

To establish whether a company operating in a NME is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

In the *Initiation Notice,* the Department stated, ''If one of the above-named companies does not qualify for a separate rate, all other exporters of Heavy Forged Hand Tools from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.'' *See Initiation Notice,* n.6.

By failing to adequately respond to the Department's requests for information, SMC, TMC, Huarong, and Jafsam (pertaining to the classes or kinds identified above) have not demonstrated they are free of government control, are therefore not eligible to receive a separate rate, and are accordingly being treated as part of the PRC-wide entity. *See AFA and Corroboration Memo.*

The PRC-wide entity including SMC, TMC, Huarong, and Jafsam (pertaining to the classes or kinds identified above) failed to adequately respond to the Department's requests for information. Because the PRC-wide entity did not cooperate to the best of its ability in the proceeding, the Department finds it appropriate, pursuant to sections 776(a)(2) and 776(b) of the Act, to use AFA as the basis for these preliminary results of review for the PRC-wide entity.

Adverse Facts Available

1. Application of Adverse Facts Available

For the reasons outlined below, we have applied total adverse facts available to the PRC-wide entity, which includes SMC (with respect to Hammers/Sledges and Bars/Wedges), TMC (with respect to Picks/Mattocks), Huarong (with respect to Hammers/Sledges and Picks/Mattocks), and Jafsam (with respect to all four classes or kinds). Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the manner in which it sells that merchandise in all of its markets. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under review.

Act, use facts otherwise available in reaching the applicable determination.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India,* 70 FR 54023, 54025–26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55792, 55794–96 (August 30, 2002). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA at 870. Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel* Corp. v. *United States,* 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (*Nippon*).

We preliminarily find that SMC (with respect to Hammers/Sledges and Bars/Wedges), TMC (with respect to Picks/Mattocks), Huarong (with respect to Hammers/Sledges and Picks/Mattocks), and Jafsam (with respect to all four classes or kinds) did not act to the best of their abilities in this proceeding, within the meaning of section 776(b) of the Act, because they failed to respond to the Department's requests for information. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to these companies. *See Nippon,* 337 F.3d at 1382–83.

SMC

From the start of this review, SMC has significantly impeded the Department's proceeding. SMC repeatedly either failed to answer, or provided contradictory answers to, many of the questions asked by the Department, calling into question the usability and reliability of the responses as a whole. For example, the May 11, 23, and 30, 2006, section A, C, and D responses were significantly deficient (with regard to all three sections), requiring the Department to issue an extensive first supplemental questionnaire. Likewise, SMC's September 15, 2006, responses were also deficient with regard to all three sections (A, C, and D), requiring the Department to issue another extensive supplemental questionnaire. SMC's January 22 and 24, 2007, responses also failed to provide adequate answers which would enable the Department (a) to understand the company's structure and ownership, (b) to compare the prices at which SMC's subject merchandise was sold in or to the United States with a constructed value, and (c) to value the factors of production necessary to calculate export price, constructed export price, or normal value. *See AFA and Corroboration Memo.*

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. SMC did not adequately answer the questions posed by the Department regarding its eligibility for receiving a separate rate in this proceeding. Under the heading of ''Separate Rates'' in the original questionnaire, the Department asked SMC, among other things, three questions which are crucial to the separate rates determination. SMC was asked to describe and explain: (i) Who owns your company, (ii) who controls your company, and (iii) your company's relationship with the national, provincial, and local governments. Throughout three separate sets of responses, SMC never clearly answered these questions. *See AFA and Corroboration Memo.*

SMC's section D response also had multiple deficiencies which prevented the Department from being able to calculate a surrogate normal value. For example, in the original section D questionnaire response, the entirety of SMC's section D data was based on activity prior to the beginning of the instant POR. *See* SMC's section D response dated May 30, 2006. In the first supplemental questionnaire, SMC was asked to provide a detailed text explanation. SMC stated that all its sales to the United States during this POR were filled from stock from production for the previous POR (2004–2005). *See* SMC's 1st supplemental questionnaire responses dated September 15, 2006. The Department, in its second supplemental questionnaire, asked SMC to provide source documents which would show that the entirety of the stocks of subject merchandise SMC sold during the POR was acquired by SMC during the previous POR. SMC did not provide the requested documentation, rendering its entire section D database unreliable and unusable. *See* SMC's Second Supplemental Questionnaire response, dated January 24, 2007; *see also AFA and Corroboration Memo.*

SMC's section C database is also rendered unusable as a result of SMC's continued and repeated failure to provide data on U.S. sales. For example, SMC failed to report any expenses paid in market economy currencies. SMC reported in the original section C questionnaire response that it had incurred some, but not all, of its freight expenses in market economy currencies but failed to provide any details or documentation. *See* SMC's Section C Questionnaire Response, dated May 23, 2006. In its first supplemental questionnaire response, SMC stated it had no market economy expenses on U.S. sales. *See* SMC's Section C Questionnaire Response, dated May 23, 2006. In its second supplemental questionnaire response, SMC stated that it incurred some freight expenses in market economy currencies, but continued to fail to provide any details or documentation. *See* SMC's 2nd supplemental A and C questionnaire responses dated January 22, 2007; *see also AFA and Corroboration Memo.* The Deaprtment was unable to evaluate any of the market economy inputs which are a critical portion of the NME section C questionnaire.

As demonstrated above, SMC withheld requested information, failed to provide reliable and usable responses to the Department's questionnaires, and significantly impeded this proceeding, warranting the use of facts available under sections 776(a)(2)(A), (B), and (C) of the Act. Given that its own records (which, for example, would at a minimum have reflected any remaining stocks from the previous POR) were reasonably available to SMC, we preliminarily find that SMC has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Accordingly, we have preliminarily applied adverse facts available. *See* Section 776(b) of the Act.

Jafsam, TMC, and Huarong

Although the Department confirmed delivery of the questionnaires and extended another opportunity to respond, Jafsam did not submit a response to any section of the Department's questionnaires. *See* Letter from Robert James, Program Manager, entitled ''Heavy Forged Hand Tools,

Finished or Unfinished, With or Without Handles, from the People's Republic of China: 02/01/2005–01/31/2006 Administrative Review,'' dated May 23, 2006. The administrative review with regard to TMC was rescinded only in Axes/Adzes, Hammers/Sledges, and Bars/Wedges. *See Rescission Notice*.

The administrative review with regard to Huarong was rescinded only with respect to Axes/Adzes and Bars/Wedges. *See Rescission Notice*. Despite having requested these reviews, TMC and Huarong did not submit responses to the Department's Q&V or section A, C, and D questionnaires in their respective classes or kinds.

By not responding to the Department's request for information, Jafsam, TMC, and Huarong each withheld information that had been requested by the administering authority (*i.e.*, the Department), failed to provide such information by the deadline for submission of the information and in the form and manner requested, and significantly impeded the review.

Therefore, pursuant to sections 776(a)(2)(A), (B), and (C) of the Tariff Act, the Department shall apply facts available to all three of these companies. Further, as the information was reasonably available to Jafsam, TMC, and Huarong, we preliminarily find that Jafsam, TMC, and Huarong have failed to cooperate by not acting to the best of their ability to comply with the Department's requests for information. Accordingly, we have preliminarily applied adverse facts available to these three companies. *See* section 776(b) of the Act.

2. Selection of AFA Rate

Section 776(b) of the Act provides that the Department may use as AFA, information derived from: (1) The petition; (2) the final determination in the investigation; (3) any previous review; or (4) any other information placed on the record.

In administrative reviews, the Department normally selects, as AFA, the highest rate determined for any respondent in any segment of the proceeding. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review,* 68 FR 19504 (April 21, 2003); *see also Stainless Steel Plate in Coils from Taiwan: Preliminary Results and Rescission in part of Antidumping Duty Administrative Review,* 67 FR 5789 (February 7, 2002). The U.S. Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit have consistently upheld the Department's practice in several cases. *See Rhone Poulenc, Inc.* v. *United States,* 899 F. 2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*); *see also NSK Ltd.* v. *United States,* 346 F.Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a LTFV investigation); *see also Kompass Food Trading Int'l* v. *United States,* 24 CIT 678, 689 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); *see also Shanghai Taoen International Trading Co., Ltd.* v. *United States,* Slip Op. 05–22, at 16 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse so ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value,* 63 FR 8909, 8932 (February 23, 1998); *see also Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part,* 71 FR 65082, 65084 (November 7, 2006). The Department's practice is to ensure ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA at 870; *see also D&L Supply Co.* v. *United States,* 113 F. 3d 1220, 1223 (Fed. Cir. 1997) (*D&L Supply*); *see also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil,* 69 FR 76910 (December 23, 2004). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *Rhone Poulenc,* 899 F. 2d at 1190.

As AFA, we are preliminarily assigning to the PRC-wide entity's sales of Axes/Adzes, Bars/Wedges, Hammers/Sledges, and Picks/Mattocks the rates of 189.37, 139.31, 45.42, and 98.77 percent, respectively. *See AFA and Corroboration Memo.*

3. Corroboration

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870; 19 CFR 351.308(d). Under section 776(c) of the Act, the Department is granted a wide discretion in its selection of secondary information, *i.e.*, the AFA rate, as long as the Department can determine, to the extent practicable, that the AFA rate has probative value. *See* SAA at 870.

The SAA further provides that the term ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for calculated margins are administrative determinations. The rate selected as AFA for the PRC-wide entity's sales of Axes/Adzes is the highest calculated rate of any segment in this proceeding, which was calculated in the 14th administrative review. *See Final Results of 14th Review.* The rate selected as AFA for Bars/Wedges was calculated during the 1998–1999 administrative review, and was corroborated and used as the PRC-wide and AFA rate in the most recently completed administrative review. *See Final Results of 14th Review.* The AFA rate we are applying for the order on Hammers/Sledges was applied as ''best information available'' (the predecessor to AFA) during the LTFV investigation for the sole respondent China National Machinery Import & Export Corporation, and was again corroborated and used as the PRC-wide and AFA rate in the 14th review. *Id.* The AFA rate we are applying for the order on Picks/Mattocks was calculated in the fifth review, became the PRC-wide and AFA rate in the seventh review, and has been used since. *Id.* These rates are applied to the PRC-wide entity, *i.e.*, those companies not eligible

for a separate rate with regard to the individual class or kind of merchandise. No information has been presented in the current review that calls into question the reliability of the information used for these AFA rates. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review,* 61 FR 6812 (February 22, 1996) (where the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply,* 113 F.3d at 1221 (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present with respect to the rates being used here.

The 139.31 percent rate for Bars/Wedges calculated in the eighth review was affirmed by the Court of Appeals for Federal Circuit, and is therefore a final margin. *See Shandong Huarong General Corp* v. *United States,* 159 F.Supp.2d 714 (CIT 2001) (remanding final results); *see also Shandong Huarong General Corp* v. *United States,* 177 F.Supp.2d 1304 (CIT 2001) (sustaining remand), aff'd 60 Fed. Appx. 797 (Fed. Cir. 2003). This rate is also the PRC-wide rate for Bars/Wedges published in the most recently completed administrative review of this antidumping order. *See Final Results of 14th Review.* Thus, this rate is the highest rate in the proceeding and was calculated using verified information provided by TMC during the 8th administrative review of the Bars/Wedges order. Accordingly, we continue to find that this rate, instead of other recently calculated rates, is an appropriate AFA rate for the PRC-wide entity because it offers a more adequate incentive to induce the PRC-wide entity, including SMC, Jafsam, and Huarong, to cooperate in this proceeding. We note that this rate has been applied in the 11th, 12th, 13th, and 14th reviews as an AFA rate. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges,* 68 FR 10690 (March 6, 2003); *see also Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part,* 69 FR 55581 (September 15, 2004); *see also Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Notice of Amended Final Results of Antidumping Duty Administrative Reviews,* 69 FR 69892 (December 1, 2004); *see also Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews,* 70 FR 54897 (September 19, 2005); *see also Final Results of 14th Review.*

As stated above, the rates selected for Axes/Adzes, Bars/Wedges, Hammers/Sledges, and Picks/Mattocks are the rates currently applicable to the PRC-wide entity and they are not being applied to companies which have demonstrated their eligibility for a separate rate. The Department assumes that if an uncooperative respondent could have demonstrated a lower rate, it would have cooperated. *See Rhone Poulenc,* 899 F. 2d at 1190; *cf. Ta Chen Stainless Steel Pipe, Inc.* v. *United States,* 24 CIT 841 (2000) (respondents should not benefit from failure to cooperate).

The information used in calculating these margins was based on sales and production data of respondents in a prior review, together with the most appropriate surrogate value information available to the Department, chosen from submissions by the parties in that review, as well as gathered by the Department itself, or on ''best information available'' from the LTFV investigation. Furthermore, the calculations were subject to comment from interested parties in the proceeding. *See Final Results of 14th Review* at page 54270. Moreover, as there is no information on the record of this review that demonstrates that these rates are not appropriate to use as AFA, we determine that these rates have relevance. As these rates are both reliable and relevant, we determine that they have probative value. Accordingly, the selected rates of 189.37 percent for Axes/Adzes, 139.31 percent for Bars/Wedges, 45.42 percent for Hammers/Sledges, and 98.77 percent for Picks/Mattocks, the highest rates from any segment of this administrative proceeding (*i.e.*, the calculated and current PRC-wide rate for each order) have been corroborated, to the extent practicable and as necessary, in accordance with section 776(c) of the Act.

Preliminary Results of the Review

As a result of our reviews, we preliminarily find that the following margins exist for the period February 1, 2005, through January 31, 2006:

Manufacturer/exporter (percent)	Weighted-average margin
Heavy Forged Hand Tools from the PRC: Axes/Adzes	
PRC-Wide Rate	[2] 189.37
Heavy Forged Hand Tools from the PRC: Bars/Wedges	
PRC-Wide Rate	[3] 139.31
Heavy Forged Hand Tools from the PRC: Hammers/Sledges	
PRC-Wide Rate	[4] 45.42

Manufacturer/exporter (percent)	Weighted-average margin
Heavy Forged Hand Tools from the PRC: Picks/Mattocks	
PRC-Wide Rate	[5] 98.77

Case briefs from interested parties may be submitted not later than 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument not to exceed five pages. Parties are also encouraged to provide a table of statutes, regulations, and cases cited, and a diskette containing the electronic version.

Any interested party may request a hearing within 30 days of publication of this notice. Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the briefs. Any hearing will normally be held 37 days after the publication of this notice, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d).

The Department will issue the final results of these reviews, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue appropriate appraisement instructions for the companies subject to these reviews directly to CBP within 15 days of publication of the final results of these reviews. However, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of these reviews for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed review; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate for each class or kind of merchandise as follows: (a) Axes/Adzes, 189.37 percent; (b) Hammers/Sledges, 45.42 percent; (c) Picks/Mattocks, 98.77 percent; and (d) Bars/Wedges, 139.31 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

These administrative reviews and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213 and 351.214.

Dated: February 28, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–4166 Filed 3–7–07; 8:45 am]

BILLING CODE 3510–DS–P

[2] The PRC-wide entity for Axes/Adzes includes Jafsam.

[3] The PRC-wide entity for Bars/Wedges includes SMC and Jafsam.

[4] The PRC-wide entity for Hammers/Sledges includes SMC, Jafsam, and Huarong.

[5] The PRC-wide entity for Picks/Mattocks includes Jafsam, TMC, and Huarong.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–857, A–201–828]

Certain Welded Large Diameter Line Pipe from Japan and Mexico; Notice of Final Results of Five-year (''Sunset'') Reviews of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Commerce.

SUMMARY: On November 1, 2006, the Department of Commerce (''the Department'') initiated the first sunset reviews of the antidumping duty orders on certain welded large diameter line pipe (''welded large diameter pipe'') from Japan and Mexico, pursuant to section 751(c) of the Tariff Act of 1930, as amended, (''the Act''). On the basis of notices of intent to participate and adequate substantive responses filed on behalf of the domestic interested parties and no response from respondent interested parties, the Department has conducted expedited sunset reviews of these antidumping duty orders. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the level indicated in the ''Final Results of Reviews'' section of this notice.

EFFECTIVE DATE: March 8, 2007.

FOR FURTHER INFORMATION CONTACT: Dena Crossland or Dana Mermelstein, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–3362 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2006, the Department initiated the first sunset reviews of the antidumping duty orders on welded large diameter pipe from Japan and Mexico, pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 71 FR 64242 (November 1, 2006). The Department received a Notice of Intent to Participate from American Steel Pipe Division of ACIPCO, Berg Steel Pipe Corporation, Dura–Bond Pipe LLC, Oregon Steel Mills, and Stupp Corp. (collectively ''domestic interested parties''), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. Domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of the subject merchandise.

We received complete substantive responses to the notice of initiation from the domestic interested parties within the 30-day deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We received no responses from the respondent interested parties to these proceedings. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted expedited sunset reviews of these orders.

Scope of the Orders

Japan

The product covered by this antidumping order is certain welded carbon and alloy line pipe, of circular cross section and with an outside diameter greater than 16 inches, but less than 64 inches, in diameter, whether or not stencilled. This product is normally produced according to American Petroleum Institute (''API'') specifications, including Grades A25, A, B, and X grades ranging from X42 to X80, but can also be produced to other specifications. Specifically not included within the scope of this investigation is American Water Works Association (''AWWA'') specification water and sewage pipe and the following size/grade combinations; of line pipe:

-Having an outside diameter greater than or equal to 18 inches and less than or equal to 22 inches, with a wall thickness measuring 0.750 inch or greater, regardless of grade.

-Having an outside diameter greater than or equal to 24 inches and less than 30 inches, with wall thickness measuring greater than 0.875 inches in grades A, B, and X42, with wall thickness measuring greater than 0.750 inches in grades X52 through X56, and with wall thickness measuring greater than 0.688 inches in grades X60 or greater.

-Having an outside diameter greater than or equal to 30 inches and less than 36 inches, with wall thickness measuring greater than 1.250 inches in grades A, B, and X42, with wall thickness measuring greater than 1.000 inches in grades X52 through X56, and with wall thickness measuring greater than 0.875 inches in grades X60 or greater.

-Having an outside diameter greater than or equal to 36 inches and less than 42 inches, with wall thickness measuring greater than 1.375 inches in grades A, B, and X42, with wall thickness measuring greater than 1.250 inches in grades X52 through X56, and with wall thickness measuring greater than 1.125 inches in grades X60 or greater.

-Having an outside diameter greater than or equal to 42 inches and less than 64 inches, with a wall thickness measuring greater than 1.500 inches in grades A, B, and X42, with wall thickness measuring greater than 1.375 inches in grades X52 through X56, and with wall thickness measuring greater than 1.250 inches in grades X60 or greater.

-Having an outside diameter equal to 48 inches, with a wall thickness measuring 1.0 inch or greater, in grades X–80 or greater.

-Having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.90 inch or more in grade X–80.

-Having an outsides diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.54 inch or more in grade X100.

Scope Clarification: On October 26, 2006, the Department determined that large diameter line pipe with an API grade X–80 having an outside diameter of 21 inches and wall thickness of 0.625 inches was excluded from the scope of the antidumping duty order on welded large diameter pipe from Japan. *See Final Results of Changed Circumstances Review: Certain Welded Large Diameter Line Pipe from Japan*, 71 FR 62584 (October 26, 2006).

The product currently is classified under U.S. Harmonized Tariff Schedule (''HTSUS'') item numbers 7305.11.10.30, 7305.11.10.60, 7305.11.50.00, 7305.12.10.30, 7305.12.10.60, 7305.12.50.00, 7305.19.10.30. 7305.19.10.60, and 7305.19.50.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

Mexico

The product covered by this order is certain welded carbon and alloy line pipe, of circular cross section and with an outside diameter greater than 16 inches, but less than 64 inches, in diameter, whether or not stenciled. This product is normally produced according to American Petroleum Institute (''API'') specifications, including Grades A25, A, B, and X grades ranging from X42 to X80, but can also be produced to other specifications. Specifically not included within the scope of this investigation is American Water Works Association (''AWWA'') specification water and sewage pipe, and the following size/grade combinations of line pipe:

-Having an outside diameter greater than or equal to 18 inches and less than or equal to 22 inches, with a wall thickness measuring 0.750 inch or greater, regardless of grade.

-Having an outside diameter greater than or equal to 24 inches and less than 30 inches, with wall thickness measuring greater than 0.875 inches in grades A, B, and X42, with wall thickness measuring greater than 0.750 inches in grades X52 through X56, and with wall thickness measuring greater than 0.688 inches in grades X60 or greater.

-Having an outside diameter greater than or equal to 30 inches and less than 36 inches, with wall thickness measuring greater than 1.250 inches in grades A, B, and X42, with wall thickness measuring greater than 1.000 inches in grades X52 through X56, and with wall thickness measuring greater than 0.875 inches in grades X60 or greater.

-Having an outside diameter greater than or equal to 36 inches and less than 42 inches, with wall thickness measuring greater than 1.375 inches in grades A, B, and X42, with wall thickness measuring greater than 1.250 inches in grades X52 through X56, and with wall thickness measuring greater than 1.125 inches in grades X60 or greater.

-Having an outside diameter greater than or equal to 42 inches and less than 64 inches, with a wall thickness measuring greater than 1.500 inches in grades A, B, and X42, with wall thickness measuring greater than 1.375 inches in grades X52 through X56, and with wall thickness measuring greater than 1.250 inches in grades X60 or greater.

-Having an outside diameter equal to 48 inches, with a wall thickness measuring 1.0 inch or greater, in grades X–80 or greater.

The product currently is classified under U.S. Harmonized Tariff Schedule

(''HTSUS'') item numbers 7305.11.10.30, 7305.11.10.60, 7305.11.50.00, 7305.12.10.30, 7305.12.10.60, 7305.12.50.00, 7305.19.10.30, 7305.19.10.60, and 7305.19.50.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

Analysis of Comments Received

All issues raised in these cases are addressed in the Issues and Decision Memorandum for the Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders on Certain Welded Large Diameter Line Pipe from Japan and Mexico, from Stephen Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated March 1, 2007 (''Decision Memo''), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these sunset reviews and the corresponding recommendations in this public memo, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn/index.html, under the heading ''March 2007.'' The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on welded large diameter pipe from Japan and Mexico would likely lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (Percent)
Japan.	
Nippon Steel Corporation	30.80
Kawasaki Steel Corporation	30.80
All Others	30.80
Mexico.	
PMT–Tubacero	49.86
All Others	49.86

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 1, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–4164 Filed 3–7–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application to Amend an Export Trade Certificate of Review.

SUMMARY: Export Trading Company Affairs (''ETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–B H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 06–A0002.''

A summary of the application for an amendment follows.

Summary of the Application

Applicant: Necole Shannon Global, Inc. (''NSG''), 7126 E. King Place, Tulsa, Oklahoma 74115.

Contact: Darah Thomas, President, Telephone: (918) 834–6277.

Application No.: 06–A0002.

Date Deemed Submitted: February 27, 2007.

The original NSG Certificate was issued on December 14, 2006 (71 FR 76275, December 20, 2006).

Proposed Amendment: NSG seeks to amend its Certificate to change its name from ''Darah Thomas, doing business as Necole Shannon Global Export Services'' to the new listing ''Necole Shannon Global, Inc.''

Dated: March 2, 2007.

Jeffrey C. Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E7–4148 Filed 3–7–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application To Amend an Export Trade Certificate of Review.

SUMMARY: Export Trading Company Affairs (''ETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–B H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 99–3A005.''

A summary of the application for an amendment follows.

Summary of the Application

Applicant: California Almond Export Association, LLC (''CAEA''), 4800 Sisk Road, Modesto, California 95356.

Contact: Doug Youngdahl, Chairman, Telephone: (916) 446–8595.

Application No.: 99–3A005.

Date Deemed Submitted: February 27, 2007.

The original CAEA Certificate was issued on December 27, 1999 (65 FR 760, January 6, 2000) and last amended on June 17, 2004 (69 FR 35585, June 25, 2004).

Proposed Amendment: CAEA seeks to amend its Certificate to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Sunny Gem, LLC, Wasco, California; and North Valley Nut, Inc., Chico, California; and

2. Change the listing of the following Member: ''Ryan*Parreira Almond Company, Los Banos, California'' to the new listing ''RPAC, LLC, Los Banos, California''.

Dated: March 2, 2007.

Jeffrey C. Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E7–4149 Filed 3–7–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022807B]

Pre-assessment Workshop and Public Meeting for West Coast Sablefish and Longnose Skate

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

ACTION: Notice of public meeting.

SUMMARY: NOAA Fisheries will hold a workshop to discuss the data and models that will be used in the upcoming stock assessments for sablefish and longnose skate.

DATES: The Pre-assessment Workshop for West Coast Sablefish and Longnose Skate will be held Tuesday, March 20, 2007, beginning at 8:30 a.m. and ending at 5 p.m. The stock assessment authors will be available on Wednesday, March 21, 2007, from 8:30 a.m. until 12 noon p.m. for additional discussion if needed.

ADDRESSES: The Pre-Assessment Workshop for West Coast Sablefish and Longnose Skate will be will be held at the Hatfield Marine Science Center, Guin Library Seminar Room, 2030 S.E. Marine Science Drive, Newport, OR 97365.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey Miller, Northwest Fisheries Science Center (NWFSC); telephone: (206) 437–5670; or Dr. Jim Hastie, Northwest Fisheries Science Center (NWFSC); telephone: (206)860–3412.

SUPPLEMENTARY INFORMATION: This workshop is intended to initiate dialog between members of the fishing community, stock assessment authors, data managers, and interested members of the public. The specific objectives of the workshop are to: (1) Discuss the data used in the sablefish and longnose skate stock assessments including details on collections methods, current observed trends, and how the data will be incorporated into the assessment models; (2) discuss the rationale for making assumptions in the models, especially when data are missing or insufficient; (3) identify anomalies in the data and provide possible explanations; and (4) identify data gaps and future research possibilities.

All participants are encouraged to pre-register for the workshop by contacting Ms. Stacey Miller, Northwest Fisheries Science Center (NWFSC) by phone at (206)437–5670 or by email at *Stacey.Miller@noaa.gov*.

Although non-emergency issues not contained in the meeting agenda may come before the workshop participants for discussion, those issues may not be the subject of formal workshop action during this meeting. Workshop 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 Fishery Conservation and Management Act, provided the public has been notified of the workshop participants' intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms.

Stacey Miller at (206) 437–5670 at least five days prior to the meeting date.

Dated: March 1, 2007.

Alan D. Risenhoover,

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

[FR Doc. E7–4090 Filed 3–8–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Final Environmental Impact Statement (FEIS) for Base Closure and Realignment (BRAC) Actions at Fort Lee, Virginia, and Fort A.P. Hill, Virginia

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Department of the Army announces the availability of an FEIS which evaluates the potential environmental impacts associated with realignment actions directed by the Base Closure and Realignment (BRAC) Commission at Fort Lee, Virginia.

DATES: The waiting period for the FEIS will end 30 days after publication of an NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: To obtain a copy of the FEIS, please contact: Ms. Carol Anderson (Fort Lee), IMNE–EE–PWE, 1816 Shop Rd., Fort Lee, Virginia 23801–1604, e-mail address: *CRMLee@lee.army.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Anderson at (804) 734–5071, or Ms. Terry Banks, Fort A.P. Hill, at (804) 633–8223, during normal business hours Monday through Friday.

SUPPLEMENTARY INFORMATION: The subject of the FEIS and the Proposed Action is the construction and renovation activities at both installations, movement of personnel to Fort Lee, and related field training activities at Fort A.P. Hill associated with the BRAC-directed realignment of Fort Lee.

To implement the BRAC recommendations, Fort Lee will be receiving personnel, equipment, and missions from various closure and realignment actions within the Department of Defense. To implement the BRAC Commission recommendations, the Army will provide the necessary facilities, buildings, and infrastructure at Fort Lee to support the establishment of a Sustainment Center of Excellence, a Joint Center for Consolidated Transportation Management Training, and a Joint Center of Excellence for Culinary Training; locate various offices of the Defense Contract Management Agency (DCMA) Headquarters; and receive all components of the Defense Commissary Agency (DeCA). Additionally, facilities will be installed or constructed at Fort A.P. Hill to accommodate field training exercises and leadership skills training for Student Soldiers at Fort Lee. These actions will impact several areas at the installations.

Following a rigorous examination of all implementation alternative, those alternatives found not to be viable were dropped from further analysis in the Fort Lee and Fort A.P. Hill FEIS. Alternatives carried forward include the Preferred Alternative and a No Action Alternative. The Preferred Alternative includes construction, renovation, and operation of proposed facilities to accommodate incoming military missions at Fort Lee.

The FEIS analyses indicate that implementation of the preferred alternative would have long-term, significant adverse impacts on socioeconomic resources (local school districts, and community services), and the transportation network at Fort Lee and its surrounding area, and no long-term significant adverse impacts on any resources at Fort A.P. Hill or its surrounding area. Minor adverse impacts on all other resources at both installations would potentially occur from implementation of the preferred alternative. Construction of new facilities in the cantonment area would have a long-term minor adverse impact on the historic setting of the Petersburg National Battlefield.

An electronic version of the FEIS can be viewed or downloaded from the following URL: *http://www.hqda.army.mil/acsim/brac/nepa_eis_docs.htm.*

Dated: March 1, 2007

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health).

[FR Doc. 07–1072 Filed 3–7–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of intention to remove certain questions from proposed IPEDS survey.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA), the Department of Education published on January 24, 2007, a Notice of Proposed Information Collection Requests in the **Federal Register** on Page 3119, Column 1 (72 FR 3119). That document invited public comment for a period of 60 days on the proposed information collection entitled, ''Integrated Postsecondary Education Data System (IPEDS), Web-Based Collection System''. The Department has received comments regarding some of the new questions included for the first time in this proposed IPEDS Information Collection Request (ICR). The Secretary has taken these comments into consideration and decided to revise the proposed collection by removing some of the new items proposed for this annual data collection. The Department will continue to take comment on the proposed IPEDS ICR during the remainder of the initial 60-day comment period and will post the revised IPEDS ICR on the Web site the Department uses to take comment. The current proposed IPEDS ICR and the revised proposed IPEDS ICR are and will be available at *http://edicsweb.ed.gov*. After posting the revised ICR, the Department will publish the required second PRA notice, providing an opportunity for an additional 30-day public comment period. The IC Clearance Official, Regulatory Information Management Services, Office of Management, hereby issues this notice under the Paperwork Reduction Act of 1995.

Dated: March 2, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

[FR Doc. E7–4108 Filed 3–7–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Smaller Learning Communities Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed priority, requirements, and selection criteria for fiscal year (FY) 2006 and subsequent years' funds.

SUMMARY: The Deputy Secretary of Education proposes a priority, requirements, and selection criteria under the Smaller Learning Communities (SLC) program. The Deputy Secretary will use the priority, requirements, and selection criteria, in

addition to any other previously established priorities and requirements, for a competition using fiscal year (FY) 2006 funds and may use them in later years. We take this action to focus Federal financial assistance on an identified national need. We intend the priority, requirements, and selection criteria to enhance the effectiveness of SLC projects in improving academic achievement and the preparation of students for postsecondary education and careers.

DATES: We must receive your comments on or before April 9, 2007.

ADDRESSES: Address all comments about the proposed priority, requirements, and selection criteria to Gregory Dennis, U.S. Department of Education, 400 Maryland Avenue, SW., FB–6, room 3W243, Washington, DC 20202–6200. If you prefer to send your comments through the Internet, use the following address: *smallerlearningcommunities@ed.gov.*

You must include the term ''SLC Proposed Requirements'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Gregory Dennis. Telephone: (202) 205–3784 or via Internet: *smallerlearningcommunities@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 under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding the proposed priority, requirements, and selection criteria. To ensure that your comments have maximum effect in developing the notice of final priority, requirements, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from the proposed priority, requirements, and selection criteria. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority, requirements, and selection criteria at the U.S. Department of Education, FB6, room 3W243, 400 Maryland Avenue, SW., Washington, DC 20202 between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority, requirements, and selection criteria. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

General

The SLC program is authorized under Title V, Part D, Subpart 4 of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 7249), as amended by the No Child Left Behind Act of 2001. It awards discretionary grants to local educational agencies (LEAs) to support the restructuring of large public high schools with enrollments of 1,000 or more students into smaller units. SLC structures include freshman academies, multi-grade academies organized around career interests or other themes, ''houses'' in which small groups of students remain together throughout high school, and autonomous schools-within-a-school. These structural changes are typically complemented by other personalization strategies, such as student advisories, family advocate systems, and mentoring programs. As used in this notice, the terms *smaller learning community, large high school,* and *BIA school* have the meanings assigned to them in the notice of final priority, requirements, definitions, and selection criteria (NFP) for this program, published in the **Federal Register** on April 28, 2005 (70 FR 22233).

Creating a more personalized learning experience for students has been a prominent part of high school improvement efforts in recent years, supported not only by the SLC program but also by States and private foundations. Several recently completed evaluations of SLCs have highlighted the strengths and limitations of these efforts. They have found, generally, that the implementation of SLCs and complementary personalization strategies can increase student attendance, reduce disruptive behavior, and create a more orderly environment for learning. However, these structural changes and personalization strategies, by themselves, do not appear to improve student academic achievement and readiness for postsecondary education and careers.

Student learning gains have been seen only in those schools that also have made considerable changes in curriculum and instruction (Bernstein, et al., 2005; Kahne, Sporte, et al., 2006; Quint, 2006; Rhodes, Smerdon, 2005). Similarly, some large comprehensive high schools that have not implemented SLCs have significantly increased student achievement in reading or mathematics and narrowed achievement gaps by implementing more rigorous courses, providing extra support to struggling students, and systematically using data to improve instruction (ACT, Inc. and the Education Trust, 2005; Billig, Jaime, et al., 2005; National Center for Educational Accountability, 2005; Robinson, et al., 2005).

This evidence suggests that SLCs are most likely to be successful in raising academic achievement and improving other student outcomes if their implementation is integrated closely with improvements in curriculum and instruction. As some reform advocates have argued persuasively, the focus of these efforts should be on achieving what most students and their parents now consider to be the core mission of the American high school: preparing all students to succeed in postsecondary education and careers without need for remediation (Roderick, 2006).

Earning a bachelor's degree or higher is now the goal of an overwhelming majority of high school students, regardless of their race, gender, ethnicity, or family income. The percentage of high school sophomores who say they expect to earn a bachelor's degree or higher has nearly doubled over the last two decades, from 41 percent in 1980 to nearly 79 percent in 2002, with the largest increases occurring among American Indian and Alaskan Native, Hispanic, and low-income students. Another 11 percent of 2002 sophomores said they expected to earn an associate's degree or postsecondary certificate (National Center for Education Statistics, 2006).

Yet too many young people do not receive the academic preparation, guidance, and support they need to achieve these ambitious aspirations. Many students lack a clear understanding of the academic requirements for entrance to

postsecondary education, how to apply for postsecondary education, or options for financial aid (Horn and Chen, 2003; Horn and Nunez, 2000; and Kirst and Venezia, 2004). Most importantly, considerable numbers of young people are graduating from high school without the academic foundation needed to succeed in postsecondary education. According to the National Assessment of Educational Progress (NAEP), more than one-third of all high school seniors, and the majority of minority and low-income seniors, scored ''below basic'' in mathematics in 2000. Just 17 percent scored proficient or higher. Similarly, on the NAEP reading assessment in 2002, only about one-third of 12th graders demonstrated proficient or advanced reading skills, while the reading skills of one-quarter of high school seniors were ''below basic.'' Fewer than 22 percent of the high school graduates who took the ACT college-entrance examination in 2004 demonstrated readiness to do college-level work in core subjects such as mathematics, English, and science (ACT, Inc., 2005). Consequently, a significant number of students begin their postsecondary education by enrolling in one or more remedial reading, writing, or mathematics courses (NCES, 2004).

Students who plan to enter the workforce immediately after high school, rather than pursue postsecondary education, also need a strong academic foundation. An emerging body of research indicates that the knowledge and skills needed to succeed in postsecondary education are comparable to those that employers expect from their entry-level workers (Achieve, Inc., 2004, 2005; ACT, Inc., 2006). Moreover, most students who decide initially that they do not want a postsecondary education and enter the workforce immediately after high school change their minds and decide within 18 months of high school graduation to pursue postsecondary education (Haimson, Deke, 2003).

For these reasons, we are proposing a priority and selection criteria that are intended to promote the integration of SLC implementation with efforts to improve the preparation of all students for postsecondary education and careers without need for remediation. We also propose other requirements to clarify statutory provisions, facilitate the review of applications, and promote the equitable distribution of limited SLC grant funds.

Discussion of Priority, Requirements, and Selection Criteria

We will announce the final priority, requirements, and selection criteria in a notice in the **Federal Register**. We will determine the final priority, requirements, and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from using additional priorities, requirements, definitions, and selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational.

The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Preparing All Students To Succeed in Postsecondary Education and Careers

This proposed priority supports projects that create or expand SLCs that are part of a comprehensive effort to prepare all students to succeed in postsecondary education and careers without need for remediation.

In order to meet this priority an applicant must demonstrate that, using SLC grant funds or other resources, it will:

(1) Provide intensive interventions to assist students who enter high school with reading/language arts or mathematics skills that are significantly below grade level to ''catch up'' quickly and attain proficiency by the end of 10th grade;

(2) Enroll students in a coherent sequence of rigorous English language arts, mathematics, and science courses that will equip them with the skills and content knowledge needed to succeed in postsecondary education and careers without need for remediation;

(3) Provide tutoring and other academic supports to help students succeed in rigorous academic courses;

(4) Deliver comprehensive guidance and academic advising to students and their parents that include assistance in selecting courses and planning a program of study that will provide the academic preparation needed to succeed in postsecondary education, early and ongoing college awareness and planning activities, and help in identifying and applying for financial aid for postsecondary education; and

(5) Increase opportunities for students to earn postsecondary credit through Advanced Placement courses, International Baccalaureate courses, or dual credit programs.

Application Requirements

Proposed Application Requirements

The Secretary proposes the following application requirements for this SLC competition. These proposed requirements are in addition to the content that all SLC grant applicants must include in their applications as required by the program statute under Title V, Part D, Subpart 4, Section 5441(b) of the ESEA, and the application requirements we established in the NFP for this program, published in the **Federal Register** on April 28, 2005 (70 FR 22233) in the following areas: Eligibility; School Report Cards; Consortium Applications and Educational Service Agencies; Student Placement; Including All Students; and Evaluation. LEAs, including BIA schools and educational service agencies, applying on behalf of large public high schools, are eligible to apply for a grant. A discussion of each proposed application requirement follows.

1. Types of Grants

We propose awarding implementation grants to applicants to support the creation or expansion of an SLC or SLCs within each targeted high school during the school year in which funds are first awarded. We do not propose funding any planning grants this year.

Grants will be awarded for a period up to 60 months. We propose to require that applicants provide detailed, yearly budget information for the total grant period requested. At the time of the initial award, the Department will

provide funds for the first 36 months of the performance period. Funding for the remaining 24 months will be contingent on the availability of funds and each grantee's substantial progress toward accomplishing the goals and objectives of the project as described in its approved application.

Rationale

Since the inception of the SLC program in 2000, the Department has awarded planning grants to more than 350 LEAs. Now, resources, planning tools, and research on SLCs and high school improvement strategies are much more prevalent and accessible for schools and LEAs than was the case at the outset of the SLC program. Therefore, the Department does not see a need to fund planning grants and, instead, intends to focus the SLC program on the actual implementation of projects to create or expand SLCs.

2. Budget Information for Determination of Award

We propose that LEAs may receive, on behalf of a single school, up to $1,750,000, depending upon student enrollment in the school, during the 60-month project period. To ensure that sufficient funds are available to support awards to LEAs of all sizes, and not only the largest LEAs, we propose, as we have in previous years, to limit to 10 the number of schools that an LEA may include in a single application for a grant. LEAs applying on behalf of a group of eligible schools thus could receive up to $17,500,000 per grant.

The following chart provides the ranges of awards per high school size that we are proposing:

SLC GRANT AWARD RANGES

Student enrollment	Award ranges per school
1,000–2,000 Students	$1,000,000–$1,250,000
2,001–3,000 Students	1,000,000–1,500,000
3,001 and Up	1,000,000–1,750,000

The actual size of awards would be based on a number of factors, including the scope, quality, and comprehensiveness of the proposed project, and the range of awards indicated in the application.

Applications that request more funds than the maximum amounts specified for any school or for the total grant would not be read as part of the regular application process. However, if, after the Secretary selects applications to be funded, it appears that additional funds remain available, the Secretary may choose to read those additional applications that requested funds exceeding the maximum amounts specified. If the Secretary chooses to fund any of those additional applications, applicants would be required to work with the Department to revise their proposed budgets to fit within the appropriate funding range.

Rationale

In previous SLC competitions, some applicants have requested more funds than the amount that we indicated would be available for a grant. Their applications included activities that could only be implemented if the applicants received a funding amount that exceeded the maximum amount specified in the notice. This strategy put at a competitive disadvantage other applicants that requested funds within the specified funding range and outlined a less extensive set of activities. For this reason, we propose to read initially only those applications that request an amount that does not exceed the maximum amounts specified for the grants.

3. Indirect Costs

We propose to require eligible applicants who propose to use SLC grant funds for indirect costs to include, as part of their applications, a copy of their approved indirect cost agreement.

Rationale

The Department needs a copy of the approved indirect cost agreement to verify the accuracy of the amount of indirect costs for which an applicant is seeking to use SLC funds.

4. Performance Indicators

We propose to require applicants to identify in their application specific performance indicators and annual performance objectives for each of these indicators. Specifically, we propose to require applicants to use the following performance indicators to measure the progress of each school:

(1) The percentage of students who score at or above the proficient level on the reading/language arts and mathematics assessments used by the State to determine whether a school has made adequate yearly progress under part A of Title I of the ESEA, as well as these percentages disaggregated by subject matter and the following subgroups:

(A) Major racial and ethnic groups;

(B) Students with disabilities;

(C) Students with limited English proficiency; and

(D) Economically disadvantaged students.

(2) The school's graduation rate, as defined in the State's approved accountability plan for Part A of Title I of the ESEA; and

(3) The percentage of graduates who enroll in postsecondary education in the semester following high school graduation.

Applicants would be required to include in their applications baseline data for each of these indicators and identify performance objectives for each year of the project period. We further propose to require recipients of grant funds to report annually on the extent to which each school achieves its performance objectives for each indicator during the preceding school year. We propose to require grantees to include in these reports comparable data, if available, for the preceding three school years so that trends in performance will be more apparent.

Rationale

While creating SLCs can appeal to teachers, students, and parents for many reasons, their fundamental purpose is to improve academic achievement and student success after high school. Assistance provided under the SLC program should also support and enhance the efforts of LEAs and schools to fulfill the ambitious goals of the No Child Left Behind Act of 2001.

For these reasons, it is important that projects measure their progress in improving student academic achievement and related outcomes. Two of the indicators we propose to use, student performance on reading/language arts and mathematics assessments and the graduation rate, are the same indicators used by States to measure the progress of LEAs and high schools under Part A of Title I of the ESEA. Performance objectives for these indicators should equal or exceed the annual measurable objectives established by the State in its approved accountability plan for Part A of Title I of the ESEA.

Enrolling in postsecondary education is now a nearly universal aspiration among high school students and their parents. The third indicator we are proposing, entrance into postsecondary education in the semester following high school graduation, would measure the success of LEAs and schools in helping students achieve this goal. Performance objectives for this indicator should exceed the baseline level of performance and give particular emphasis to narrowing any gaps between students in general and economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and

students with limited English proficiency.

5. Required Meetings Sponsored by the Department

Applicants must set aside adequate funds within their proposed budget to send their project director to a two-day project directors' meeting in Washington, DC, in years one and two of the grant, and to send a team of five key staff members to attend a two-day regional institute in year one of the grant. The Department will host these meetings.

Rationale

Convening all project directors at an initial meeting enables Department staff to provide introductory information on grants administration and Department regulations, and other topics of interest to new grantees. The second project directors' meeting is intended to provide project directors an opportunity to take stock of their implementation progress and to share with their peers what they have learned, their success, and any challenges encountered in the first year of implementation. Project directors will have an opportunity to ask questions of one another and consult with technical assistance providers at this second meeting. Regional institutes in year one will provide grantee teams with technical assistance that will be useful in implementing their projects.

Previous Grantees

We propose to allow an LEA to apply only on behalf of a school or schools that will not receive funds through an SLC implementation grant that has a performance period that extends beyond the current fiscal year (September 30, 2007).

Rationale

Schools included in implementation grants that will be active after September 30, 2007 do not need additional assistance. Since the Department has received more applications for SLC grants than it has been able to fund in recent years, we believe that targeting new awards to LEAs that will assist high schools that are not included in grants that will be active after September 30, 2007 would be equitable and make the best use of limited program funds.

Selection Criteria

Proposed Selection Criteria

We propose that the following selection criteria be used to evaluate applications for new grants under this program. We may apply these selection criteria to any SLC competition in the future.

Need for the Project

In determining the need for the proposed project, we will consider the magnitude of the need for the services that will be provided and the activities that will be carried out by the proposed project.

Quality of the Project Design

In determining the quality of the design of the proposed project, we will consider the extent to which—

(1) Teachers, school administrators, parents and community stakeholders support the proposed project and have been and will continue to be involved in its development and implementation;

(2) The applicant has carried out sufficient planning and preparatory activities to enable it to implement the proposed project during the school year in which the grant award will be made;

(3) School administrators, teachers, and other school employees will receive effective, ongoing technical assistance and support in implementing structural and instructional reforms;

(4) The applicant will offer all students a coherent sequence of rigorous English language arts, mathematics, and science courses that will provide students with the knowledge and skills needed to succeed in postsecondary education and careers without need for remediation; and

(5) The proposed project is part of a districtwide strategy for high school redesign and strengthens the district's capacity to develop and implement smaller learning communities and improve student academic achievement as part of that strategy.

Quality of Project Services

In determining the quality of the services to be provided by the proposed project, we will consider the extent to which the proposed project is likely to be effective in—

(1) Creating an environment in which a core group of teachers and other adults within the school know the needs, interests, and aspirations of each student well, closely monitor each student's progress, and provide the academic and other support each student needs to succeed;

(2) Equipping all students with the reading/English language arts, mathematics, and science knowledge and skills they need to succeed in postsecondary education and careers without need for remediation;

(3) Helping students who enter high school with reading/English language arts or mathematics skills that are significantly below grade-level ''catch up'' quickly and attain proficiency by the end of the 10th grade;

(4) Providing teachers with the professional development, coaching, regular opportunities for collaboration with peers, and other supports needed to implement a rigorous curriculum and provide high-quality instruction;

(5) Increasing the participation of students, particularly low-income students, in Advanced Placement, International Baccalaureate, or dual credit courses; and

(6) Increasing the percentage of students who enter postsecondary education in the semester following high school graduation.

Support for Implementation

In determining the adequacy of the support the applicant will provide for implementation of the proposed project, we will consider the extent to which—

(1) The management plan is likely to achieve the objectives of the proposed project on time and within budget and includes clearly defined responsibilities and detailed timelines and milestones for accomplishing project tasks;

(2) The project director and other key personnel are qualified to carry out their responsibilities, and their time commitments are appropriate and adequate to implement the SLC project effectively;

(3) The applicant will support the proposed project with funds provided under other Federal or State programs and local cash or in-kind resources; and

(4) The requested grant amount and the project costs are sufficient to attain project goals and reasonable in relation to the objectives and design of the project.

Quality of the SLC Project Evaluation

In determining the quality of the proposed project evaluation to be conducted by an independent, third-party evaluator, we consider the extent to which—

(1) The evaluation will provide timely, regular, and useful feedback to the LEA and the participating schools on the success and progress of implementation, and identify areas for needed improvement; and

(2) The independent evaluator is qualified to conduct the evaluation.

Executive Order 12866

This notice of proposed priority, requirements, and selection criteria has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this notice of proposed priority, requirements, and selection criteria are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, requirements, definitions, and selection criteria, we have determined that the benefits of the proposed priority, requirements, and selection criteria justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Elsewhere in this notice we discuss the potential costs and benefits of the proposed priority, requirements, and selection criteria under the following heading: Discussion of Priority, Requirements, and Selection Criteria.

Paperwork Reduction Act of 1995 (PRA)

Certain sections of the proposed priority, requirements, and selection criteria for the SLC grant program contain changes to information collection requirements already approved by the Office of Management and Budget (OMB) under OMB control number 1810–0676 (1890–0001). We will be publishing a separate notice in the **Federal Register** requesting comments on these changes.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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/news/fedregister.*

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

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

(Catalog of Federal Domestic Assistance Number 84.215L, Smaller Learning Communities Program.)

Program Authority: 20 U.S.C. 7249.

Dated: March 2, 2007.

Raymond Simon,

Deputy Secretary of Education Delegated the Authority to Perform the Functions of the Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E7–4228 Filed 3–7–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 07–02–LNG]

Office of Fossil Energy; ConocoPhillips Alaska Natural Gas Corporation and Marathon Oil Company; Application for Blanket Authorization To Export Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed jointly on January 10, 2007 by ConocoPhillips Alaska Natural Gas Corporation (CPANGC) and Marathon Oil Company (Marathon), requesting blanket authorization to export on their own behalf or as agents for others on a short-term or spot market basis from existing facilities near Kenai, Alaska up to 99 Trillion British thermal units (TBtu's) (approximately 99 Billion cubic feet (Bcf)) of liquefied natural gas (LNG) to Japan and/or one or more countries on either side of the Pacific Rim over a two year period commencing April 1, 2009 and terminating March 31, 2011.

The application is filed under section 3 of the Natural Gas Act (15 U.S.C. 717b), as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102–486), and DOE Delegation Order No. 00–002.00G (Jan. 29, 2007) and DOE Redelegation Order No. 00–002.04C (Jan. 30, 2007). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, April 9, 2007.

ADDRESSES: Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3E–042, FE–34, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Beverly Howard, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3E–042, FE–34, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–9478; (202) 586–9387.

Edward Myers, Office of the Assistant General Counsel for Fossil Energy and Energy Efficiency, U.S. Department of Energy, Forrestal Building, Room 6B–159, 1000 Independence Ave., SW., Washington, DC 20585. (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

CPANGC, a Delaware corporation with its principal place of business in Anchorage, Alaska, is a wholly-owned subsidiary of ConocoPhillips Company, a publicly traded Delaware corporation. Marathon is an Ohio corporation with its principal place of business in Houston, Texas. CPANGC and Marathon are not affiliated with each other. The applicants are joint indirect owners of natural gas liquefaction and marine terminal facilities near Kenai, Alaska (Kenai LNG Facility) on Cook Inlet in Southcentral Alaska.[1]

Existing Long-Term Authorization

The applicants hold an existing long-term authorization to export LNG to Japan granted to CPANGC predecessor Phillips Petroleum Company (Phillips) and Marathon by the Federal Power Commission in 1967.[2] Phillips and Marathon were specifically authorized to export LNG from the State of Alaska to supply Tokyo Electric Power Company Inc. (Tokyo Electric) and Tokyo Gas Company Limited (Tokyo Gas) for a 15-year period terminating on May 31, 1984. The order also authorized Phillips and Marathon to construct the necessary liquefaction and marine terminal facilities in the Cook Inlet Basin near Kenai, Alaska. The long-term export authorization was subsequently amended and extended by the Economic

[1] The Kenai LNG Facility is owned by the Kenai LNG Corporation. CPANGC has a 70-percent ownership interest and Marathon has a 30-percent ownership interest in Kenai LNG Corporation.

[2] See, *Phillips Alaska Natural Gas Corporation and Marathon Oil Company,* 37 FPC 777 (April 19, 1967).

Regulatory Administration (ERA) at various times between 1982 and 1987.[3]

On July 28, 1988, ERA granted CPANGC, then known as Phillips 66 Natural Gas Company, and Marathon an extension of the long-term authorization to export LNG to Japan for a term of 15 years, ending March 31, 2004. FE subsequently approved amendments of the long-term authorization at various times between 1991 and 1995.[4]

On April 2, 1999, in DOE/FE Order No. 1473, FE granted CPANGC predecessor Phillips Alaska Natural Gas Corporation (PANGC) and Marathon a further five-year extension of the long-term authorization to annually export up to 64.4 TBtu's of LNG to Japan commencing April 1, 2004 through March 31, 2009.[5] The commencement date proposed by the applicants for the blanket export authorization coincides with the anticipated termination of the applicants' currently effective long-term authorization issued in Order No. 1473.

On June 20, 2000, FE granted PANGC and Marathon approval of a revision in the pricing provisions of their Japanese sales contracts.[6]

Existing Blanket Authorization

On April 10, 2000, in DOE/FE Order No. 1580, FE granted PANGC and Marathon blanket authorization to export up to 10 TBtu's (10 Bcf) of LNG from the Kenai LNG facility to international markets in the Pacific Rim over a two year period beginning on the date of the first export.[7] Although this blanket authorization was intended to supplement the long term authorization issued in DOE/FE Order No. 1473, the blanket authorization issued in DOE/FE Order No. 1580 has not been activated to date and no exports of LNG under this blanket authorization have been made.

Current Application

In the instant application, the applicants initially requested that FE vacate the blanket authorization issued in DOE/FE Order No. 1580 contemporaneous with, and conditioned on, the issuance of the proposed blanket authorization sought in this application. However, by letter dated February 16, 2007, the applicants subsequently notified DOE that they are contemplating the activation of the blanket authorization issued in DOE/FE Order No. 1580. The applicants further state in the February 16 letter that if they activate the Order No. 1580 blanket authorization before the Department issues a favorable order in the instant proceeding, it will not be necessary for the Department to vacate the Order No. 1580 authorization. Alternatively, the applicants state that if the Department issues a favorable order herein before the applicants activate the Order No. 1580 authorization, then the applicants seek to reserve the ability to activate the Order No. 1580 authorization prior to the time period covered by the instant application.

Public Interest Considerations

In support of their application, CPANGC and Marathon state there is no regional need for the volume of LNG that they seek authority to export during the two year time period of the proposed authorization. The applicants commissioned separate studies by two independent consulting firms, Netherland, Sewell & Associates (NSAI) and Resource Decisions (RD), to assist in determining the regional need for the natural gas proposed to be exported as LNG. The NSAI study evaluates natural gas reserves in the Cook Inlet region of Alaska and the RD study provides an analysis of the available supply and the effective demand for Cook Inlet natural gas during the term of the proposed blanket authorization. The RD study, in particular, postulates ''Expected Cases'' and ''Stress Cases'' for natural gas supply and demand in Southcentral Alaska in order to discern the possible impact of the export of LNG on regional need from 2006 through the first quarter of 2011. The applicants state the Expected Demand Case employs the most likely estimates for Southcentral Alaska natural gas demand and the Expected Supply Case employs the most likely estimates for Cook Inlet natural gas supply. The Stress Demand Case, on the other hand, reportedly employs regional natural gas demand assumptions that are higher than expected and the Stress Supply Case employs Cook Inlet natural gas supply assumptions that are lower than expected. The applicants project that under all of the analyzed scenarios, there are sufficient supplies of natural gas and other energy sources to meet both the regional demand of Southcentral Alaska and the foreign export market during the two year period of the proposed export authorization.[8]

With respect to national need, CPANGC and Marathon state that shipment of LNG from the applicants' Kenai LNG facilities to the lower 48 states does not appear to be a viable option due to certain regulatory and economic hurdles. The applicants emphasize that the requirements of Section 27 of the Merchant Marine Act of 1920 (46 U.S.C. 883), commonly known as the Jones Act, would present a substantial regulatory hurdle. The applicants also emphasize that there are no existing U.S. west coast LNG receiving terminals and the cost of shipping Kenai LNG to U.S. east coast or Gulf Coast LNG receiving terminals would vastly exceed the cost of transporting the same LNG to Japan and/or another customer in the Pacific Rim due to the distances involved.

The applicants assert that approval of the requested authorization to export Cook Inlet LNG from Kenai to Japan and/or one or more countries on either side of the Pacific Rim will provide tangible benefits to the Alaskan economy and to U.S. national interests. The applicants maintain that the Kenai LNG Facility provides a stable source of income and employment in Southcentral Alaska, an area noted for seasonal unemployment and a marked cyclical response to world oil price changes. The operation of the Kenai LNG Facility reportedly provides employment generating an estimated $15.9 million dollars in personal income.[9] The State of Alaska and its citizens also benefit from royalty payments on the LNG and from production and corporate income tax receipts. The applicants assert that a

[3] See, DOE/ERA Opinion and Order No. 49 (1 ERA ¶ 70, 116, December 14, 1982) (extended export authority); DOE/ERA Opinion and Order No.49–A (1 ERA ¶''70,127, April 3, 1986) (transferred authorization from Phillips Petroleum Company to Phillips 66 Natural Gas Company); DOE/ERA Opinion and Order No. 206 (1 ERA ¶''70,128, November 16, 1987) (amended pricing formula).

[4] See, DOE/ERA Opinion and Order No. 261 (1 ERA ¶ 70,130, July 28, 1988) (extended export authority); DOE/FE Opinion and Order No. 261–A (1 FE ¶''70,454, June 18, 1991) (amended pricing formula); DOE/FE Opinion and Order No. 261–B (1 FE ¶70, 506, December 19, 1991) (transferred authorization from Phillips 66 Natural Gas Company to PANGC); DOE/FE Opinion and Order No. 261–C (1 FE ¶''70,607, July 15, 1992) (increased annual contract quantity from 52 trillion Btu's to 64.4 trillion Btu's—the provision for yearly sales up to 106 percent of annual contract quantity remained unchanged); DOE/FE Opinion and Order No. 261–D (1 FE ¶''71,087, March 2, 1995) (amended pricing formula); DOE/FE Opinion and Order No. 261–E (2 FE ¶ 71,429, July 18, 1997) (dismissed complaint).

[5] See, *Phillips Alaska Natural Gas Corporation and Marathon Oil Company,* DOE/FE Opinion and Order No. 1473 (2 FE ¶ 70,317, April 2, 1999).

[6] See, DOE/FE Opinion and Order No. 261–F (2 FE ¶ 70,506, June 20, 2000) (amended pricing provisions of Japanese sales contracts).

[7] See, *Phillips Alaska Natural Gas Corporation and Marathon Oil Company,* DOE/FE Opinion and Order No. 1580 (2 FE ¶ 70,472, April 10, 2000).

[8] See Resource Decisions, Economic Analysis of Kenai LNG Export (January 2007) included as Appendix C to the application of CPANGC and Marathon filed January 10, 2007; and Netherland, Sewell & Associates report evaluating natural gas reserves in the Cook Inlet region of Alaska (January 4, 2007), included as Appendix D to the application of CPANGC and Marathon filed January 10, 2007.

[9] In 2005 dollars.

denial of the application will lead to the end of LNG exports from the Kenai LNG Facility by early 2009, resulting in a major loss in benefits to the State of Alaska. The applicants further assert that shutdown of the Kenai LNG Facility would cause a shut-in of the flowing gas supplies that would otherwise be produced from the Cook Inlet reservoirs and could result in permanent loss of natural gas reserves and deliverability. In this regard, the applicants maintain that once flowing wells are shut-in, there is no guarantee that those supplies will be available in the future at the same rate of production or that reserves will not be lost permanently. Finally, CPANGC and Marathon note the beneficial impact of the exportation of LNG on the balance of payments between the U.S. and Pacific Rim countries during the two year term of the proposed blanket authorization.

DOE/FE Evaluation

This export application will be reviewed pursuant to section 3 of the Natural Gas Act, as amended, and the authority contained in DOE Delegation Order No. 00–002.00G (Jan. 29, 2007) and DOE Redelegation Order No. 00–002.04C (Jan. 30, 2007). In reviewing LNG exports, DOE considers domestic need for the gas and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues. CPANGC and Marathon assert the proposed authorization is in the public interest. Under section 3 of the Natural Gas Act, as amended, an export from the United States to a foreign country must be authorized unless ''the proposed exportation will not be consistent with the public interest.'' Section 3 thus creates a statutory presumption in favor of approval of this application, and parties opposing the authorization bear the burden of overcoming this presumption.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as a basis for any decision on the application must file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to the application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Oil and Gas Global Security and Supply at the address listed above.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The application filed by CPANGC and Marathon is available for inspection and copying in the Office of Oil and Gas Global Security and Supply docket room, 3E–042, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The application is also available electronically by going to the following Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html*.

Issued in Washington, DC, on March 2, 2007.

Robert F. Corbin,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. E7–4162 Filed 3–7–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–632–022]

Dominion Transmission, Inc.; Notice of Compliance Filing

March 2, 2007.

Take notice that on February 20, 2007, Dominion Transmission, Inc. (DTI) tendered for filing its addendum to the 2006 informational fuel report filed with the Commission on June 30, 2006 in Docket No. RP00–632–021.

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

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

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

Comment Date: 5 p.m. Eastern Time on March 9, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E7–4119 Filed 3–7–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 2, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–63–000.

Applicants: Hardee Power Partners Limited.

Description: Hardee Power Partners Limited submits a request for authorization for a transaction that would result in an indirect change in the upstream ownership.

Filed Date: 02/27/2007.

Accession Number: 20070301–0152.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 20, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–411–014.

Applicants: Wolverine Power Supply Cooperative, Inc.

Description: Wolverine Power Supply Coop, Inc submits its third triennial market power analysis update.

Filed Date: 02/26/2007.

Accession Number: 20070301–0091.

Comment Date: 5 p.m. Eastern Time on Monday, March 19, 2007.

Docket Numbers: ER99–1005–007; ER05–1280–002; ER03–1079–008; ER02–47–007; ER02–1381–003; ER02–309–007.

Applicants: Kansas City Power & Light Company; Strategic Energy, LLC; Aquila, Inc.; Aquila Long Term, Inc.; Aquila Merchant Services, Inc.; MEP Clarksdale Power, LLC.

Description: Kansas City Power & Light Co and Strategic Energy, LLC submit a notification of Great Plains Energy Inc's pending acquisitions of Aquila and Aquila's MBR Entities.

Filed Date: 02/26/2007.

Accession Number: 20070301–0090.

Comment Date: 5 p.m. Eastern Time on Monday, March 19, 2007.

Docket Numbers: ER04–835–007; EL04–103–002.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp submits a compliance filing pursuant to FERC's 12/27/06 Order 492.

Filed Date: 02/26/2007.

Accession Number: 20070301–0088.

Comment Date: 5 p.m. Eastern Time on Monday, March 19, 2007.

Docket Numbers: ER07–572–000.

Applicants: Alliant Energy Corporate Services, Inc.

Description: Alliant Energy Corporate Services, Inc on behalf of Wisconsin and Light Co submits a Revised Master Power Supply Agreement with Great Lakes Utilities.

Filed Date: 02/26/2007.

Accession Number: 20070301–0087.

Comment Date: 5 p.m. Eastern Time on Monday, March 19, 2007.

Docket Numbers: ER07–573–000.

Applicants: Ocean State Power.

Description: Ocean State Power submits revisions to Rate Schedule FERC 1–4 and Rate Schedule FERC 5–8 to update the rate of return on equity.

Filed Date: 02/26/2007.

Accession Number: 20070301–0089.

Comment Date: 5 p.m. Eastern Time on Monday, March 19, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–25–000.

Applicants: Upper Peninsula Power Company.

Description: Upper Peninsula Power Company submits its Application for Renewed Authorization to Issue Securities Under Section 204 of the FPA.

Filed Date: 02/28/2007.

Accession Number: 20070228–5062.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 21, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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

Magalie R. Salas,

Secretary.

[FR Doc. E7–4118 Filed 3–7–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–25–000]

Questar Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Southern System Expansion Project II

March 2, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Questar Pipeline Company (Questar) in the above-referenced docket. This EA has been prepared in cooperation with the U.S. Department of Interior's, Bureau of Land Management, U.S. Geological Survey, and U.S. Fish and Wildlife Service (collectively, ''cooperating agencies'').

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff and cooperating agencies conclude that approval of the proposed project, with

appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed Southern System Expansion Project II including:

Main Line 104 Extension Pipeline—Consisting of about 53.9 miles of new 24-inch-diameter pipeline loop and ancillary facilities in Uintah, Duchesne and Carbon Counties, Utah. The new pipeline would loop Questar's existing Main Line 40 northeast of Price, Utah and include a pig launcher, four new mainline block valves, a 200-barrel slug catcher, cathodic protection systems, and associated crossover piping, taps, and valves.

Main Line 104 Loop Pipeline—Consisting of about 4.7 miles of new 24-inch-diameter pipeline loop and ancillary facilities. The ML 104 Loop pipeline would parallel Questar's existing ML 104 between its existing Fausett Junction and Oak Spring Compressor Station facilities.

Blind Canyon Compressor Station Upgrades—Consisting of upgrades to one of two existing compressor units. Additional proposed facility upgrades would include the installation of about 1,200 feet of new station suction and discharge piping, one pig launcher, one pig receiver, one block valve, one spillover valve, one ultrasonic gas meter, and one filter separator.

Oak Spring Compressor Station Upgrades—Consisting of restaging two of the three existing compressor units. Additional proposed facility upgrades would include installation of one pig receiver, one block valve, and one valve associated with the pig receiver.

Price Yard Facilities—Consisting of approximately 200 feet of inlet and outlet piping, a 200-barrel slug catcher, a filter separator, and associated valves that would be installed within the boundary of the existing facility site.

The purpose of the Southern System Expansion Project II is to deliver up to approximately 175,000 dekatherms per day of natural gas on a firm basis from various receipt points on Questar's southern transmission system to a delivery point at an existing interconnect facility with the Kern River Gas Transmission Company pipeline near Goshen, Utah.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state and local agencies, public interest groups, interested individuals, affected landowners, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Sign-up.''

If you are filing written comments, please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Gas Branch 3, PJ 11.3.
- Reference Docket No. CP07–25–000; and
- Mail your comments so that they will be received in Washington, DC on or before April 2, 2007.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. E7–4121 Filed 3–7–07; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–442–000]

UGI LNG, Inc.; Notice of Availability of the Environmental Assessment for the Temple LNG Plant

March 2, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this Environmental Assessment (EA) to discuss the environmental impacts involving the operation of facilities for the existing Temple LNG Plant proposed by UGI LNG, Inc. (UGI LNG) in the above referenced docket. The proposed project is located in Berks County, Pennsylvania.

Because the Temple LNG Plant is an existing facility the EA focused on the operation of the proposed project, the cryogenic design aspects of the plant and public safety.

This EA has been prepared to comply with the requirements of the National Environmental Policy Act (NEPA), the Council of Environmental Quality (CEQ) regulations for implementing NEPA (Title 40, Code of Federal Regulations [CFR], sections 1500–1508), and the Commission's regulations (18 CFR 380).

The staff concludes that approval of this proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state and local agencies, public interest groups, interested individuals, affected landowners, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Sign-up.''

If you are filing written comments, please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Gas Branch 3, PJ 11.3.
- Reference Docket No. CP06–442–000; and
- Mail your comments so that they will be received in Washington, DC on or before April 2, 2007.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. E7–4120 Filed 3–7–07; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

February 27, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 349–121.

c. *Date Filed:* December 19, 2006, and supplemented on February 21, 2007.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Hydroelectric Project.

f. *Location:* The project is located on Lake Martin in Elmore County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § §thnsp;791(a)–825(r) and § § 799 and 801.

h. *Applicant Contact:* Mr. Keith E. Bryant, Senior Engineer; 600 18th Street North, Birmingham, AL 35203, (205) 257–1403.

i. *FERC Contact:* Any questions on this notice should be addressed to Isis Johnson at (202) 502–6346, or by e-mail: *Isis.Johnson@ferc.gov.*

j. *Deadline for filing comments and or motions:* March 27, 2007.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–349–121) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Alabama Power Company, licensee for the Martin Dam Hydroelectric Project, has requested Commission approval to permit Anchor Bay Marina, LP to redevelop the facilities at Anchor Bay Marina on Lake Martin. The proposed redevelopment would include: (1) Relocating three existing dock structures with a total of 51 slips; (2) adding dry-stack storage for 144 boats; (3) providing additional parking facilities; (4) upgrading the existing boat showroom; and (5) remodeling the existing sales office, restroom facilities, and restaurant. The dock structures would be moved across the bay to the eastern peninsula, along with their associated water, electricity and cable television lines. No new structures would be added to the lake. The proposal also includes the associated grading the east peninsula. Filter fabric and riprap would be used to stabilize the shoreline. All excess material would be transported to an inland spoil area outside the project boundary. The marina is located on the south shore of Kowaliga Bay, approximately three stream miles above Martin Dam in Elmore County, Alabama.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-

free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3968 Filed 3–7–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

March 2, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Application Type:* Amendment of license to upgrade the installed capacity.

b. *Project No.:* 2778–035.

c. *Date Filed:* August 17, 2006.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Shoshone Falls.

f. *Location:* The project is located on the on the Snake River in Jerome and Twin Falls Counties, Idaho. Part of the project occupies lands owned by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Tom R. Saldin, Senior Vice President, Idaho Power Co., P.O. Box 70, Boise, Idaho 83707. Tel: (208) 388–2550. Also, Mr. Nathan F. Gardiner, Idaho Power Co., P.O. Box 70, Boise, Idaho 83707. Tel: (208) 388–2975.

i. *FERC Contact:* Any questions on this notice should be addressed to Vedula Sarma at (202) 502–6190 or *vedula.sarma@ferc.gov*.

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing and is ready for further environmental analysis. On February 27, 2007, Commission staff issued a draft environmental assessment to facilitate the generation of further analysis on the proposed project expansion. Idaho Power Company (IPC) proposes to demolish a section of the Shoshone Falls powerhouse built in 1907 and containing two generating units 0.4 MW, and 0.6 MW and replace it with a new powerhouse containing a 50 MW generating unit. The project's authorized installed capacity would increase from 11,875 kilowatts (kW) to 60,875 kW, and the hydraulic capacity would increase from 815 cubic feet per second (cfs) to 4,815 cfs. The IPC also requests an extension of the license term for the project from 30 to 50 years.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' '' TERMS AND CONDITIONS,'' or '' FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, recommendations, terms and conditions

or prescriptions should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

n. An applicant must file no later than 60 days following the date of issuance of this notice of acceptance and ready for environmental analysis provided for in § 4.34(b)(5)(i): (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Magalie R. Salas,

Secretary.

[FR Doc. E7–4122 Filed 3–7–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL05–10–000]

Criteria for Reassertion of Jurisdiction Over the Gathering Services of Natural Gas Company Affiliates

February 15, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Terminating Proceeding and Clarifying Policy.

SUMMARY: The Federal Energy Regulatory Commission is terminating the instant proceeding. The Commission also finds that it may only assert jurisdiction over a gathering provider affiliated with an interstate pipeline when the gatherer has used its market power over gathering to benefit the pipeline in its performance of jurisdictional transportation or sales service and that benefit is contrary to the Commission's policies concerning jurisdictional service adopted pursuant to the NGA. Further, the order clarifies that, where the gathering affiliate has engaged in the type of conduct described above as justifying an assertion of jurisdiction, the Commission need not also find ''concerned action'' between the pipeline and its gathering affiliate.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8389.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

Order Terminating Proceeding and Clarifying Policy

1. In September 2005, the Commission issued a Notice of Inquiry (NOI) [1] to evaluate possible changes in the criteria set forth in *Arkla Gathering Service Co.*[2] for determining when the Commission may assert Natural Gas Act (NGA) jurisdiction over the gathering activities of a gathering affiliate of a natural gas pipeline to guard against abusive practices by the affiliated companies. In *Arkla*, the Commission held that gathering affiliates of interstate pipelines are generally exempt from the Commission's NGA jurisdiction. However, the Commission also held that ''if an affiliated gatherer acts in concert with its pipeline affiliate in connection with the transportation of gas in interstate commerce and in a manner that frustrates the Commission's effective regulation of the interstate pipeline, then the Commission may look through, or disregard, the separate corporate structures and treat the pipeline and gatherer as a single entity.'' [3]

2. In *Williams Gas Processing—Gulf Coast Company, L.P.* v. *FERC*,[4] the United States Court of Appeals for the District of Columbia Circuit vacated and remanded Commission orders, in which the Commission had sought to reassert jurisdiction over certain affiliated gathering activities under the criteria set forth in *Arkla.* The court held that the Commission had not met its own test under *Arkla* for reassertion of jurisdiction. In light of the court's holding that the circumstances presented by the *Williams Gas Processing* case did not satisfy the *Arkla* test, the Commission determined to explore whether that test should be modified. To assist this reevaluation of the *Arkla* test, the Commission issued the NOI, asking parties to submit comments and respond to a number of specific questions. After carefully reviewing the comments, the Commission has determined not to change its current policies with respect to affiliated gatherers, although we do clarify the existing *Arkla* test.

I. Statutory and Regulatory Backdrop

3. Section 1(b) of the NGA gives the Commission jurisdiction over (1) transportation of natural gas in interstate commerce, (2) sales in interstate commerce of natural gas for resale,[5] and ''natural gas companies'' [6] engaged in such transportation or sales. However, section 1(b) exempts ''gathering of natural gas'' from Commission jurisdiction. The Commission uses the ''primary function'' test to determine whether a facility is devoted to jurisdictional interstate transportation or non-jurisdictional gathering of natural gas.[7] Under that test, the Commission relies on various physical characteristics of the facilities to determine their jurisdictional status.

4. Before Order No. 436,[8] interstate natural gas pipelines generally did not perform transportation-only or gathering-only services. Rather, they used all their facilities, including any gathering facilities they owned, to provide a bundled transportation and sale for resale service, for which they charged a single bundled rate. The United States Supreme Court held that the gathering exemption did not foreclose the Commission from reflecting ''the production and gathering

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[1] 112 FERC ¶ 61,292 (2005).

[2] *Arkla Gathering Service Co.*, 67 FERC ¶ 61,257, at 61,871 (1994), *order on reh'g*, 69 FERC ¶ 61,280 (1994), *reh'g denied*, 70 FERC ¶ 61,079 (1995), *reconsideration denied*, 71 FERC ¶ 61,297 (1995) (collectively, *Arkla*), *aff'd in part and reversed in part, Conoco Inc.* v. *FERC*, 90 F.3d 536 (D.C. Cir. 1996) (*Conoco*).

[3] *Arkla*, 67 FERC at 61,871.

[4] *Williams Gas Processing-Gulf Coast Co., L.P.* v. *FERC,* 373 F.3d 1335 (D.C. Cir. 2004) (*Williams Gas Processing*).

[5] The Wellhead Decontrol Act of 1989 removed all first sales from Commission jurisdiction.

[6] Section 2(6) of the NGA defines ''natural-gas company'' as ''a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.''

[7] The Commission first articulated the primary function test in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983). The Commission subsequently modified the test in *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990).

[8] *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 436, 50 Fed. Reg. 42,408 (Oct. 18, 1985), FERC Stats. & Regs. ¶ 30,665 at 31,554 (1985), *vacated and remanded, Associated Gas Distributors* v. *FERC*, 824 F.2d 981 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988), *readopted on an interim basis*, Order No. 500, 52 FR 30,334 (Aug. 14, 1987), FERC Stats. & Regs. ¶ 30,761 (1987), *remanded, American Gas Ass'n* v. *FERC*, 888 F.2d 136 (D.C. Cir. 1989), *readopted*, Order No. 500–H, 54 FR 52,344 (Dec. 21, 1989), FERC Stats. & Regs. ¶ 30,867 (1989), *reh'g granted in part and denied in part*, Order No. 500–I, 55 FR 6,605 (Feb. 26, 1990), FERC Stats. & Regs. ¶ 30,880 (1990), *aff'd in part and remanded in part, American Gas Ass'n* v. *FERC*, 912 F.2d 1496 (D.C. Cir. 1990), *cert. denied*, 498 U.S. 1084 (1991).

facilities of a natural gas company in the rate base and determining the expenses incident thereto for the purpose of determining the reasonableness of the [bundled] rates subject to its jurisdiction.'' *Colorado Interstate Natural Gas Co.* v. *FPC*, 324 U.S. 581, 603 (1954). *See Conoco, Inc.* v. *FERC*, 90 F.3d 536, 545 (D.C. Cir. 1996).

A. Order Nos. 436 and 636

5. In Order No. 436, the Commission initiated its open access transportation program, under which shippers can obtain a transportation-only service from the pipeline, and purchase their gas from third parties. As part of Order No. 436, the Commission adopted a regulation requiring that the rates for open access transportation service ''separately identify cost components attributable to transportation, storage, and gathering costs.'' [9] In *Northern Natural Gas Co.*,[10] a pipeline seeking authorization to perform open access transportation service stated that it intended to charge its customers separate rates for any gathering services it provided in connection with open access transportation service. However, the pipeline contended that NGA section 1(b) prevented the Commission from requiring those rates to be set forth in its tariff or determining the lawfulness of those rates. The Commission rejected this contention.

6. The Commission pointed out that NGA section 4(a) provides: All rates and charges made, demanded, or received by any natural gas company for *or in connection with* the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations *affecting or pertaining to* such rates or charges, shall be just and reasonable [emphasis added].

7. In addition, section 5(a) similarly provides that when the Commission finds that any rate charged by a natural gas company ''in connection with'' jurisdictional transportation or sales is unjust and unreasonable, or finds that any rule, regulation, or practice affecting such rate is unjust and unreasonable, the Commission may modify it. The Commission concluded that these provisions ''require the Commission to determine the rates, rules, and regulations not only for the actual transportation or sales subject to the Commission's jurisdiction, but also for other services performed in connection with or ancillary to such transportation and sales,'' [11] including gathering. The United States Court of Appeals for the Eighth Circuit affirmed this decision.[12]

8. When pipelines first implemented Order No. 436, they generally continued to bundle gathering service within their stand-alone open access transportation service. Thus, even though the pipelines separately identified their gathering costs in their rates for open access transportation service, shippers still had to purchase a bundled gathering/transportation service. However, in the 1989 Rate Design Policy Statement,[13] the Commission stated its preference for a full unbundling of gathering services from transportation, so that shippers would only pay for the services they actually used.[14] While Order No. 636 [15] only mandated pipelines to unbundle their sales service from their transportation service, Order No. 636–A restated the Commission's strong preference for fully unbundled gathering services with separately charged rates, consistent with the Rate Design Policy Statement.[16] Ultimately, most pipelines with gathering facilities did unbundle their gathering services, either in their Order No. 636 restructuring proceedings or in rate cases.[17]

9. In the Order No. 636 restructuring proceedings, the Commission continued to require pipelines performing gathering services to include a statement of their gathering rates in their tariff. The Commission also required that the pipeline's tariff include a statement that its gathering service is non-discriminatory, not unduly preferential, and not inconsistent with the terms and conditions applicable to its Part 284 open access service. However, the Commission did not further exercise its authority over the terms and conditions of gathering services by requiring such pipelines to include a full gathering rate schedule in their tariffs, similar to the separate rate schedules required for jurisdictional service such as firm and interruptible transportation service.[18]

B. The Arkla Policy and Conoco Inc. v. FERC

10. In the aftermath of Order No. 636, a number of pipelines determined that it would be advantageous in the new regulatory environment either to ''spin down'' their gathering facilities to corporate affiliates or ''spin off'' the facilities to unrelated third parties. In February 1994, the Commission held a public conference to explore the issues raised by these filings.[19] After receiving written comments following the conference, the Commission determined to establish its policy concerning the spin down of gathering facilities to an affiliate of a natural gas company in the individual pending cases, including *Arkla* [20] and several companion orders issued the same day.

11. First, the Commission addressed the issue of the extent of its jurisdiction to regulate the rates, terms, and conditions of gathering services performed by affiliates of natural gas companies. The Commission held that it generally lacks jurisdiction over affiliates that perform only a gathering service. The Commission recognized that the Eighth Circuit had confirmed in *Northern Natural* v. *FERC*, that under NGA sections 4 and 5 the Commission may regulate gathering services provided by ''natural gas companies'' ''in connection with'' their jurisdictional transportation services. However, the Commission pointed out that NGA section 2(6) defines a jurisdictional ''natural gas company'' as a person engaged in the transportation or natural gas in interstate commerce or the sales of such gas in interstate commerce for resale. Interstate pipelines

[9] 18 CFR 284.8 (d)(1) (1986). That regulation is now found at 18 CFR 284.10(c)(1) (2006).

[10] 43 FERC ¶ 61,473 (1988), *order on reh'g*, 44 FERC ¶ 61,384 (1988).

[11] *Northern Natural Gas Co.*, 43 FERC at 62,160.

[12] *Northern Natural Gas Co.* v. *FERC*, 929 F.2d 1261 (8th Cir. 1991).

[13] *Interstate Natural Gas Pipeline Rate Design*, 47 FERC ¶ 61,295, at 62,059 (1989).

[14] *See also Panhandle Eastern Pipeline Co.*, 57 FERC ¶ 61,264, at 61,840 (1991) (Opinion No. 369), *order on reh'g*, 59 FERC ¶ 61,244, at 61,853 (1992) (Opinion No. 369–A).

[15] *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, 57 FR 13,267 (Apr. 16, 1992), FERC Stats. and Regs. Regulations Preambles (January 1991–June 1996) ¶ 30,939 (Apr. 8, 1992), *order on reh'g*, Order No. 636–A., 57 FR 36,128 (Aug. 12, 1992), FERC Stats. and Regs. Regulations Preambles (January 1991–June 1996) ¶ 30,950 (Aug. 3, 1992), *order on reh'g*, Order No. 636–B, 57 FR 57,911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), *notice of denial of reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part, vacated and remanded in part, United Dist. Cos.* v. *FERC*, 88 F.3d 1105 (D.C. Cir. 1996), order on remand, Order No. 636–C, 78 FERC ¶ 61,186 (1997).

[16] 16 Order No. 636–A, at 30,609. *See also El Paso Natural Gas Co.*, 60 FERC ¶ 61,109, at 61,353, 61,355 (1992), *order on reh'g*, 61 FERC ¶ 61,173, at 61,633–5 (1992).

[17] *See, e.g.*, Opinion No. 369, 57 FERC at 61,841; Opinion No. 369–A, 59 FERC at 61,853; *Columbia Gas Transmission Corp.*, 64 FERC ¶ 61,060, at 61,517 (1993); *National Fuel Gas Supply Corp.*, 62 FERC ¶ 61,200, at 62,445 (1993).

[18] *Natural Gas Gathering Services Performed by Interstate Pipelines and Interstate Pipeline Affiliates—Issues Related to Rates and Terms and Conditions of Service*, 65 FERC ¶ 61,136, at 61,689 (1993); *Williams Natural Gas Co.*, 64 FERC ¶ 61,165, at 62,432 (1993).

[19] *Natural Gas Gathering Services Performed by Interstate Pipelines and Interstate Pipeline Affiliates—Issues Related to Rates and Terms and Conditions of Service*, 65 FERC ¶ 61,136 (1993).

[20] 67 FERC ¶ 61,257, *order on reh'g*, 69 FERC ¶ 61,280, *reh'g denied*, 70 FERC ¶ 61,079, *reconsideration denied*, 71 FERC ¶ 61,297, *aff'd in part and reversed in part, Conoco*, 90 F.3d 536.

are, of course, such natural gas companies. The Commission then held:

> However, companies that perform only a gathering function, whether they are independent or affiliated with an interstate pipeline, are not natural gas companies because they neither transport natural gas in interstate commerce, nor sell such gas in interstate commerce for resale. Therefore, the Commission does not have jurisdiction over such companies whether they are independent or affiliated with an interstate pipeline.[21]

12. Despite concluding that it generally lacked jurisdiction over affiliates performing only a gathering function, the Commission stated that it ''can exert control over the gathering activities of affiliated gatherers in particular circumstances where such action is necessary to accomplish the Commission's policies for the transportation of natural gas in interstate commerce.'' The Commission then set forth the following standard for asserting jurisdiction over an affiliated gatherer:

> If an affiliated gatherer acts in concert with its pipeline affiliate in connection with the transportation of gas in interstate commerce and in a manner that frustrates the Commission's effective regulation of the interstate pipeline, then the Commission may look through, or disregard, the separate corporate structures and treat the pipeline and gatherer as a single entity, *i.e.,* a single natural gas company. In so doing, the Commission would regulate the gathering activities as it would if the gathering facilities were owned directly by an interstate pipeline.[22]

13. The Commission then further explained its standard for asserting jurisdiction as follows:

> The types of affiliate abuses which would trigger the Commission's authority to disregard the corporate form would be limited to abuses arising specifically from the interrelationship between the pipeline and its affiliate. That is, a complainant would have to allege that the pipeline would benefit by certain actions taken by the affiliate in conjunction with its affiliated pipeline. Such actions might include the affiliate's giving preferences to market affiliate gas or tying gathering service to the pipeline's jurisdictional transmission service; the pipeline's giving transportation discounts only to those utilizing the affiliate's gathering service; and actions resulting in cross-subsidization between the affiliate's gathering rates and the pipeline's transportation rates. Although an affiliate could undertake other types of anti-competitive activities, the Commission's jurisdiction would be implicated only where the abuse is directly related to the affiliate's unique relationship with an interstate pipeline. Except where the Commission finds that a pipeline and its gathering affiliate should be treated together as a single ''natural gas company,'' the affiliated gatherer would be subject to state, not Federal jurisdiction.[23]

14. In *Arkla*, the Commission held that, in order to implement a proposal to spin down gathering facilities to an affiliate, the pipeline must file an application under NGA section 7(b) to abandon any of the gathering facilities for which it had received a certificate. In addition, the Commission held that, because the pipeline's termination of its gathering services was a change of service subject to the Commission's jurisdiction under NGA section 4, the pipeline must make a section 4 filing to terminate its gathering services for both the certificated and uncertificated facilities.[24] The Commission held that these filings would give it an opportunity to take several actions to protect shippers, in addition to its reservation of the right to assert jurisdiction over an affiliated gatherer in the circumstances discussed above.

15. First, the Commission stated it would require the pipeline to include non-discriminatory and equal access provisions in its tariff.[25] Second, as clarified on rehearing, the Commission required the pipeline to file a default gathering contract continuing existing rates for two years, which its affiliate had to offer to the pipeline's existing gathering customers. The Commission held that such a default contract was necessary to ensure continuity of service for the existing customers who had a reasonable expectation of a continuation of regulated service. Accordingly, without the default contract, the Commission could not find any section 7 abandonment or section 4 termination of service to be in the public interest and just and reasonable.[26]

16. In addition to the pipeline's filings to implement the spin-down, the entity acquiring the assets typically files a request for a declaratory order declaring that the facilities are non-jurisdictional gathering facilities. The Commission evaluates both those requests for declaratory orders and pipeline requests to abandon certificated gathering facilities pursuant to its primary function test.

17. In one of the companion orders to *Arkla*, the Commission held that, in determining whether to approve a spin down proposal, it would not consider whether the customers of spun down facilities would have competitive alternatives.[27] Rather, the Commission would approve spin down proposals, where application of the primary function test showed that the facilities were gathering, and the pipeline complied with the tariff language and default contract conditions. The Commission stated that, because the NGA does not give it jurisdiction to regulate affiliated gatherers, the existence or absence of competition is irrelevant to whether or not the Commission will regulate affiliated gatherers. The Commission pointed out that the comments filed in response to its notice revealed that ''a significant part of the gathering industry, perhaps as much as 70 percent, is performed by unregulated independent gatherers,'' and ''many customers of such gatherers are captive to a single gatherer, *i.e.*, there is no competition for gathering services.'' [28] Nevertheless, the NGA only authorizes the Commission to regulate gathering performed by natural gas companies, *i.e.* pipelines, in connection with jurisdictional transportation service. The Commission also found that the comments suggested that abuse of market power was not a significant problem, because customers of unregulated independent gatherers had found ways to prevent excessive rates [29] and there are various state and federal antitrust laws that could be invoked. The Commission concluded that the existence of competition is not particularly relevant to a decision to allow a pipeline to abandon its gathering facilities and, to the extent it was relevant, the excessive effort to assess it would be unwarranted where customers have recourse to other remedies.

18. The United States Court of Appeals for the District of Columbia

[21] 67 FERC at 61,871. The Commission also observed that, ''although the Eighth Circuit's decision contained a footnote that might be construed to the contrary, the issue of whether the Commission has similar jurisdiction over pipeline-affiliated gatherers was not before that Court. We do not believe that sections 4 and 5 of the NGA nor the holding in *Northern* support the view that the Commission has jurisdiction over rates for gathering services that are 'in connection with' interstate gas transportation if those services are not provided by a natural gas company.'' *Id.*

[22] *Id.*

[23] *Id.*

[24] *Arkla*, 69 FERC at 62,082–3.

[25] The required tariff provisions state that the pipeline: (1) Will provide nondiscriminatory access to all sources of supply, (2) will not give shippers of its gathering affiliate undue preferences over shippers of non affiliated gatherers, and (3) will not condition or tie its agreement to provide transportation service to an agreement by the producer, customer, end-use or shipper relating to any service in which its gathering affiliate is involved.

[26] *Arkla*, 69 FERC at 62,081–5.

[27] *Mid Louisiana Gas Co.*, 67 FERC ¶ 61,255, at 61,850–1 (1994), *order on reh'g*, 69 FERC ¶ 61,303, at 62,168–9 (1994).

[28] *Id.* at 61,851.

[29] The Commission gave the example of gathering customers threatening to build bypass facilities.

Circuit reviewed the Commission's *Arkla* orders in *Conoco, Inc.* v. *FERC*, 90 F.3d 536 (D.C. Cir. 1996). The court affirmed the Commission's holding that it generally lacks jurisdiction over affiliates that perform only a gathering service and thus are not natural gas companies as defined in NGA section 2(6). The court stated, ''Section 1(b) contemplates that some measure of authority over gathering should be reserved to the states, and jurisdiction over companies whose sole business is gathering is a permissible place to start.'' [30] With regard to the Commission's reservation of the right to reassert jurisdiction in certain circumstances, the court stated:

> As an abstract matter, we have no reason to doubt the Commission's conclusion that a non-jurisdictional entity could act in a manner that would change its status by enabling an affiliated interstate pipeline to manipulate access and costs of gathering.[31]

19. However, the court stated that, because the Commission had not yet sought to exercise such authority, it could not speculate as the specific circumstances under which such a reassertion of authority would be justified.

20. The court reversed the Commission's requirement that the pipeline file a default contract as a condition for approval of a spin-down, finding that the Commission had not identified any source of authority to impose that condition. The court explained,

> Where an activity or entity falls within NGA § 1(b)'s exemption for gathering, the provisions of NGA §§ 4, 5, and 7, including the ''in connection with'' language of §§ 4 and 5, neither expand the Commission's jurisdiction nor override § 1(b)'s gathering exemption * * * Because the Commission concluded that the facilities to be transferred by NorAm Gas were exempt under § 1(b) as gathering facilities, and that NorAm Gas' independently operated affiliate gatherer was not a ''natural gas company'' subject to the NGA, the Commission cannot simply assert authority over the facilities and the affiliate by invoking other sections of the Act.[32]

C. OCSLA

21. Section 5(e) of the Outer Continental Shelf Lands Act (OCSLA) authorizes the Secretary of Interior to grant rights of way through submerged lands on the Outer Continental Shelf (OCS) for purposes of transporting natural gas, upon the condition that the pipeline will transport natural gas produced in the vicinity of the pipelines in such proportionate amounts as the Commission, in consultation with the Secretary of Energy, may determine to be reasonable. Section 6(e)(1) provides that every permit, right-of-way, or other grant of transportation authority must require that the pipeline be operated in accordance with various competitive principles. These include that the pipeline must provide open and nondiscriminatory access to both owner and non-owner shippers. Section 6(e)(2) provides that the Commission may exempt pipelines that feed into a facility where gas is first collected from the required competitive principles of subparagraph 1.

22. In 2002, the Commission issued Order No. 639,[33] adopting regulations requiring companies providing natural gas transportation services, including gathering, on the OCS to periodically file information with the Commission concerning their pricing and service structures. The Commission relied on the OCSLA as providing the necessary authority for these regulations, and stated that the required information would assist it in determining whether OCS transportation services conform to the open access requirements of the OCSLA. In Order No. 639-A, the Commission recognized that it had generally relied only on the NGA to regulate offshore natural gas facilities and services. However, the Commission stated that, as offshore exploration and development had evolved, it had grown beyond our ability to regulate by relying exclusively on the NGA. The Commission further stated that approximately half of offshore gas infrastructure was now considered gathering and thus excluded from its NGA jurisdiction. In these circumstances, the new OCSLA reporting requirements were needed to ensure compliance with the OCSLA's competitive principles.

23. In *Williams Companies* v. *FERC*, 345 F.3d 910 (D.C. Cir. 2003) (*Williams Companies*), the D.C. Circuit affirmed a District Court decision vacating the rules adopted by Order No. 639 as exceeding the Commission's authority under the OCSLA. The court held that the OCSLA does not provide the Commission a general power to enforce the OCSLA open access provisions, but only assigns the Commission a few well-defined tasks. When the Commission issues certificates pursuant to NGA section 7, it must include the open access conditions required by OCSLA section 6(f)(1). However, the court held that the OCSLA provided for the Secretary of Interior to enforce those conditions, not the Commission.

D. Shell Offshore Inc. v. Transco and the Williams Gas Processing Remand

24. Transco filed an application for abandonment in which it proposed to spin-down roughly 22 miles of its North Padre Island pipeline facilities on the OCS, which were originally functionalized as transmission, to its affiliate, Williams Field Services (WFS). The application was accompanied by WFS's petition to declare the facilities gathering upon their acquisition by WFS. Over protests, the Commission approved the abandonment and granted the petition, declaring the facilities to be gathering upon completion of the sale, which occurred on December 1, 2001.[34]

25. Prior to the spin-down Transco had charged Shell Offshore Inc. (Shell) $0.08/Dth to transport Shell's gas the 230-mile distance from the interconnect with Shell's production facilities to one of Transco's mainline pooling points. After the spin-down, Shell not only paid Transco the $0.08 transportation rate, WFS also demanded that it pay WFS an additional $0.08/Dth for transporting Shell's gas 3.08 miles from the connection with Shell's production facilities on what had become WFS's facilities to the interconnection with Transco's transmission facilities. Shell chose to shut in its production rather than pay double the rate it had been paying Transco alone for the same transportation service.

26. Shell filed a complaint against Transco and its affiliates, and the Commission set the complaint for hearing before an ALJ. In affirming the ALJ's Initial Decision, the Commission adopted the ALJ's finding that Transco and WFS, in effectuating the spin-down, met the *Arkla* test. Treating Transco and WFS as a single entity because of their concerted actions, the Commission found that their behavior frustrated the Commission's regulation of Transco by requiring Shell to execute a gathering agreement that included an exorbitant gathering rate and anticompetitive conditions, such as a life-of-reserves commitment tying Shell's production to the Transco facilities for the life of the reserves. The Commission also found that WFS's actions violated the OCSLA. The Commission then imposed a just and reasonable rate of $0.0169/Dth for

[30] *Conoco,* 90 F.3d at 547.

[31] *Id.* at 549.

[32] *Id.* at 553.

[33] *Regulations under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf*, Order No. 639, 65 FR 20,354 (Apr. 17, 2000), III FERC Stats. & Regs. ¶ 31,097 (2000), *order on reh'g*, Order No. 639–A, 65 FR 47,294 (Aug. 2, 2000), III FERC Stats. & Regs. ¶ 31,103 (2000), *order denying clarification*, 93 FERC ¶ 61,274 (2000).

[34] *Transcontinental Gas Pipe Line Corp.*, 96 FERC ¶ 61,115 (2001), *reh'g denied*, 103 FERC ¶ 61,177 (2003).

gathering services on the spun-down North Padre facilities.

27. On rehearing, in attempting to rebuff arguments that the Commission did not properly apply the *Arkla* test, the Commission clarified that it viewed the *Arkla* test as being simply a circumvention test. That is, the Commission could reassert jurisdiction based on its finding that Transco created the ''illusion of a separate gathering entity to evade the Commission's regulations,'' thus permitting ''WFS to extract money that Transco, as a natural gas company, providing both services alone, could not.'' [35] The Commission denied requests for rehearing, describing the spin-down as ''a sham * * * designed to circumvent the Commission's regulation.'' [36]

28. WFS filed a petition for review of the Commission's orders [37] with the U.S. Court of Appeals for the District of Columbia. On July 13, 2004, the court vacated and remanded the Commission's orders in *Williams Gas Processing—Gulf Coast Company, L.P.* v. *FERC.*[38] The court rejected both of the Commission's statutory bases for reasserting jurisdiction—the NGA and the OCSLA. At the heart of the court's findings with respect to the Commission's NGA jurisdiction is its determination that the Commission misapplied the *Arkla* test. First, the court found that the Commission failed to show that the narrow kinds of abuses that would trigger a reassertion of jurisdiction had occurred. The court stated that *Arkla* permits a reassertion of jurisdiction in circumstances ''limited to'' abuses ''directly related to the affiliate's unique relationship with an interstate pipeline,'' such as ''tying gathering service to the pipeline's jurisdictional transmission service,'' or ''cross-subsidization between the affiliate's gathering rates and the pipeline's transmission rates.'' [39] Thus, under *Arkla*, the court found that ''[o]nly those types of activities—where the affiliate is leveraging its relationship with the pipeline to enhance its market power—would 'trigger the Commission's authority to disregard the corporate form and treat the pipeline and its affiliate as a single entity.' '' [40] The court found that WFS's actions fell outside this category. The court found that the gathering affiliate's affiliation with the pipeline was ''utterly irrelevant to its ability to charge high rates, or to impose onerous conditions for gathering service.'' [41] Instead, the affiliate ''could do these things for one reason only—because it was a recently deregulated monopolist in the North Padre gathering market.'' [42] It observed that WFS was charging the same rates and service conditions that any non-affiliate gatherer could demand in the OCS and, thus, was not ''leveraging'' its unique relationship with Transco.

29. Second, the court found that the Commission, in piercing the corporate veil to treat WFS and Transco as a single entity in a ''sham'' transaction (the spin-down), analyzed the elements of the *Arkla* test out of sequence: ''it adopts as its first premise (WFS is Transco) the *Arkla Gathering* test's ultimate conclusion—that corporate form may be set aside.'' [43] Under *Arkla,* the rationale for reasserting ''in connection with'' jurisdiction is that the concerted behavior between the two entities (*i.e.*, the regulated pipeline and the affiliated non-jurisdictional gathering affiliate) has frustrated the Commission's ability to regulate the *pipeline* (not the gatherer). By treating WFS and Transco as a single entity, the Commission ''could thus attribute the gatherer's alleged malfeasance to the pipeline, and apply the pipeline's regulatory requirements to the gatherer.'' [44] The court found error, because ''Only when the Commission finds both concerted action between a jurisdictional pipeline and its gathering affiliate and that the concerted action frustrates the Commission's effective regulation of the pipeline, may it then pierce the corporate veil and treat the legally distinct entities as one.'' [45]

30. The court also rejected the Commission's finding that WFS' actions warranted application of the OCSLA's open access and nondiscrimination prohibitions to set a just and reasonable gathering rate. Describing an argument made on appeal that the Commission simply was enforcing the open access and non-discrimination conditions in Transco's tariff as *post hoc* rationalization, the court observed that the Commission's assertion of OCSLA jurisdiction over WFS based on the *Arkla* test ''is nowhere present in either the Order or the Order on Rehearing.'' [46] It left open for another day the broader question of whether the Commission may ever assert jurisdiction over gas gatherers, whether affiliated with a pipeline or not.

31. On remand, the Commission found that, based on the record in the proceeding and the court's interpretation of the Commission's precedent, the Commission lacked sufficient basis to reassert NGA jurisdiction or to assert OCSLA jurisdiction over the gathering rates and services of WFS's North Padre Island gathering facilities.[47] On rehearing, Shell contended that the Commission should modify the *Arkla* test, and grant relief based on the revised test. The Commission denied rehearing on the ground that the case had been fully litigated based on the existing test. However, the Commission concurrently issued a notice of inquiry to evaluate possible changes in the *Arkla* test. Thirteen comments have been filed. The commenters include (1) producers,[48] (2) providers of gathering services, and (3) interstate pipelines.[49] No local distribution companies, state regulatory Commissions, or other representatives of natural gas consumers filed comments.

II. Comments

32. Several of the producer commenters [50] contend that the Commission should modify the *Arkla* test so that the Commission can reassert jurisdiction when: (a) the gatherer's facilities are connected to an affiliate's transportation facilities, and (b) the gatherer frustrates the Commission's effective regulation of interstate transportation. They contend that such frustration may occur when the gathering affiliate charges an excessive price for gathering, since that effectively allows the corporate family to charge excessive rates for the entire transportation path, including over the pipeline itself. These producers further

[35] *Id.* at P 7.

[36] 103 FERC ¶ 61,177 at P 7.

[37] 100 FERC ¶ 61,254 (2002), *reh'g denied*, 103 FERC ¶ 61,177 (2003).

[38] *Williams Gas Processing*, 373 F.3d 1335.

[39] *Id.* at 1342.

[40] *Id.* (*citing Arkla*, 67 FERC at 61,871).

[41] *Id.* at 1342.

[42] *Id.*

[43] *Id.* at 1343.

[44] *Id.*

[45] *Id.* (*citing Arkla*, 67 FERC at 61,871).

[46] *Id.* at 1345.

[47] *Shell Offshore Inc.* v. *Transcontinental Gas Pipe Line Corp.*, 110 FERC ¶ 61,254, *order on reh'g*, 112 FERC ¶ 61,293 (2005).

[48] The following producers submitted comments: Natural Gas Supply Association (NGSA); Independent Petroleum Association of America (IPAA); Producer Coalition (Producer Coalition); Shell Offshore, Inc. (Shell Offshore); and Indicated Shippers (Indicated Shippers). Indicated Shippers include: BPAmerica Production Company, BP Energy Company, ExxonMobil Gas & Power Marketing Company, Chevron U.S.A. Inc., Marathon Oil Company and Shell Offshore Inc).

[49] The following gathering providers and/or pipelines submitted comments: Williams Midstream Gas and Liquids (Williams); ONEOK Field Services Company (ONEOK); Western Gas Resources, Inc. (Western); Duke Energy Field Services, Inc. (Duke); Enterprise Products Partners, L.P. (Enterprise); Enbridge Energy Partners, L.P. and Enbridge, Inc. (Enbridge); Williston Basin Interstate Pipeline Company (Williston); and Interstate Natural Gas Association of America (INGAA).

[50] Shell Offshore and Indicated Shippers.

contend that there is a problem with offshore gathering notwithstanding the limited number of complaints to date. They assert that pipelines are waiting for final resolution of the Commission's jurisdiction. Spin-downs and spin-offs create the potential for abuse because they involve existing facilities; the customer does not have meaningful alternatives.

33. Other producer commenters recognize that the Commission has limited legal authority to reassert jurisdiction over gathering facilities that have been spun down to an affiliate or spun off to an independent company.[51] These commenters accordingly request that the Commission should review the potential for an abuse of market power when it considers a pipeline's request for abandonment of gathering facilities, rather than only considering whether the facilities are gathering facilities. These commenters also request that the Commission should redefine gathering so that fewer facilities qualify for the gathering exemption from Commission regulation.

34. Gathering providers and pipelines contend that the Commission should retain the current *Arkla* test for reasserting jurisdiction. They argue that, as a legal matter, the Commission lacks jurisdiction to assert jurisdiction over gathering performed by non-natural gas companies except in the situation allowed by the current *Arkla* test. These commenters also state that there is no regulatory gap with respect to gathering. The states regulate gathering onshore and in state waters. OCS gathering is governed by the OCSLA and antitrust laws. In any event, they state that there is no industry-wide problem requiring a solution, since only a few complaints have been filed with the Commission. Moreover, they argue the current policy appropriately permits affiliated and non-affiliated gatherers to compete under the same regulatory structure. Also current commercial arrangements have been entered into based on the *Arkla* policy as it now stands. Re-regulation by the Commission would introduce regulatory risk and adversely affect investment in new infrastructure. The potential chilling of long-term commitments in gathering is not warranted given the relatively small number of spin-downs and the effectiveness of current regulation.

III. Discussion

35. After carefully reviewing the comments, the Commission has determined to clarify the existing *Arkla* test in certain respects. However, consistent with the court's decision in *Williams Gas Processing*, an assertion that the gathering affiliate has charged too high a rate, by itself, would be insufficient to justify a reassertion of jurisdiction over the affiliate's gathering activities.

A. The Arkla Test for Reasserting Jurisdiction

36. As the Commission held in *Arkla,* and the court affirmed in *Conoco,* the Commission generally lacks jurisdiction over affiliates of interstate pipelines that perform only a gathering service. However, the Commission has reserved the right to ''exert jurisdiction over the [affiliate's] gathering service to the extent needed to preserve the Commission's statutory mandates under the NGA.'' [52] The Commission has no doubt as to its authority to disregard corporate structures, including those created when a pipeline spins down its gathering facilities to a corporate affiliate, where necessary to prevent frustration of the statutory purpose of the NGA.[53] For example, in *Transcontinental Gas Pipe Line Corp.* v. *FERC (Transco)*,[54] the court upheld the Commission's order that found Transco had used affiliates to engage in a complicated scheme to (1) make jurisdictional sales to non-captive customers at less than its filed rate, while (2) passing through losses in those sales to its jurisdictional captive customers: ''For the Commission not to have investigated further would frustrate a statutory purpose by allowing Transco to set up subsidiaries to sell gas at prices at which the company could not legally sell.'' [55]

37. The issue here is what circumstances would require the Commission to exert jurisdiction over an affiliate's gathering activities in order to avoid frustration of the purposes of the NGA. In order to answer that question, it is first necessary to understand the relevant statutory purposes of the NGA, particularly what activities the Congress intended the Commission to regulate when it enacted the NGA. Therefore, the first section below discusses the extent to which the regulation of gathering may be considered to be within the statutory purposes of the NGA. We then clarify, in the next section, the type of conduct that would frustrate the NGA's statutory purposes, and thus justify a reassertion of jurisdiction. Finally, we consider the issues of whether a finding of ''concerted action'' between the affiliate and the pipeline is necessary to justify a reassertion of jurisdiction, and whether the affiliate's gathering activities must be conducted by separate personnel.

1. Statutory Purpose of the NGA

38. The statutory purpose of the NGA is, of course, ''to protect consumers against exploitation at the hands of natural gas companies.'' [56] In order to carry out that purpose, NGA section 1(b) gives the Commission jurisdiction to regulate: (1) Transportation of natural gas in interstate commerce, (2) sales for resale of natural gas in interstate commerce,[57] and (3) ''natural gas companies'' engaged in such transportation and sales. This gives the Commission full authority to regulate the rates, terms, and conditions of jurisdictional transportation service performed by natural gas companies, *i.e.* interstate pipelines. If a natural gas company provides gathering service in addition to jurisdictional transportation service, the Commission's regulation of the jurisdictional transportation service ''may necessarily impinge on'' the gathering service if ''gathering is intertwined with jurisdictional activities.'' [58] For example, the Supreme Court has held that the Commission may consider a natural gas company's gathering costs ''for the purpose of determining the reasonableness of rates subject to its jurisdiction.'' [59]

39. However, the statutory purpose of the NGA does not include the regulation of gathering service, particularly by companies who are not natural gas companies. This follows from the fact that NGA section 1(b) expressly exempts ''gathering of natural gas'' from the Commission's jurisdiction. As the Supreme Court stated in *Northwest Central Pipeline* v. *State Corp. Commission,* 489 U.S. 493, 509–14 (1989), Congress in the NGA ''carefully divided up regulatory power over the natural gas industry'' so as to ''expressly reserve to the States the power to regulate * * * gathering.''

40. Several of the producer commenters nevertheless argue that the

[51] Producer Coalition comments at 2–3, 10–11; IPAA comments at 2–3.

[52] *Arkla*, 69 FERC at 62,087.

[53] *Capital Tel. Co.* v. *FCC*, 498 F.2d 734, 738, n.10 (D.C. Cir. 1974) (''[w]here the statutory purpose could be easily frustrated through the use of separate corporate entities a regulatory commission is entitled to look through the corporate entities and treat the separate entities as one for purposes of regulation.'').

[54] 998 F.2d 1313 (5th Cir. 1993).

[55] *Id.* at 1321.

[56] *FPC* v. *Hope Natural Gas Co.,* 320 U.S. 591, 610 (1944).

[57] Excluding ''first sales'' deregulated by the Wellhead Decontrol Act of 1989.

[58] *Conoco,* 90 F.3d at 549.

[59] *Colorado Interstate Gas Co.,* 324 U.S. 581, 603 (1945).

provisions of NGA sections 4 and 5 permitting the Commission to determine rates for a natural gas company's services performed ''in connection with'' jurisdictional transportation and sales support a holding that the statutory purpose of the NGA includes ensuring that natural gas companies and their affiliates do not charge excessive rates for gathering. These commenters rely on the Eighth Circuit's holding in Northern Natural that the Commission ''may * * * under the NGA's §§ 4 and 5 regulate rates charged for gathering on the pipeline's own gathering facilities in connection with jurisdictional interstate transportation, notwithstanding the explicit § 1(b) exclusion of gathering from the act.'' 929 F.2d at 1269. In addition, they point out that the court defined the phrase '' 'gathering facilities owned by the pipeline' and all subsequently similar expressions [used in its opinion] * * * to include such facilities owned or operated directly or indirectly by a pipeline or its parent, affiliate, subsidiary or lessors.'' *Id.*, at 1263 n. 2.

41. However, in both *Arkla* and *Conoco,* the Commission and the D.C. Circuit rejected similar contentions that the Eighth Circuit's decision should be relied upon to find that the Commission has NGA sections 4 and 5 ''in connection with'' jurisdiction over gathering affiliates. For example, in *Conoco,* the D.C. Circuit pointed out that the gathering service at issue in *Northern Natural* was provided by the pipeline itself, not an affiliate, and thus the Eighth Circuit ''did not have to consider the full ramifications of its footnote. It did not discuss the issue of the jurisdictional status of affiliate-run gathering services, and it thus provides little persuasive authority on that issue.'' 90 F.3d, at 546.

42. While the Commission's regulation of a natural gas company's jurisdictional transportation services may necessarily impinge on any gathering services that company performs which are intertwined with its jurisdictional activities, the ''in connection with'' language of sections 4 and 5 does not constitute a grant of authority to the Commission to regulate gathering independent of its effect on jurisdictional transportation. The D.C. Circuit made this clear in *Conoco,* when it reversed *Arkla's* default contract condition. Arkla had required a pipeline spinning down gathering facilities to an affiliate to file a default contract offering the existing gathering customers service at existing rates for two years. The court rejected the Commission's argument that it could impose this condition pursuant to its section 4 authority to regulate non-jurisdictional activities performed ''in connection with'' jurisdictional service. The Commission had argued that permitting a pipeline to terminate its gathering services without adequate protection for its existing gathering customers would frustrate the Commission's policy, in its regulation of jurisdictional transportation service, to promote a competitive market. The court held that the statute forecloses interpreting the phrase ''in connection with'' in section 4 as permitting the Commission to regulate facilities which the Commission has expressly found to be outside its section 1(b) jurisdiction.

43. The court explained its decision as follows:

> Where an activity or entity falls within NGA section 1(b)'s exemption for gathering, the provisions of NGA §§ 4, 5, and 7, including the ''in connection with'' language of §§ 4 and 5, neither expand the Commission's jurisdiction nor override § 1(b)'s gathering exemption. In language no less applicable here, the Supreme Court held in *Panhandle III,* 337 U.S. at 508–09, that ''sections 4, 5, and 7 do not concern the production or gathering, of natural gas; rather, they have reference to the interstate sale and transportation of gas and are so limited by their express terms. * * * Nothing in the sections indicates that the power given to the Commission over natural-gas companies by § 1(b) could have been intended to swallow all the exemptions of the same section, and thus extend the power of the Commission to the constitutional limit of congressional authority over commerce.'' Because the Commission concluded that the facilities to be transferred by NorAm Gas were exempt under § 1(b) as gathering facilities, and that NorAm Gas' independently operated affiliated gatherer was not a ''natural gas company'' subject to the NGA, the Commission cannot simply assert authority over the facilities and the affiliate by invoking other sections of the act.

44. We recognize that Congress intended the NGA to be a comprehensive regulatory scheme, without any ''attractive gaps.'' [60] Given this purpose of the NGA, the Supreme Court has held that, in borderline cases, Commission jurisdiction may be found where necessary to avoid a regulatory gap.[61] In light of this rule of statutory construction, the Commission included in the NOI several questions designed to enable it to further review the extent to which regulation of gatherers affiliated with interstate pipelines may be justified as necessary to prevent a regulatory gap.[62] Upon review of those comments, we continue to find that the regulatory gap argument does not justify a finding that a purpose of the NGA is to enable the Commission to regulate gathering, particularly by non-natural gas companies, whether onshore or on the OCS.

45. Onshore and in state waters, there is no regulatory gap, because the states have full authority to regulate gathering within their borders, including the rates charged by non-natural gas company gathering providers. As the court stated in *Conoco*, ''Section 1(b) contemplates that some measure of authority over gathering should be reserved to the States, and jurisdiction over companies whose sole business is gathering is a permissible place to start.'' [63] And, while states have not imposed across-the-board, cost-based rate regulations on local gatherers, they have imposed anti-discrimination requirements and permitted the filing of complaints by producers.[64]

46. We recognize that states cannot regulate gathering on the OCS, since only the federal government has regulatory authority with respect to the OCS.[65] However, this does not justify a finding that a purpose of the NGA is to fill any regulatory gap with respect to the regulation of gathering on the OCS. NGA section 1(b) makes no distinction between the Commission's jurisdiction onshore and its jurisdiction on the OCS. Thus, given our holding that the purposes of the NGA do not include the regulation of gathering by non-natural gas companies onshore, there is no basis in the language of the NGA to make a different finding with respect to

[60] *FPC* v. *Transcontinental Gas Pipe Line Corp.,* 365 U.S. 1, 28 (1961).

[61] *FPC* v. *Louisiana Power & Light Co.,* 406 U.S. 621, 631 (1972). In *Conoco,* 90 F.3d at 553, the court found that the Commission had not supported its contention that a default contract was necessary to avoid a regulatory gap, finding that the Commission had not explained why the states would be unable to protect NorAm Gas Transmission Company's customers.

[62] Question 11 asked, ''Is there a gap between state regulation of gathering services and the Commission's regulation of natural gas companies, and, if so, what is the nature of that gap?'' Question 12 asked, ''Should the Commission view the conduct of offshore affiliated gatherers differently from onshore affiliated gatherers due to this lack of state regulation offshore?''

[63] 90 F.3d at 547.

[64] *See* Enbridge comments at 26–30, summarizing how Texas, Louisiana, New Mexico, Wyoming, and Oklahoma regulate gathering. *See also* Enterprise comments at 16 and Williams comments at 24–25.

[65] Under the OCSLA, 43 U.S.C. 1331 *et seq.* (2000), it is ''the policy of the United States that * * * the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition * * * '' 43 U.S.C. 1332 (2000). However, while '' '[a]ll law applicable to the Outer Continental Shelf is federal law, [] to fill the substantial 'gaps' in the coverage of federal law, OCSLA borrows the 'applicable and not inconsistent' laws of the adjacent States as surrogate federal law.' '' *Ten Taxpayer Citizens Group* v. *Cape Wind Associates,* 373 F.3d 183, 192 (1st Cir. 2004) (quoting *Gulf Offshore Co.* v. *Mobil Oil Corp.,* 453 U.S. 473, 480 (1981)).

gathering by non-natural gas companies offshore.

47. We find that Congress determined how to address any regulatory gap with respect to gathering on the OCS in the OCSLA. When Congress first enacted the OCSLA in 1953, it recognized that there was no federal law applicable to the recovery of natural resources from the OCS.[66] At that time, Congress enacted only a '' 'bare bones' leasing authority with essentially no statutory standards or guidelines,'' because there was a ''relative lack of basic knowledge concerning, and interest in, development of the resources of the Shelf at that time.'' [67] However, by the late 1970s, it was recognized that ''the OCS represents such a large and promising area for oil and gas exploration,'' that ''Congress must update the [OCSLA] * * * to provide adequate authority and guidelines for the kind of development activity that probably will take place in the next few years.'' [68] Accordingly, Congress amended the OCSLA in 1978 for this purpose.

48. The OCSLA, unlike the NGA, contains no exemption for gathering, but applies to the full range of gas exploration, development, production, gathering, and transportation activities. One purpose of the 1978 OCSLA amendments was to assure that resources on the OCS are developed ''in a manner which is consistent with the maintenance of competition.'' [69] To that end, section 5(e) of the OCSLA authorizes the Secretary of the Interior to grant rights of way through submerged lands on the OCS for purposes of transporting natural gas, upon the condition that the pipeline will transport natural gas produced in the vicinity of the pipelines in such proportionate amounts as the Commission, in consultation with the Secretary of Energy, may determine to be reasonable. Section 5(f)(1) provides that every permit, right-of-way, or other grant of transportation authority must require that the pipeline be operated in accordance with various competitive principles. These include that the pipeline must provide open and nondiscriminatory access to both owner and non-owner shippers.

49. However, the D.C. Circuit held in *Williams Companies* v. *FERC* [70] that these sections do not give the Commission any general power to create and enforce open access on the OCS. Rather, Congress intended that the Secretary of the Interior have the general power to enforce these provisions,[71] with the Commission assigned only a few well-defined roles. One of those roles is to include in any certificates issued to an OCS pipeline pursuant to NGA section 7 the condition required by OCSLA section 5(f)(1). However, since our NGA section 7 certificate authority does not extend to gathering facilities, this provision cannot give us any jurisdiction with respect to OCS gathering.[72]

50. In this order, we express no opinion on the extent of the Secretary of the Interior's authority under these provisions of the OCSLA to address assertions that a gatherer has abused its market power to charge unreasonably high prices. We hold only that Congress recognized in both 1953 when it first enacted the OCSLA and in 1978 when it amended that Act, that there was a regulatory gap on the OCS, and adopted the current provisions of the OCSLA for the express purpose of addressing that gap. In so doing, Congress did not amend the NGA to give this Commission any additional authority under that Act with respect to the OCS. We therefore conclude that the regulation of gathering on the OCS is no more within the purposes of the NGA than is the regulation of gathering onshore or in state waters.[73]

2. Conduct Frustrating the Statutory Purpose

51. We now turn to the issue of the type of conduct that would frustrate the NGA's statutory purpose, and thus justify the Commission's disregarding the corporate form in order to exert jurisdiction over an affiliate's gathering service. For the reasons discussed below, the Commission finds that it may assert NGA sections 4 and 5 ''in connection with'' jurisdiction over the activities of an affiliated gatherer, when (1) the gatherer has used its market power over gathering to benefit the pipeline in its performance of jurisdictional transportation or sales service and (2) that benefit is contrary to the Commission's policies concerning jurisdictional services adopted pursuant to the NGA. However, the fact that an affiliated gatherer has abused its market power over gathering to benefit its own gathering service would not, by itself, justify an assertion of jurisdiction.

52. Examples of the types of conduct by an affiliated gatherer which could justify an assertion of jurisdiction include the following. An affiliated gatherer could refuse to provide gathering service or charge higher rates, unless the shipper also entered into a contract with the affiliated pipeline for long-term firm service, rather than short-term firm or interruptible transportation service. This could enable the pipeline to obtain more profitable contracts for its jurisdictional transportation service, than it otherwise could. That is because the Commission requires pipelines to accept a maximum rate bid for a short-term service, absent a higher net present value bid for a longer-term service.[74] Or, in situations where an affiliated, long-haul pipeline is interconnected with other interstate pipelines in the production area, the affiliated gatherer could refuse service or charge higher rates, unless the shipper also entered into a long-haul transportation contract with the affiliated pipeline for the entire haul to the market area, rather than using an unaffiliated interconnecting pipeline to reach the market area. This would similarly enable the pipeline to obtain a more profitable contract than it otherwise could, because, under the Commission's open access requirements, pipelines must accept maximum rate bids for short-haul service, absent a higher net present value bid for long-haul service. Such circumvention would frustrate the Commission's regulation of the pipeline's jurisdictional transportation service pursuant to the NGA.

53. The above two examples of conduct justifying assertion of jurisdiction are both anti-competitive

[66] For example, the House Committee on the Judiciary, which reported on H.R. 5134, the bill which was enacted in 1953 as the OCSLA, found that ''no law [] exists whereby the Federal Government can lease those submerged lands [in the Outer Continental Shelf], * * * [] [T]herefore, [it is] the duty of the Congress to enact promptly a leasing policy for the purpose of encouraging the discovery and development of the oil potential of the Continental Shelf.'' H.R. Rep. No. 413 (1953).

[67] S. Rep. No. 95–284, at 48 (1977).

[68] *Id.*

[69] OCSLA section 3(3).

[70] 345 F.3d 910 (D.C. Cir. 2003).

[71] In addition, OCSLA section 23 authorizes citizens to commence civil actions to enforce any provision of the OCSLA.

[72] In addition, OCSLA section 5(f)(2) permits the Commission to exempt from section (f)(1) competitive principles ''any pipeline or class of pipelines which feeds into a facility where oil and gas are first collected, separated, dehydrated, or otherwise processed.'' However, the court held in *Williams Companies* that ''a provision allowing FERC to exempt a subset of facilities from section (f)(1)'s competitive principles is plainly not an authorization for it to adopt and enforce principles over all facilities.'' 345 F.3d at 914.

[73] In addition to the state and OCSLA regulation described above, gathering affiliates are also subject to federal and state anti-trust laws. For example, the Clayton Act, 15 U.S.C. 12–17 (2000), prohibits various anti-competitive activities.

[74] *Northern Border Pipeline Co.,* 107 FERC ¶ 61,027, at P 11 (2004).

tying arrangements,[75] which, in the words of *Arkla*, are ''directly related to the affiliate's unique relationship with an interstate pipeline.'' [76] That is because the actions benefit the pipeline by enabling the pipeline to obtain more profitable contracts for its jurisdictional transportation service. The actions do not provide any direct benefit to the gathering affiliate's own business. Thus, absent the affiliation, a gatherer with market power would not appear to have an incentive to exercise its market power in such a manner. Such conduct would not increase the profitability of an independent gatherer's business.

54. By contrast, a gathering affiliate's charging an unreasonably high rate for its gathering service, without more, does not frustrate the statutory purpose of the NGA and thus would not justify an assertion of jurisdiction.[77] This is true, even where the gathering affiliate owns gathering facilities that provide the sole link between a production field and the interstate pipeline. As already discussed, the statutory purpose of the NGA does not include the regulation of gathering service, particularly by companies who are not natural gas companies. Rather, the NGA only permits the Commission to affect gathering service to the extent necessary to carry out its responsibilities under the NGA to regulate jurisdictional services. A gathering affiliate's exercise of market power to charge high gathering prices may increase its own profits. But such an exercise of market power does not affect the Commission's regulation of jurisdictional transportation service. It does not permit the pipeline to circumvent any of the Commission's policies concerning jurisdictional transportation service or otherwise benefit the affiliated pipeline in its performance of jurisdictional transportation service.

55. Thus, unlike the examples of conduct justifying an assertion of jurisdiction described above, there is simply no relationship between the gathering affiliate's relationship with the pipeline and its charging of high prices for gathering service. As now Chief Justice Roberts wrote in *Williams Gas Processing,* ''The fact that WFS is an affiliate of Transco is utterly irrelevant to its ability to charge high rates, or to impose onerous conditions for gathering service. This irrelevance is demonstrated by the fact that WFS, as a deregulated monopolist, could have (and likely would have) undertaken the same course of conduct had Transco been owned by someone else entirely. The fact that WFS had an affiliate relationship with Transco neither enhanced nor detracted from its ability to charge high rates or impose onerous conditions.'' [78]

56. When the Commission determined in *Arkla* that it lacks jurisdiction over non-natural gas companies performing gathering service including affiliates of pipelines, the Commission recognized that many customers of such gatherers are ''captive * * * *i.e.*, there is no competition for gathering services.'' [79] The Commission nevertheless held that the NGA only authorizes it to regulate gathering performed by natural gas companies in connection with jurisdictional services. Therefore, the Commission stated that ''the absence of competition by itself is not sufficient to confer upon the Commission jurisdiction to regulate gathering by non-pipelines.'' [80] It follows that a gathering affiliate's exercise of market power solely to charge high gathering prices does not violate the NGA's statutory purpose.

57. Producer commenters generally recognize that, in order to assert jurisdiction over an affiliated gatherer, the Commission must find that the gatherer has engaged in conduct that frustrates the statutory purpose of the NGA. For example, Shell Offshore proposes that the Commission modify the *Arkla* test ''to provide that the Commission may assert jurisdiction over the gathering services on an affiliate of an interstate pipeline whenever the affiliate abuses its market power *and the abuses frustrate the effective regulation of the pipeline* as a consequence of any of the factors underlying the 'in connection with' relationship between the interstate transportation service and the gathering services.'' [81] The producers argue that any abuse of market power by an affiliated gatherer, including simply charging excessive rates frustrates our regulation of the pipeline. That is because, as Shell Offshore argues, those excessive gathering rates ''effectively exact monopolistic rents * * * over the entire combined service [of both the gatherer and the pipeline] nominally applying them solely to the gathering component.'' [82]

58. In order to find a frustration of statutory purpose in the manner suggested by the producer commenters, the Commission would have to treat a gathering affiliate's charges in excess of a reasonable gathering rate as being additional charges for the pipeline affiliate's jurisdictional transportation service, rather than additional charges for the gathering affiliate's own service. However, this would effectively nullify the Commission's holding in *Arkla,* affirmed by the D.C. Circuit in *Conoco,* that the Commission lacks jurisdiction to regulate the rates charged by a gathering affiliate that performs only a gathering service. That is because whenever the gathering affiliate charged more than we determined was a reasonable rate for gathering service, we would treat the excess charge as a charge for jurisdictional transportation service and disallow it. This would have essentially the same effect as our directly regulating the rates charged for gathering by all affiliated gatherers.

59. Above, we have held that Congress reserved to the states jurisdiction to regulate gathering within their boundaries (*i.e.*, onshore and in state waters) by non-natural gas companies, including affiliates of natural gas companies. Therefore, it is consistent with the statutory purpose of the NGA to allow the states to address any assertions that a non-natural gas company, whether or not affiliated with a pipeline, has charged excessive rates for gathering service within their boundaries. Similarly, we have held that Congress gave us no greater NGA authority with respect to OCS gathering, than over gathering onshore and in state waters, and has only provided for regulation of OCS gathering by non-natural gas companies under the OCSLA. The court has interpreted the OCSLA as giving the Department of the Interior, and not this Commission, the authority to enforce the non-discrimination and other requirements of the OCSLA. Therefore, we find it consistent with the purposes of the NGA and the OCSLA that a remedy, if any, for excess charges by non-natural gas companies for OCS gathering be provided by the Department of Interior, not us.

60. Finally, we emphasize that, if an interstate pipeline itself engages in anti-competitive conduct that favors its gathering affiliate, the Commission has

[75] As the court found in *Williams Gas Processing,* 374 F.3d at 1342, a tying arrangement is ''conditioning the sale of a good or service on the purchase of another different (or tied) good or service.'' In the above examples, the gathering affiliate would be conditioning sale of its gathering service on the purchase of a particular type of transportation service from the pipeline.

[76] 67 FERC at 61,871.

[77] *Contrast Transco,* 998 F.2d 1313, in which the court affirmed the Commission's assertion of jurisdiction where the use of corporate affiliates had enabled the pipeline to make jurisdictional sales at unduly discriminatory prices.

[78] *Williams Gas Processing*, 373 F.3d at 1342.

[79] *Mid Louisiana Gas Co.,* 67 FERC at 61,851.

[80] *Id.*

[81] Shell Offshore comments at 41 (emphasis supplied).

[82] *Id.* at 43.

full authority under the NGA to provide a remedy, without the need to assert jurisdiction over the affiliate. For example, if a pipeline seeks to subsidize its gathering affiliate by including costs properly allocated to the gathering affiliate in its interstate transportation rates, the Commission could order the removal of those costs.[83] Similarly, as described above, the Commission has required pipelines spinning down gathering service to an affiliate to include in their tariffs provisions stating that the pipeline (1) will provide nondiscriminatory access to all sources of supply, (2) will not give shippers of its gathering affiliate undue preferences over shippers of non affiliated gatherers, and (3) will not condition or tie its agreement to provide transportation service to an agreement by the producer, customer, end-user or shipper relating to any service in which its gathering affiliate is involved. No pipeline has questioned our authority to impose these requirements.

61. Thus, it is only when the gathering affiliate engages in anti-competitive conduct benefiting the pipeline, that the Commission must assert jurisdiction over the affiliate's activities in order to provide a remedy. In this regard, we note that in *Arkla* one of the examples we gave of activity that could justify a reassertion of jurisdiction was: ''the pipeline's giving transportation discounts only to those utilizing the affiliate's gathering service.'' We clarify that there would be no need to assert jurisdiction over the affiliate in this situation, since the Commission has authority under the NGA to remedy any undue discrimination in the pipeline's offering of discounts to its customers, without regard to its jurisdiction with respect to other companies who may benefit from those discounts. The appropriate example of activity that could justify exerting jurisdiction over the gathering affiliate in this context would be the reverse situation: where, as described above, the *gathering affiliate* gives gathering discounts only to those entering into particular types of contracts for the *pipeline's transportation service* that are beneficial to the pipeline. Similarly, any improper shifting of costs between a natural gas company and its gathering affiliate could be remedied in a proceeding to set the former's rates.

3. Whether Concerted Action Is Necessary

62. In *Arkla,* the Commission stated that it would reassert jurisdiction ''if an affiliated gatherer acts in concert with its pipeline affiliate in connection with the transportation of gas in interstate commerce and in a manner that frustrates the Commission's effective regulation of the interstate pipeline.'' This language has been interpreted as creating a two-pronged test under which the Commission must make separate findings that: (1) the jurisdictional pipeline and its gathering affiliate have engaged in ''concerted action'' and (2) the concerted action frustrates the Commission's ability to regulate the pipeline.[84] In the NOI, the Commission requested the parties' views on the need for the ''concerted action'' prong of the *Arkla* test.[85]

63. After evaluating the parties' comments on this issue, the Commission concludes that, in determining whether to assert jurisdiction over the activities of a gathering affiliate, the focus should be on whether the gathering affiliate has engaged in the type of conduct described in the previous section as justifying such an assertion of jurisdiction. While a finding that the pipeline also participated in the conduct may buttress the need for an assertion of jurisdiction over the activities of the gathering affiliate, we find, for the reasons discussed below, that a finding of such ''concerted action'' is not a necessary prerequisite to an assertion of jurisdiction.

64. The D.C. Circuit has held that ''[w]here the statutory purpose could be easily frustrated through the use of separate corporate entities, the Commission is entitled to look through the corporate form and treat the separate entities as one and the same for purposes of regulation.''[86] Thus, the fundamental test for asserting jurisdiction over the activities of an affiliate is whether such jurisdiction is necessary to avoid frustration of the statutory purpose. When this test is met, the Commission may look through the corporate form, even though the separate corporations were formed in good faith, and there has been no showing that the corporate form was adopted for the purpose of evading the statute.[87]

65. In the preceding section, the Commission has explained that, in order to justify an assertion of jurisdiction over the activities an affiliated gatherer, there must be a showing that the gatherer has engaged in conduct that frustrates the purpose of the NGA. This requires a showing that the gathering affiliate has abused its market power over gathering in order to benefit the pipeline in the pipeline's performance of jurisdictional transportation or sales service in a manner contrary to the Commission's policies concerning jurisdictional services. We believe that a showing of such conduct by the gathering affiliate is sufficient to show that Commission jurisdiction over the affiliate is necessary to avoid frustration of the NGA's purpose, regardless of whether there is also evidence of ''concerted action'' in the form of pipeline participation in the affiliate's conduct.

66. This conclusion may be illustrated by the examples the Commission gave in the previous section of conduct that would frustrate the purpose of the NGA. In those examples, the affiliated gatherer refuses to provide gathering service or charges higher rates, unless the shipper also enters into long-term or long-haul firm transportation contracts with the affiliated pipeline. Commission policy prohibits pipelines from demanding that their customers enter into such contracts. The ''concerted action'' prong of the existing *Arkla* test would prevent the Commission from asserting jurisdiction in this situation, unless there was evidence not only that the gathering affiliate had engaged in this activity, but also that the pipeline had participated in the activity sufficiently to justify a finding of ''concerted action.'' This would suggest that the Commission would have to find that the pipeline had requested the gathering affiliate to engage in the activity, or at least that the two affiliates had in some manner discussed or jointly planned the gathering affiliate's actions.

67. However, as discussed in the previous section, the gathering affiliate's actions would not provide any direct benefit to the gathering affiliate's own business. Rather, their sole purpose would appear to be to benefit the pipeline by enabling the pipeline to

[83] *Colorado Interstate Gas Co.,* 324 U.S. 581, 603 (1945).

[84] *Williams Gas Processing,* 373 F.3d at 1343.

[85] Question 8 asked, ''Should a showing of 'concerted action' by the gathering affiliate and the pipeline be required, or should it be sufficient for the gathering affiliate alone to have engaged in anticompetitive or otherwise objectionable behavior to trigger the Commission's reassertion of jurisdiction?'' Question 9 asked, ''What kind of activities would constitute 'concerted action' between the gathering affiliate and its affiliated pipeline for purposes of circumventing the Commission's effective regulation of the pipeline?''

[86] *Transco,* 998 F.2d at 1321 (*quoting Capital Tel. Co.* v. *United States,* 449 F.2d 846, 855 (5th Cir. 1971)).

[87] *Anderson* v. *Abbott,* 321 U.S. 349 (1944); *Kavanaugh* v. *Ford Motor Co.,* 353 F.2d 710 (7th Cir. 1965).

obtain more profitable contracts for its jurisdictional transportation service. If a gathering affiliate realizes on its own, without any consultation with the pipeline, that it can benefit the overall corporate family by requiring its customers to enter into contracts with the pipeline which the pipeline could not legally require, the purposes of the NGA have been frustrated just as much as if the two entities jointly planned the gathering affiliate's actions. Therefore, while every case must be decided based on the actual facts of that case, we will not exclude the possibility that situations could arise in which the Commission may assert jurisdiction over a gathering affiliate without a finding of ''concerted action.''

68. By the same token, consistent with the court's decision in *Williams Gas Processing,*[88] a finding that the gathering affiliate and the pipeline have engaged in some form of ''concerted action'' would not, by itself, justify asserting jurisdiction over the activities of the gathering affiliate. There must be a finding of activity by the gathering affiliate that frustrates the Commission's ability to regulate the pipeline's jurisdictional service. Thus, concerted action between the two affiliates on matters that do not frustrate the purposes of the NGA, such as increasing the gathering affiliate's rates simply to make its gathering business more profitable, would not justify an assertion of jurisdiction.

4. Separate Operating Personnel

69. In the NOI, the Commission requested the parties' views on the extent to which a gathering affiliate must be separately staffed and otherwise independent of its pipeline affiliate in order to be considered exempt from the Commission's NGA jurisdiction.[89] Several gathering providers and pipelines assert that a requirement of separate staffing would increase the costs of providing gathering services.[90] Enbridge states that its OCS gathering and pipeline facilities were developed as coordinated projects, and must be operated in close coordination in order to deliver natural gas that meets the gas quality provisions of the pipeline and downstream markets. Enbridge states that it currently continues to realize economies of scale by using a single group of contract administrators and operations, scheduling, and gas control staff to operate its OCS pipelines and affiliated gatherers.

70. Some producers assert that the Commission should require that the gathering affiliate be separately staffed.[91] However, other producers also state that the relative degree of independence of the gathering affiliate from the pipeline should not be the issue when considering whether to assert jurisdiction over a gathering affiliate because of its abuse of market power; rather the focus should be whether there has been market power abuse, regardless of the extent to which the gathering affiliate operates independently.[92]

71. In Order No. 2004,[93] the Commission amended its standards of conduct in 18 CFR part 358 in order to apply them not only to marketing affiliates, but also to certain other ''energy affiliates.'' Order No. 2004 generally required natural gas pipeline transmission providers and their energy affiliates to function independently.[94] Order No. 2004 defined ''energy affiliates'' to include affiliates which are involved in transmission transactions in U.S. energy and transmission markets or which manage or control transmission capacity of the affiliated pipeline.[95] However, the Commission excluded gathering affiliates from the definition of energy affiliate if the gatherers only made incidental purchases or sales of *de minimus* volumes of natural gas to remain in balance under applicable pipeline tariff requirements and otherwise did not engage in energy affiliate activities such as managing the affiliated pipeline's transmission capacity.[96]

72. However, in *National Fuel Gas Supply Corp.* v. *FERC,* 468 F.3d 831 (D.C. Cir. 2006), the D.C. Circuit vacated Order No. 2004 as applied to natural gas pipelines and remanded the order to the Commission. The court stated that vertical integration between a pipeline and its affiliates should create efficiencies which benefit consumers, and therefore the Commission cannot impede such vertical integration without adequate justification. The court concluded that Order No. 2004 had failed to provide such a justification with respect to its application of the Standards of Conduct to the relationship between natural gas pipeline transmission providers and their non-marketing affiliates, *i.e.*, energy affiliates.

73. In response to the court's decision, the Commission issued an interim rule on January 9, 2007,[97] which among other things, provides that the standards of conduct will not govern the relationship between natural gas pipeline transmission providers and their energy affiliates.[98] Subsequently, on January 18, 2007, the Commission issued a Notice of Proposed Rulemaking, proposing to make this interim rule permanent.[99] Consistent with the interim rule, the Commission will not require that a gathering affiliate function independently of its natural gas pipeline affiliate in order to be considered exempt from the Commission's NGA jurisdiction. Any assertion of jurisdiction over the gathering affiliate will turn on whether the affiliate has engaged in the types of conduct described above as justifying such an assertion of jurisdiction, without regard to the relative independence of its employees. This finding is, of course, subject to the outcome of the Notice of Proposed Rulemaking concerning the Commission's Standards of Conduct.

B. The Primary Function Test

74. Although the NOI did not request comments on the Commission's primary function test, which is applied to determine whether facilities perform primarily a gathering or a transmission function, or on the extent to which the Commission may utilize its abandonment authority under NGA section 7(b) to find that reclassifying facilities from transmission to gathering is not consistent with the public interest based on economic grounds, some producer commenters offered their

[88] 373 F.3d at 1343.

[89] Question 3 asked, ''What factors are relevant in determining whether a gathering affiliate is separate from its pipeline affiliate and independent from its pipeline affiliate in performing its gathering functions?'' Question 4 asked, ''Must a gathering affiliate be physically separate and separately staffed in order to be independent of its pipeline affiliate?''

[90] Enbridge comments at 24–25; Enterprise comments at 13.

[91] *See, e.g.*, Producer Coalition comments at 2.

[92] Indicated Shippers comments at 32; Shell Offshore comments at 57.

[93] *Standards of Conduct for Transmission Providers,* Order No. 2004, 68 FR 69,134 (Dec. 11, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh'g,* Order No. 2004–A, 69 FR 23,562 (Apr. 29, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,161 (2004), *order on reh'g,* Order No. 2004–B, 69 FR 48,371 (Aug. 10, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,118 (2004), *order on reh'g,* Order No. 2004–C, 70 FR 284 (Jan. 4, 2005), FERC Stats. & Regs., Regulations Preambles ¶ 31,325 (2004), *order on reh'g,* Order No. 2004–D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines, National Fuel Gas Supply Corporation* v. *FERC,* 468 F.3d 831 (D.C. Cir. 2006).

[94] 18 CFR 358.4 (2006).

[95] *See* 18 CFR 358.3(d)(1), (2) and (6)(vi) (2006).

[96] 18 CFR 358.4(d)(6)(vi) (2006).

[97] *Standards of Conduct for Transmission Providers,* Order No. 690, 72 FR 2427 (Jan. 19, 2007), III FERC Stats. & Regs. ¶ 31,237 (2007).

[98] *See* revised 18 CFR 358.1(e) (to be codified).

[99] *Standards of Conduct for Transmission Providers, Notice of Proposed Rulemaking,* 72 FR 3,958 (Jan. 29, 2007), IV FERC Stats. & Regs. ¶ 32,611 (2007).

views on these subjects. We will briefly respond to these comments.

75. Regarding the primary function test, the commenters note that they expressed the same views in conjunction with the September 23, 2003 public conference in Docket No. AD03–13–000, convened to address whether the primary function test should be reformulated in light of perceived uncertainty in the application of the test to offshore facilities.[100] They note that although the Commission compiled a substantial record in that proceeding, it has not taken any further action, and urge that the Commission use the instant proceeding to address this issue.

76. The commenters contend that the Commission should redefine gathering so that fewer facilities will qualify for the gathering exemption under the NGA. Although most commenters conclude that the Commission should continue to employ a physical-factor test to determine the primary function of facilities, they urge the Commission to give more emphasis to non-physical factors. Such factors would include the purpose, location, operation and ownership of a facility, as well as whether the jurisdictional determination is consistent with the objectives of the NGA and with the changing technical and geographic nature of offshore exploration and production. For example, one commenter suggests that an assessment of operational function would reveal whether the subject pipeline facility will continue to provide essentially the same service of moving gas from the wellhead or platform to the same downstream pipeline after it is reclassified. If so, a change in the jurisdictional classification would not be warranted.

77. Other commenters criticize what they perceive as the Commission's emphasis on the central point of aggregation prong of its physical test, arguing that the Commission should consider all factors in an individual case.[101] Another commenter suggests that when a pipeline seeks to reclassify a facility from transmission to gathering, there should be a presumption that the facility will continue to perform a transmission function unless the pipeline can demonstrate that the criteria of gathering are satisfied and that a change in jurisdictional status will not be economically detrimental to existing shippers on the facility who committed to service with the expectation that they could rely on Commission oversight. Under this view, the commenter opines, the Commission would not have to rely on its abandonment authority under section 7(b) of the NGA to find that a reclassification of a facility is inconsistent with the public interest, because the effect of the requested reclassification on shippers would be part of the test to determine jurisdiction. The commenters also point out that the courts have found that the Commission has great latitude or discretion when it determines what constitutes gathering and what constitutes transmission.[102]

78. Another commenter offers an alternative to the primary function test which it calls the ''platform test.'' This approach would involve redefining ''gathering'' as the preparation of natural gas for the first stages of distribution, consistent with the Supreme Court's view in *Northern Natural Gas Co.* v. *State Corporate Commission,*[103] that gathering is ''narrowly confined to the physical acts of drawing the gas from the earth and preparing it for the first stages of distribution.'' [104] This commenter suggests that for offshore production, gathering would cease at, or just downstream of, the platform where the natural gas is first treated or prepared and made ready for delivery into a pipeline for transportation to shore.

79. In the NOI for the conference in Docket No. AD03–13–000, we acknowledged that

> [a]s with onshore facilities, the use of the primary function test, as modified by the policy statement for deepwater facilities, seems to be workable, and there has been relatively little controversy concerning its application in recent years. Efforts to apply the primary function test to offshore facilities in the shallow OCS, however, have been contentious.[105]

80. We solicited responses to specific questions from interested parties as well as any ideas for a new or further modified primary function test. We stated:

> [a] new test should ensure that similar facilities are subject to similar regulatory treatment. It should also provide incentives for investment in production, gathering, and transportation infrastructure offshore, without subjecting producers to the unregulated market power of third party transporters. Persons who appear at the conference should be prepared to indicate how the Commission's definition of gathering can be changed to achieve these goals.[106]

81. Admittedly, that is a high standard for any new test to meet. Nevertheless, we see no point in disturbing the current regulatory regime unless doing so would result in a significant decrease in any inconsistent or uncertain results. In other words, replacing one test, which can be difficult to apply in many instances, with another test which would be equally, or perhaps more difficult to apply, would not achieve the desired goals that prompted us to issue the NOI in the first place.

82. We have not been persuaded by the comments and proposals submitted in Docket No. AD03–13–000, or by the comments proffered in this proceeding, that any new test would meet the above-described goals better than the current primary function test does. Nor are we convinced that we should depart from our practice of making jurisdictional findings on a case-by-case basis and relying, instead, on a more generic or ''bright line'' test, as some commenters propose. Moreover, as noted above, generally the current primary function test as applied to facilities located onshore and in deep water offshore has satisfied most interested parties. Thus, it may well be that similar results will be achieved as the Commission continues to make jurisdictional determinations for facilities located in shallow water by applying the current test on a case-by-case basis, making minor adjustments to the test or emphasizing different factors as circumstances evolve. Despite the fact that this approach may be more difficult and may sometimes produce uneven results, it is consistent with the guidance given to the Commission by the several courts that have reviewed the Commission's jurisdictional determinations under NGA section 1(b).[107]

83. Further, some commenters offer suggestions for a new approach to the

[100] *See Notice of Public Conference, Application of the Primary Function Test for Gathering on the Outer Continental Shelf* (Aug. 14, 2003) (*NOI*). This notice provides a comprehensive history of the development of the Commission's primary function test, particularly as it applied to offshore facilities. *See also, ExxonMobil Gas Marketing Co.* v. *FERC,* 297 F.3d 1071 (D.C. Cir. 2002), *cert. denied,* 540 U.S. 937 (2003) (*ExxonMobil*) (providing a thorough history of the primary function test).

[101] *See Sea Robin Pipeline Co.,* 87 FERC ¶ 61,384 (1999) (*Sea Robin*), *order on reh'g,* 92 FERC ¶ 61,072 (2000), *aff'd, ExxonMobil,* 297 F.3d 1071 (D.C. Cir. 2002) (the Commission reformulated its primary function test to include a central point of aggregation prong for the primary function test when applied offshore, which was intended to be an analogue for the central-point-in-the field prong of the test which is applicable onshore, but is not dispositive offshore).

[102] *Citing, ExxonMobil,* 297 F.3d 1071 (D.C. Cir. 2002) and *Williams Gas Processing—Gulf Coast Co.* v. *FERC,* 331 F.3d 1011 (D.C. Cir. 2003).

[103] 372 U.S. 84 (1963).

[104] *Id.* at 90.

[105] *See NOI* at 4.

[106] *Id.*

[107] *See, e.g., ExxonMobil*, 297 F.3d at 1087; *Sea Robin Pipeline Co.* v. *FERC*, 127 F.3d 365, 370 (5th Cir. 1997); *Conoco*, 90 F.3d at 543.

primary function test that would run afoul of the courts' various admonishments regarding the Commission's responsibilities in making jurisdictional determinations. In addition, aspects of the Commission's current test which some commenters criticize have been upheld as reasonable by the courts. For example, with regard to the Commission's reliance on the central point of aggregation as a place where gathering ended and transportation began on some offshore facilities, the court in *ExxonMobil* stated that

> the central aggregation test is not a new, bright-line test, but rather is an amalgamation of physical factors, and in any event, is wholly consistent with past FERC precedent. It has long been the Commission's view, upheld by this Court, among others, that when gas from separate wells is collected by several lines which converge at a single location in the producing field for delivery into a single line for transportation, the separate lateral lines behind the central point are classified as non-jurisdictional gathering facilities.[108]

84. Obviously, where there is no such point on facilities, this prong of the primary function test would not apply, and other factors of the test would dictate the jurisdictional outcome. Thus, the ''platform test'' suggestion would establish a bright line test that would limit our ability to look at the other factors that may be relevant.[109]

85. Further, the courts have stated that the Commission may not make the jurisdictional distinctions required under NGA section 1(b) simply to assure a desirable policy result.[110] Thus we cannot adopt the commenter's notion that we can simply create a test to distinguish gathering from jurisdictional transmission that is geared to the preordained result that more offshore pipelines will be found to perform a jurisdictional transportation rather than a gathering one. The courts have also held that as long as the NGA contemplates a distinction between gathering and jurisdictional transportation, the Commission is required to make those distinctions even when doing so is difficult.[111] In other words, we may not devise a newly conceived test just because it is easier to apply. For all of these reasons, at this time the Commission is not adopting a new primary function test applicable to offshore pipelines and will continue to apply its current test in making jurisdictional determinations on a case-by-case basis.

86. Producer commenters also contend that the Commission should modify the way it considers whether it is in the public interest under NGA section 7(b) to permit a natural gas pipeline to reclassify or abandon certificated facilities or services, regardless of whether they could be considered to be primarily gathering or production.[112] Commenters argue that because a natural gas company receives benefits by obtaining a certificate, the company should not be able to avoid corresponding obligations by removing facilities or services from the Commission's jurisdiction. They assert that the D.C. Circuit erroneously held that section 7(b) does not apply to a pipeline's reclassification of certificated facilities or services to gathering or production.[113]

87. The commenters suggest that when the Commission has permitted such reclassifications or transfers, it has only paid lip service to the public interest standard that must be met before services or facilities may be abandoned under NGA section 7(b). They propose that the Commission carefully consider and require mitigation of any potential for abuse of market power when it reviews a proposed abandonment of certificated facilities or services. Among the factors the Commission should consider are the impact on existing customers, the market power of the company that is acquiring the facilities or services, the commercial considerations underlying the contracts entered into by the interstate pipeline and its customers, and the ongoing useful life of the facility. They urge that, if it is found that an acquiring company will be able to exercise market power or will provide service over facilities transferred or sold by a natural gas company in a spin-down or spin-off, the acquiring company would be engaged in interstate transportation and, therefore, would fall within the Commission's jurisdiction. As noted, some commenters also proposed changing the test to determine whether facilities perform a gathering or production function by introducing economic or historical factors.

88. As some commenters assert, it is true that the U.S. Court of Appeals for the 5th Circuit and the U.S. Court of Appeals for the District of Columbia Circuit hold different views regarding the extent to which the NGA's abandonment authority under section 7(b) should be applied to certificated facilities and services that a natural gas company seeks to reclassify as non-jurisdictional gathering facilities and continue to operate.[114] In any event, those who suggest that the Commission should first determine, based on market power issues and other public interest concerns, whether it is consistent with the public convenience or necessity to permit a pipeline to reclassify or transfer facilities or services before the Commission actually determines their proper function are putting the proverbial cart before the horse.

89. When a jurisdictional natural gas company comes before the Commission to request that the function of certificated facilities it owns and operates be deemed non-jurisdictional gathering or production, the starting point for determining whether the subject facilities are performing primarily a gathering or production function under NGA section 1(b) is to consider the physical characteristics of the subject facilities. While the courts have sanctioned giving some weight to non-physical factors when applying the primary function test, non-physical factors are secondary, and generally only come into play if application of the physical factors results in a close call.[115] The market power, economic, and historical considerations that some commenters advocate are not physical tests, and therefore cannot be given substantial weight.

The Commission orders:

(A) Commission policy concerning the assertion of jurisdiction over the gathering services of natural gas company affiliates is clarified as discussed above.

(B) Docket No. PL05–10–000 is terminated.

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[108] *ExxonMobil*, 297 F.3d at 1085.

[109] ''The Fifth Circuit concluded that FERC had 'reverted to its single factor, bright-line approach that it had previously rejected as unworkable for offshore pipelines,' '' (*ExxonMobil,* 297 F.3d at 1079, *quoting Sea Robin Pipeline Co.*, 127 F.3d at 370 (citations omitted)).

[110] *See ExxonMobil*, 297 F.3d at 1088 (*citing Sea Robin Pipeline Co.*, 127 F.3d at 371).

[111] *See Id.* at 1080 (''Congress did not intend to extend the FERC's jurisdiction to all natural gas pipelines; * * * it demands the drawing of jurisdictional lines, even when the end of gathering is not easily located.'' (*citing Sea Robin Pipeline Co.*, 127 F.3d 365, 371 (5th Cir. 1997))).

[112] *See, e.g., United Gas Pipeline Co.* v. *McCombs*, 442 U.S. 529, 538–539 (1978).

[113] *See ExxonMobil*, 297 F.3d at 1088.

[114] The 5th Circuit held in *Pacific Gas & Electric Co.* v. *FERC*, 106 F.3d 1190 (5th Cir. 1997) that the Commission has discretion under section 7(b) to examine, to some extent, whether it is in the public interest for a natural gas pipeline to abandon facilities that have been classified as gathering. In contrast, the D.C. Circuit in *Williams Gas Processing-Gulf Coast Co., L.P.* v. *FERC*, 331 F.3d 1011 (D.C. Cir. 2003), held that once the Commission determines that a facility is not dedicated to a jurisdictional function, it does not have authority under section 7(b) to determine whether a reclassification or transfer of the facilities is in the public interest.

[115] *See, e.g., Sea Robin Pipeline Co.* v. *FERC*, 127 F.3d 365, 370 (5th Cir. 1997) and *Lomak Petroleum, Inc.* v. *FERC*, 206 F.3d 1193 (D.C. Cir. 2000).

By the commission.

Magalie R. Salas,

Secretary.

[FR Doc. E7–4074 Filed 3–7–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8285–6]

EPA Science Advisory Board (SAB) Staff Office Request for Nominations for Clean Air Scientific Advisory Committee (CASAC) Particular Matter (PM Review Panel)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office is announcing the formation of the Clean Air Scientific Advisory Committee (CASAC) review panel for Particulate Matter (PM). The SAB Staff Office is soliciting public nominations for this Panel.

DATES: New nominations should be submitted by March 29, 2007.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov*. General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. Section 109(d)(1) of the Clean Air Act (CAA) requires that EPA carry out a periodic review and revision, as appropriate, of the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including PM. This **Federal Register** notice solicitation is seeking nominations for additional, subject-matter experts to augment the chartered CASAC. This CASAC Panel will review EPA's technical and policy assessments that form the basis for updating the NAAQS for PM. The CASAC PM Review Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Nominator's Assessment of Expertise. The SAB Staff Office requests nominees for the CASAC PM Review Panel who are nationally-recognized experts in one or more of the following disciplines:

(a) *Atmospheric Science.* Expertise in evaluating the physical/chemical properties of particulate matter including transport of PM on urban to global scales, transformation of primary particles in the atmosphere to secondary particles, and movement of PM between media through deposition and other such mechanisms. Expertise in evaluating natural and anthropogenic sources and emissions of PM and resulting ambient levels, pertinent monitoring or measurement methods for PM, and spatial and temporal trends in PM atmospheric concentrations.

(b) *Human Exposure and Risk Assessment/Modeling.* Expertise in measuring general population exposure to PM and/or in modeling exposure to PM emitted from ambient and indoor sources. Expertise in human health risk analysis modeling for PM related to respiratory, cardiovascular, and other non-cancer health effects as well as cancer. Expertise in characterizing uncertainty in exposure and risk analyses.

(c) *Dosimetry.* Expertise in evaluating the dosimetry of animal and human subjects, including identifying factors associated with differential patterns of inhalation and/or deposition/uptake in various respiratory tract regions that may contribute to differential susceptibility of sensitive subpopulations and animal-to-human dosimetry extrapolations.

(d) *Toxicology.* Expertise in evaluating and interpreting experimental laboratory animal studies, including animal models simulating sensitive subpopulations (*e.g.*, children, older adults, individuals with preexisting respiratory or cardiac disease), and *in vitro* studies of the effects of PM on pulmonary and extrapulmonary (*e.g.*, cardiovascular, immunological) endpoints and cancer.

(e) *Controlled Human Exposure.* Expertise in evaluating and interpreting controlled human exposure studies of the effects of PM on the general population and sensitive subpopulations (*e.g.*, children, older adults, individuals with preexisting respiratory or cardiac disease). Experts would include physicians with experience in the clinical treatment of cardiopulmonary diseases, including asthma, chronic obstructive pulmonary disease (COPD), and diabetes.

(f) *Epidemiology and Biostatistics.* Expertise in evaluating epidemiological evidence of the effects of exposures to ambient PM and other major air pollutants (*e.g.*, ozone, SO_2, NO_2, carbon monoxide) on the general population and sensitive subpopulations (*e.g.*, children, older adults, individuals with preexisting respiratory or cardiac disease). Expertise in evaluating a broad range of health endpoints, including mortality and morbidity effects (*e.g.*, respiratory symptoms, lung function decrements, asthma medication use, physiological changes or biomarkers for cardiac changes, cardiopulmonary-related emergency department visits, cardiopulmonary-related hospital admissions, cancer). Expertise in using biostatistical models to interpret epidemiological evidence.

(g) *Effects on Visibility Impairment.* Expertise in evaluating and interpreting studies of the effects of PM on local visibility impairment as well as regional haze. Expertise would include evaluating visibility trends and conditions in Class I, urban, and non-urban areas, studies of economic value of improving visual air quality, and approaches to assessing public perceptions of visibility impairment and judgments about the acceptability of varying degrees of visibility impairment.

(h) *Ecological Effects.* Expertise in evaluating the effects of exposure to PM on agricultural crops and natural ecosystems and their components, both flora and fauna, ranging from biochemical/sub-cellular effects on organisms to increasingly more complex levels of ecosystem organization. Appropriate expertise disciplines include: Aquatic chemistry; aquatic ecology/biology; limnology; terrestrial ecology; forest ecology; grassland ecology; rangeland ecology; terrestrial/aquatic biogeochemistry; terrestrial/aquatic nutrient cycling; and terrestrial/aquatic wildlife biology and soil chemistry.

(i) *Other Welfare Effects.* Expertise in evaluating the effects of PM on other public welfare effects, including damage to materials, and also the atmospheric interactions of PM as related to global climate conditions.

(j) *Ecosystem Exposure and Risk Assessment/Modeling.* Expertise in deposition modeling across a range of

scales from local watershed to landscape to continental; static and dynamic ecosystem response models; integrated assessment models; identification of bioindicators useful for tracking ecosystem change; and methods and approaches for estimating damage to ecosystems.

(k) *Resource Valuation*. Expertise in ecological resource and other welfare effects valuation and/or economic benefits assessment approaches and models.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals to add expertise to the CASAC PM Review Panel in the areas of expertise described above. Nominations should be submitted in electronic format through the SAB Web site at the following URL: *http://www.epa.gov/sab;* or directly via the *Form for Nominating Individuals to Panels of the EPA Science Advisory Board* link found at URL: *http://www.epa.gov/sab/panels/paneltopics.html*. Please follow the instructions for submitting nominations carefully. To be considered, nominations should include all of the information required on the associated forms. Anyone unable to submit nominations using the electronic form and who has any questions concerning the nomination process may contact Mr. Fred Butterfield, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than March 29, 2007.

For nominees to be considered, please include: Contact information; a curriculum vitae; a biosketch of no more than two paragraphs (containing information on the nominee's current position, educational background, areas of expertise and research activities, service on other advisory committees and professional societies; the candidate's special expertise related to the panel being formed; and sources of recent grant and/or contract support).

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and biosketchs of qualified nominees identified by respondents to the **Federal Register** notice and additional experts identified by the SAB Staff will be posted on the SAB Web site at: *http://www.epa.gov/sab*. Public comments on this ''Short List'' of candidates will be accepted for 21 calendar days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office, a balanced subcommittee or review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In establishing the final CASAC PM Review Panel, the SAB Staff Office will consider public comments on the ''Short List'' of candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Specific criteria to be used for Panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; and (e) skills working in committees, subcommittees and advisory panels; and, for the Panel as a whole, (f) diversity of, and balance among, scientific expertise, viewpoints, *etc*.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf*.

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at: *http://www.epa.gov/sab/pdf/ec02010.pdf*.

Dated: March 2, 2007.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E7–4168 Filed 3–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8284–4]

Notice of a Second Workshop on the Development of Regulations for Aircraft Public Water Systems

AGENCY: Environmental Protection Agency.

ACTION: Notice of a public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is holding a second workshop on the development of regulations for aircraft public water systems. This workshop will provide information about recent activities and an overview of approaches for the proposed Aircraft Drinking Water Rule. This is the second workshop in a series designed to gain perspectives from representatives from industry, government, public interest groups, and the general public.

DATES: The workshop will be held from 9 a.m. to 5 p.m., Eastern time (ET), on Wednesday, March 28, 2007 and from 9 a.m. to 4 p.m. ET, Thursday, March 29, 2007, with one and a half hour lunch breaks each day.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA in Ballroom A. The hotel is located adjacent to the Crystal City Metro Station on the blue and yellow lines.

FOR FURTHER INFORMATION CONTACT: For general information about this workshop or to pre-register, please contact Kathryn Aegis, RESOLVE, 1255 23rd St., NW., Washington, DC 20037, telephone number 202–965–6393, or e-mail at *kaegis@resolv.org*. For technical inquiries regarding the development of an aircraft drinking water rule, contact Rick Naylor at (202) 564–3847, or by e-mail: *naylor.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: There is no charge for attending this workshop as an observer, but seats are limited, so register as soon as possible. We suggest attendees book their hotel room as soon as possible because the workshop is being held during a peak time of the tourist season for Washington, DC.

Special Accommodations

Any person needing special accommodations at this meeting, including wheelchair access, should contact Kathryn Aegis at the phone number or e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for special accommodations should be made at least five business days in advance of the public meeting.

Dated: February 23, 2007.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E7–4174 Filed 3–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8284–3]

Notice of Availability of the Framework for Metals Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of the final ''Framework for Metals Risk Assessment'' (EPA 120/R–07/001, March 2007). The purpose of the Framework is to present key guiding principles based on the unique attributes of metals (as differentiated from organic and organometallic compounds) and to describe how these metals-specific attributes and principles may then be applied in the context of existing EPA risk assessment guidance and practices. This Framework document is not a prescriptive guide on how any particular type of assessment should be conducted within an EPA program or regional office. Rather, it outlines key metal principles and describes how they should be considered in conducting human health and ecological risk assessments to advance our understanding of metals impact and foster consistency across EPA programs and regions. As a result the Framework is a science-based document that describes basic principles that address the special attributes and behaviors of metals and metal compounds to be considered when assessing their human health and ecological risks. EPA's Risk Assessment Forum oversaw the development of this document, which included input from stakeholders and experts throughout the Agency, obtained through several expert workshops, followed by peer review by the EPA Science Advisory Board.

The Framework sets out a variety of principles that are general, fundamental properties of metals, which should be addressed and incorporated into all inorganic metals risk assessments. The five overarching principles are summarized as follows: (1) Metals are naturally occurring constituents in the environment and vary in concentrations across geographic regions; (2) All environmental media have naturally occurring mixtures of metals, and metals are often introduced into the environment as mixtures; (3) Some metals are essential for maintaining proper health of humans, animals, plants and microorganisms; (4) Metals, as chemical elements, and unlike organic chemicals, are neither created nor destroyed by biological or chemical processes, although, these processes can transform metals from one species to another (valence states) and can convert them between inorganic and organic forms; and (5) The absorption, distribution, transformation and excretion of a metal within an organism depends on the metal, the form of the metal or metal compound, and the organism's ability to regulate and/or store the metal.

ADDRESSES: The final document is available electronically through the EPA Office of the Science Advisor's Web site at: *http://www.epa.gov/osa/metalsframework.* A limited number of paper copies will be available from EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone 1–800–490–9198 or 513–489–8190; facsimile 301–604–3408; e-mail *NSCEP@bps-lmit.com.* Please provide your name and mailing addresses and the title and EPA number (as given above) of the requested publication.

FOR FURTHER INFORMATION CONTACT: Dr. Randall S. Wentsel, Risk Assessment Forum Technical Writing Panel Co-chair, Mail Code 8101–R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–3214; fax number: (202) 564–2070, E-mail: *wentsel.randy@epa.gov.*

SUPPLEMENTARY INFORMATION: In December 2002 EPA's Science Policy Council tasked an Agency workgroup, under the oversight of the Risk Assessment Forum, with developing a plan for ensuring the consistent application of scientific principles to metals risk assessment. A step-wise plan was developed beginning with the Metals Action Plan (MAP), which included brief descriptions of the Agency's current activities on metals, identified critical scientific issues, and recommended the scope of the metals framework. The MAP was reviewed by EPA's Science Advisory Board. Then, EPA commissioned individual scientists to develop issue papers on important topics in metals risk assessment, including environmental chemistry, exposure, human health effects, ecological effects, and bioavailability and bioaccumulation. The Framework was developed based, in part, on these issues papers and reviewed by the Agency-wide workgroup. Additional workshops and peer review activities were conducted at multiple intervals during the development of the Framework, and the Agency consulted with other federal agencies at key points during its development. Finally, the Framework underwent external peer review by EPA's Science Advisory Board.

Dated: March 1, 2007.

George M. Gray,

EPA Science Advisor.

[FR Doc. E7–4035 Filed 3–7–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2007–0169; FRL–8285–2]

Jernigan Trucking Dump Site, Seffner, Hillsborough County, FL; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Jernigan Trucking Dump Site located in Seffner, Hillsborough County, Florida.

DATES: The Agency will consider public comments on the settlement until April 9, 2007. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2007–0169 or Site name Jernigan Trucking Dump Superfund Site by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Batchelor.Paula@gov.*
- *Fax:* 404/562–8842/Attn: Paula V. Batchelor
- *Mail:* Ms. Paula V. Batchelor, U.S. EPA Region 4, WMD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection

provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.''

Instructions: Direct your comments to Docket ID No. EPA–R04–SFUND–2007–0169. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. EPA Region 4 Office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: February 21, 2007.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E7–4172 Filed 3–7–07; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Meetings; Sunshine Act

DATE AND TIME: Thursday, March 15, 2007, 1 p.m., Eastern Time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: *Open Session:*

1. Announcement of Notation Votes, and
2. FY 2007 Budget Allocations for the State and Local Program.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

Dated: March 6, 2007.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 07–1108 Filed 3–6–07; 1:27 pm]

BILLING CODE 6570–06–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register.** Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011839–005.

Title: Med-Gulf Space Charter Agreement.

Parties: Hapag-Lloyd AG and Compania Sud Americana de Vapores S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment expands the geographic scope of the agreement to cover all of Florida rather than just Miami.

Agreement No.: 011971–001.

Title: USL/ANL Space Charter and Sailing Agreement.

Parties: U.S. Lines Limited and ANL Singapore Pte Ltd.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 555 West Fifth Street; 46th floor; Los Angeles, CA 90013.

Synopsis: The amendment permits ANL to provide a vessel to the service, and permits U.S. Lines to charter slots on that vessel.

Agreement No.: 011989.

Title: CMA CGM/MARUBA New Brasex Cross Space Charter, Sailing, and Cooperative Working Agreement.

Parties: CMA CGM S.A. and MARUBA S.A.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway; Suite 3000; New York, NY 10006–2802.

Synopsis: The agreement authorizes CMA CGM and MARUBA to charter vessel space to each other between the U.S. East Coast and ports throughout South America and the Caribbean.

By Order of the Federal Maritime Commission.

Dated: March 2, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–4101 Filed 3–7–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passenger for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for

Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 App. U.S.C. 817 (e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Ambassadors International, Inc., Ambassadors Cruise Group, LLC d/b/a Majestic America Line, DQSC Operations, LLC d/b/a Delta Queen Steamboat Company, American West Steamboat Company LLC d/b/a American West Steamboat Company, DQ Boat, LLC and AQ Boat, LLC, MQ Boat, LLC, EN Boat LLC, QW Boat LLC, 1071 Camelback Street, Newport Beach, CA 92660.

Vessels: AMERICAN QUEEN, DELTA QUEEN, MISSISSIPPI QUEEN, EMPRESS OF THE NORTH, QUEEN OF THE WEST, COLUMBIA QUEEN.

Fred Olsen Cruise Lines Ltd., Fred. Olsen House, White House Road, Ipswich, Suff IP1 5LL, United Kingdom.

Vessel: BALMORAL.

MSC Corciere S.P.A. d/b/a MSC Cruises, Piazza Garibaldi 91, Naples, 80142 Italy.

Vessel: MUSICA, OPERA, LIRICA.

Dated: March 2, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–4085 Filed 3–7–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurrred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 App. U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Ambassadors International, Inc.; Ambassadors Cruise Group, LLC d/b/a Majestic America Line, DQSC Operations, LLC d/b/a Delta Queen Steamboat Company; American West Steamboat Company LLC d/b/a American West Steamboat Company; DQ Boat, LLC; AQ Boat, LLC; MQ Boat, LLC; EN Boat LLC; and QW Boat Company LLC, 1071 Camelback Street, Newport Beach, CA 92660.

Vessels: AMERICAN QUEEN, DELTA QUEEN, MISSISSIPPI QUEEN, EMPRESS OF THE NORTH, QUEEN OF THE WEST, COLUMBIA QUEEN.

Carnival Corporation (d/b/a Carnival Cruise Lines), MSRM 820N, 3655 NW 87 Avenue, Miami, FL 33178.

Vessel: CARNIVAL FREEDOM.

C.I.C. Classic International Cruises S.A. and Arcalia Shipping Co. Ltd., 5–Piso, Avenida 24 De Julho 126, Lisboa Portugal 1530–346.

Vessel: ATHENA.

Corporation Ferries Del Caribe, Inc. d/b/a Ferries Del Caribe Calle Concordia #249, 2nd Floor, Mayaguez, Puerto Rico 00680 6448.

Vessel: CARIBBEAN EXPRESS.

MSC Crociere S. P. A. d/b/a MSC Cruises, Burnous Investment Corporation Panama, and Cruises International S.A., 250 Moonachie Road, Moonachie, NJ 07074.

Vessel: LIRICA.

MSC Crociere S.A. d/b/a MSC Cruises, Lycoper Holdings Inc. Panama, and Cruises International S.A., 250 Moonachie Road, Moonachie, NJ 07074.

Vessel: OPERA.

NCL (Bahamas) Ltd. d/b/a NCL, 7665 Corporate Center Drive, Miami, FL 33126.

Vessel: NORWEGIAN PEARL.

Regatta Acquisition, LLC., Oceania Cruises, Inc. And V.Ships Leisure S.A.M., 8300 NW 33rd Street, Miami, FL 33122.

Vessel: REGATTA.

Regent Seven Sea Cruises, Inc. and Celtic Pacific (UK) Two Limited, 1000 Corporate Drive, Suite 500, Fort Lauderdale, FL 33334.

Vessel: SEVEN SEAS NAVIGATOR.

Dated: March 2, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–4105 Filed 3–7–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409), and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
011335N	Aeronet, Inc., 42 Corporate Park, Suite 150, Irvine, CA 92606	December 28, 2006.
015247NF	Amerindias, Inc., 5220 NW. 72nd Avenue, Bay 3, Miami, FL 33166	November 10, 2006.
013692F	Gallagher Transport International, Inc., P.O. Box 39005, Denver, CO 80239	May 30, 2003.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E7–4106 Filed 3–7–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 018793F.

Name: Berr International, Inc.

Address: 8344 NW 30th Terrace, Miami, FL 33122.

Date Revoked: February 17, 2007.

Reason: Failed to maintain a valid bond.

License Number: 003147NF.

Name: Eagle Shipping & Trading Corporation.

Address: 1380 Flatbush Ave., Brooklyn, NY 11210.

Date Revoked: February 17, 2007.

Reason: Failed to maintain valid bonds.

License Number: 002880NF.

Name: Four Stars Forwarding.

Address: Box 26046, San Diego, CA 92196.

Date Revoked: February 15, 2007.

Reason: Surrendered license voluntarily.

License Number: 003973F.

Name: Freight Service Network Inc.

Address: 831–A Foster Ave., Bensenville, IL 60106.

Date Revoked: February 18, 2007.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E7–4094 Filed 3–7–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary Licenses; Correction

In the OTI Applicant Notice published in the **Federal Register** on December 28, 2006 (71 FR 78206) reference to the name of the Cane Freight, Inc. is corrected to read:

''Carie Freight, Inc.''

Dated: March 2, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–4107 Filed 3–7–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

Landmark Freight, Inc., 11404 Gettysburg Drive, Suite #19, Norwalk, CA 90650. *Officer:* Shin Kim, CEO, (Qualifying Individual).

Marichal Net Shipping LLC, 7491 NW., 72 Ave., Medley, FL 33166. *Officer:* Juan Marichal, Manager, (Qualifying Individual).

HI Trading International Corp., dba HI Transport International, 7770 Garvey Ave., Rosemead, CA 91770. *Officers:* Haipei Liu, Vice President, (Qualifying Individual), Jacky Li, Secretary.

PNBRCI Holding Company, Ltd dba PNB Cargo Services, 3345 Wilshire Blvd., Suite #230, Los Angeles, CA 90010. *Officers:* Reynaldo E. Yoro, Asst. Vice President, (Qualifying Individual), Rommel R. Garcia, Director.

Oceanwind International, Inc. dba OWI dba The Broadwell Group, 27905 Pontevedra Drive, Rancho Palos Verdes, CA 90275. *Officers:* Daniel Benoit, President, (Qualifying Individual), Tami Ballentine-Benoit, Director.

Warehouse Logistics, Inc., 16037 E. Foothill Blvd., Irwindale, CA 91702–2813. *Officers:* Barry Wing Cheung Hung, Secretary, (Qualifying Individual), Eric (Wai Man) Tang, Director.

SS-World Enterprise Inc. dba Smooth Shipping, 305 NW., 24th Street, Grand Prairie, TX 75050. *Officers:* Syed S. Rabi-UL-Hassan, Vice President, (Qualifying Individual), Mohammad Shakil, President.

Trans Atlantic Freight Company, LLC, 221 Park Avenue, East Hartford, CT 06108. *Officers:* Daniel J. Carstens, Dir. of Shipping, (Qualifying Individual), Guillermo Herrera, Member President.

Grand Power Express International (USA) Corp., 901 West Hillcrest Street, Inglewood, CA 90301. *Officers:* Ju-Ching, Sung, President, (Qualifying Individual), Jing Robert Sung, Secretary.

Alto Container Line, Inc., 2867 Surveyor Street, Pomona, CA 91768. *Officers:* Jack Huang, President, (Qualifying Individual), Al Garcia CFO.

FCL Carrier.com (U.S.) LLC, 2147 South Columbus Boulevard, Philadelphia, PA 19148. *Officers:* Richard P. Moore, Vice President, (Qualifying Individual), Antonius Plompen, CEO.

ASW America LLC, 730 Del Ord Drive, Safety Harbor, FL 34695. *Officer:* Carlos F. Diaz, Member/Manager, (Qualifying Individual).

B2B Logistics Group, Inc. dba B2Bcarriers, 383 Van Ness Ave., Suite 1604, Torrance, CA 90501. *Officers:* Christine S. Kim, Secretary, (Qualifying Individual), James Yung Choh, President.

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Inter Custom Logistics LLC dba Inter Custom Logistics, 8133 NW., 69th Street, Miami, FL 33166. *Officers:* Gladys Pardo, President, (Qualifying Individual), Robert A. Roubitchek, Director.

Solusco Worldwide, Inc. dba SGL Worldwide Inc., 1221 Landmeier Road, Elk Grove Village, IL 60007. *Officers:* Kyoon Hyon, Vice President, (Qualifying Individual), Simon I. Kim, President.

Pride Global Logistics LL,C 1221 Landmeier Road, Suite 209, Elk Grove Village, IL 60007. *Officer:* David Michael Shake, President, (Qualifying Individual).

Polaris Logistics Corp., 21 Langerfeld Road, Hillsdale, NJ 07642. *Officers:* Moon H. You, President, (Qualifying Individual), Han J. Song, Treasurer.

Dynamic Worldwide Logistics, Inc., 125 Pennsylvania Avenue, South Kearny, NJ 07032. *Officers:* Martin J. Kelly, III, Vice President, (Qualifying Individual), Thomas C. Gambino, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

J & L Export, 101 Ashford Circle, Summerville, SC 29485. Joeanne W. Leake, Sole Proprietor.

Hart Worldwide Logistics, Inc., 2360 NW., 66th Avenue—Cargo Bldg. 701, Suite 207, Miami, FL 33122. *Officers:* Laurence E. Hart, Jr., President, (Qualifying Individual), Evelyn Schwab, Vice President.

UpakWeShip, Inc., 10610 Iron Bridge Road, Unit 6, Jessup, MD 20794. *Officers:* Alison Elizabeth Kane, President, (Qualifying Individual), Mark Nash, Vice President.

GABI Investments & Management Corporation, dba Universal Cargo Services, 1240 E. Vine Avenue, West Covina, CA 91790. *Officers:* Carlito Magnaye Gabi, President, (Qualifying Individual), Richard Gabi, Vice President.

ASBCO Container Services Inc., 12900 Hall Road, Suite 455, Sterling Heights, MI 48313. *Officer:* Donald Finnerty, CEO, (Qualifying Individual).

Dated: March 2, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–4102 Filed 3–7–07; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. OCC–2007–0005]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1278]

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 2007–09]

NATIONAL CREDIT UNION ADMINISTRATION

Proposed Statement on Subprime Mortgage Lending

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); and National Credit Union Administration (NCUA).

ACTION: Notice with request for comment.

SUMMARY: The OCC, Board, FDIC, OTS, and NCUA (the Agencies) request comment on this proposed Statement on Subprime Mortgage Lending. The proposed statement addresses emerging issues and questions relating to certain subprime mortgage lending practices, and it discusses risk management and consumer compliance processes, policies, and procedures that institutions should implement to respond to these concerns.

DATES: Comments must be submitted on or before May 7, 2007.

ADDRESSES: The Agencies will jointly review all of the comments submitted. Therefore, interested parties may send comments to any of the Agencies and need not send comments (or copies) to all of the Agencies. Please consider submitting your comments by e-mail or fax, since paper mail in the Washington area and at the Agencies is subject to delay. Interested parties are invited to submit comments to:

OCC: You should include ''OCC'' and Docket Number OCC–2007–0005 in your comment. You may submit your comment by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OCC Web Site: http://www.occ.treas.gov.* Click on ''Contact the OCC,'' scroll down and click on ''Comments on Proposed Regulations.''
- *E-Mail Address: regs.comments@occ.treas.gov.*
- *Fax:* (202) 874–4448.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: In general, the OCC will enter all comments received into the docket without change, including any business or personal information that you provide.

You may review comments and other related materials by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- *Viewing Comments Electronically:* You may request that we send you an electronic copy of comments via e-mail or mail you a CD–ROM containing electronic copies by contacting the OCC at *regs.comments@occ.treas.gov.*
- *Docket Information:* You may also request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. OP–1278, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number (OP–1278) in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments also may be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

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

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include ''Statement on Subprime Mortgage Lending'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

OTS: You may submit comments, identified by docket number 2007–09, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail address: regs.comments@ots.treas.gov.* Please include docket number 2007–09 in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2007–XX.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days. Address envelope as

follows: Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2007–09.

Instructions: All submissions received must include the agency name and docket number for this proposed Statement. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the OTS's Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on '' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT:

OCC: Michael S. Bylsma, Director, Community and Consumer Law Division, (202) 874–5750 or Stephen Jackson, Director, Retail Credit Risk, (202) 874–5170.

Board: Division of Banking Supervision and Regulation: Brian Valenti, Supervisory Financial Analyst, (202) 452–3575, Virginia Gibbs, Senior Supervisory Financial Analyst, (202) 452–2521, or Sabeth Siddique, Assistant Director, (202) 452–3861; Division of Consumer and Community Affairs: Kathleen Ryan, Counsel, (202) 452–3667, or Jamie Goodson, Attorney, (202) 452–3667; or Legal Division: Stephanie Martin, Associate General Counsel, (202) 452–3198. Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TTD) only, call (202) 263–4869.

FDIC: Suzy S. Gardner, Examination Specialist, (202) 898–3640, Division of Supervision and Consumer Protection; Richard Foley, Counsel, (202) 898–3784, Legal Division; or April Breslaw, Acting Associate Director, Compliance Policy & Exam Support Branch, (202) 898–6609, Division of Supervision and Consumer Protection.

OTS: Tammy Stacy, Director of Consumer Regulation, Compliance and Consumer Protection Division, (202) 906–6437; Glenn Gimble, Senior Project Manager, Compliance and Consumer Protection Division, (202) 906–7158, William Magrini, Senior Project Manager, Credit Risk, (202) 906–5744; or Teresa Luther, Economist, Credit Risk, (202) 906–6798.

NCUA: Cory Phariss, Program Officer, Examination and Insurance, (703) 518–6618.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed Statement on Subprime Mortgage Lending (Statement) discusses criteria and factors, including payment shock, that an institution should assess in determining a borrower's ability to repay a subprime loan. The Statement also discusses consumer protection issues and practices, including reminders about some of the existing statutes, regulations, and guidance intended to protect consumers from unfair, deceptive, and other predatory practices. Finally, the Statement discusses the need for policies, procedures, and systems to assure that institutions' subprime mortgage lending is conducted in a safe and sound manner. The Statement is contained in Section II, below. The Agencies [1] request comment on all aspects of the Statement, including, but not limited to, the specific questions that appear in Section III.

[1] The Agencies consist of the Board of Governors of the Federal Reserve System (the Board), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS), collectively the Agencies.

II. Proposed Statement on Subprime Mortgage Lending

The Agencies developed this Statement to address emerging issues and questions relating to certain subprime [2] mortgage lending practices. The Agencies are concerned that subprime borrowers may not fully understand the risks and consequences of obtaining certain adjustable-rate mortgage (ARM) products. In particular, the Agencies are concerned with ARM products marketed to subprime borrowers with the following characteristics:

- Offering low initial payments based on a fixed introductory or ''teaser'' rate that expires after a short initial period then adjusts to a variable index rate plus a margin for the remaining term of the loan; [3]
- Approving borrowers without considering appropriate documentation of their income;
- Setting very high or no limits on how much the payment amount or the interest rate may increase (''payment or rate caps'') at reset periods, potentially causing a substantial increase in the monthly payment amount ''payment shock''; [4]
- Containing product features likely to result in frequent refinancing to maintain an affordable monthly payment;
- Including substantial prepayment penalties and/or prepayment penalties that extend beyond the initial interest rate adjustment period; and/or
- Providing borrowers with inadequate information relative to product features, material loan terms and product risks, prepayment penalties, and the borrower's obligations for property taxes and insurance.

The consequences to subprime borrowers could include: Being unable to afford the monthly payments after the initial rate adjustment because of payment shock; experiencing difficulty in paying real estate taxes and

[2] The term ''subprime'' is defined in the 2001 Expanded Guidance for Subprime Lending Programs. Federally insured credit unions should refer to LCU 04–CU–13—Specialized Lending Activities.

[3] For example, ARMs known as ''2/28'' loans feature a fixed rate for two years and then adjust to a variable rate for the remaining 28 years. The spread between the initial fixed rate of interest and the fully indexed interest rate in effect at loan origination typically ranges from 300 to 600 basis points.

[4] Payment shock refers to a significant increase in the amount of the monthly payment that occurs when the interest rate adjusts to a fully indexed basis. Products with a wide spread between the initial interest rate and the fully indexed interest rate that do not have payment caps or periodic interest rate caps, or that contain very high caps can produce significant payment shock.

homeowners insurance that were not escrowed; incurring expensive refinancing fees frequently due to closing costs and prepayment penalties, especially if the prepayment penalty period extends beyond the rate adjustment date; and losing their home. The Agencies also are concerned about the elevated credit risk that is inherent in these products.

The Agencies note that many of these concerns are addressed in existing interagency guidance. The most prominent are the 1993 Interagency Guidelines for Real Estate Lending (Real Estate Guidelines), the 1999 Interagency Guidance on Subprime Lending (Subprime Lending Guidance), and the 2001 Expanded Guidance for Subprime Lending Programs (Expanded Subprime Guidance).[5]

While the 2006 Interagency Guidance on Nontraditional Mortgage Product Risks (NTM Guidance) may not explicitly pertain to products with the characteristics addressed in this Statement, it outlines prudent underwriting and consumer protection principles that institutions should also consider with regard to subprime mortgage lending. This Statement reiterates many of the principles addressed in existing guidance relative to prudent risk management practices and consumer protection laws.[6]

Risk Management Practices

Predatory Lending Considerations

Institutions marketing subprime mortgage loans should ensure that they do not engage in the type of predatory lending practices discussed in the Expanded Subprime Guidance. Typically, predatory lending involves at least one, and perhaps all three, of the following elements:

- Making mortgage loans based predominantly on the foreclosure or liquidation value of a borrower's collateral rather than on the borrower's ability to repay the mortgage according to its terms;
- Inducing a borrower to repeatedly refinance a loan in order to charge high points and fees each time the loan is refinanced (''loan flipping''); or
- Engaging in fraud or deception to conceal the true nature of the mortgage loan obligation, or ancillary products, from an unsuspecting or unsophisticated borrower.

Institutions marketing mortgage loans such as these carry an elevated risk that their conduct will violate Section 5 of the Federal Trade Commission Act (FTC Act), which prohibits unfair or deceptive acts or practices.[7]

Underwriting Standards

Institutions should refer to the Real Estate Guidelines, which provide underwriting standards for all real estate loans.[8] The Real Estate Guidelines state that prudently underwritten real estate loans should reflect all relevant credit factors, including the capacity of the borrower to adequately service the debt.[9] The 2006 NTM Guidance details similar criteria for qualifying borrowers for products that may result in payment shock.

Prudent qualifying standards recognize the potential effect of payment shock in evaluating a borrower's ability to service debt. An institution's analysis of a borrower's repayment capacity should include an evaluation of the borrower's ability to repay the debt by its final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule. One widely accepted approach in the mortgage industry is to quantify a borrower's repayment capacity by a debt-to-income (DTI) ratio. An institution's DTI analysis should assess a borrower's total monthly housing-related payments (e.g., principal, interest, taxes, and insurance, or ''PITI'') as a percentage of gross monthly income.

This assessment is particularly important if the institution relies upon reduced documentation or allows other forms of risk layering. Risk-layering features in a subprime mortgage loan may significantly increase the risks to both the institution and the borrower. Therefore, an institution should have clear policies governing the use of risk-layered features, such as reduced documentation loans or simultaneous-second lien mortgages. When risk-layering features are combined with a mortgage loan, an institution should demonstrate the existence of effective mitigating factors that support the underwriting decision and the borrower's repayment capacity.

The higher a loan's risk, either from loan features or borrower characteristics, the more important it is to verify the borrower's income, assets, and liabilities. When underwriting higher risk loans, stated income and reduced documentation should be accepted only if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. For many borrowers, institutions should be able to readily document income using recent W–2 statements, pay stubs or tax returns. A higher interest rate is not considered an acceptable mitigating factor.

Consumer Protection Principles

Fundamental consumer protection principles relevant to the underwriting and marketing of mortgage loans include:

- Approving loans based on the borrower's ability to repay the loan according to its terms, and
- Providing information that enables consumers to understand material terms, costs, and risks of loan products at a time that will help the consumer select products and choose among payment options.

When applying these principles to ARMs marketed to subprime borrowers described in this document, communications with consumers, including advertisements, oral statements, and promotional materials should provide clear and balanced information about the relative benefits and risks of the products. This information should be provided in a timely manner to assist consumers in the product selection process, not just upon submission of an application or at consummation of the loan. Institutions should not use such communications to steer consumers to these products to the exclusion of other products offered by the institution for which the consumer may qualify.

Information provided to consumers should clearly explain the risk of

[5] Federally insured credit unions should refer to LCU 04–CU–13—Specialized Lending Activities. National banks should also refer to 12 CFR 34.3(b) and (c), as well as 12 CFR part 30, Appendix C.

[6] As with the Interagency Guidance on Nontraditional Mortgage Product Risks, 71 FR 58609 (October 4, 2006), this Statement applies to all banks and their subsidiaries, bank holding companies and their nonbank subsidiaries, savings associations and their subsidiaries, savings and loan holding companies and their subsidiaries, and credit unions.

[7] The OCC, the Board, the OTS, and the FDIC enforce this provision under section 8 of the FDI Act. The OCC, Board, and FDIC also have issued supervisory guidance to the institutions under their respective jurisdictions concerning unfair or deceptive acts or practices. See OCC Advisory Letter 2002–3—Guidance on Unfair or Deceptive Acts or Practices, March 22, 2002 and 12 CFR part 30, Appendix C; Joint Board and FDIC Guidance on Unfair or Deceptive Acts or Practices by State-Chartered Banks, March 11, 2004. OTS has also issued a regulation that prohibits savings associations from using advertisements or other representations that are inaccurate or misrepresent the services or contracts offered (12 CFR 563.27). The NCUA prohibits federally insured credit unions from using any advertising or promotional material that is inaccurate, misleading, or deceptive in any way concerning its products, services, or financial condition (12 CFR 740.2).

[8] Refer to 12 CFR part 34, subpart D (OCC); 12 CFR 208, subpart C (Board); 12 CFR part 365 (FDIC); 12 CFR 560.100 and 12 CFR 560.101 (OTS); 12 CFR 701.21 (NCUA).

[9] OTS Examination Handbook Section 212, 1–4 Family Residential Mortgage Lending, also discusses borrower qualification standards. Federally Insured Credit Unions should refer to LCU 04–CU–13—Specialized Lending Activities.

payment shock[10] and the ramifications of prepayment penalties, balloon payments, and the lack of escrow for taxes and insurance, as applicable. The Agencies strongly encourage institutions that impose prepayment penalties to structure them in such a way that they do not extend beyond the initial reset period and, further, provide borrowers a sufficient window of time immediately prior to the reset date to refinance without penalty.

Similarly, if borrowers do not understand that their monthly mortgage payments do not include taxes and insurance, and they have not budgeted for these essential homeownership expenses, they may be faced with the need for significant additional funds on short notice.[11] Therefore, mortgage product descriptions and advertisements should provide clear, detailed information about all of the costs, terms, features, and risks of the loan to the borrower. Consumers should be informed of:

- *Payment Shock.* Potential payment increases, including how the new payment will be calculated when the introductory fixed rate expires.
- *Prepayment Penalties.* The existence of any prepayment penalty, how it will be calculated, and when it may be imposed.[12]
- *Balloon Payments.* The existence of any balloon payment.
- *Cost of Reduced Documentation Loans.* Whether there is a pricing premium attached to a reduced documentation or stated income program.
- *Responsibility for Taxes and Insurance.* The requirement to make payments for real estate taxes and insurance in addition to their loan payments, if not escrowed, and the fact that taxes and insurance costs can be substantial.

Control Systems

Institutions should develop strong control systems to monitor whether actual practices are consistent with their policies and procedures. Systems should address compliance and consumer information concerns, as well as safety and soundness, and encompass both institution personnel and applicable third parties, such as mortgage brokers or correspondents.

Important controls include establishing appropriate criteria for hiring and training loan personnel, entering into and maintaining relationships with third parties, and conducting initial and ongoing due diligence with third parties. Institutions also should design compensation programs that avoid providing incentives for originations inconsistent with sound underwriting and consumer protection principles, and that do not steer consumers to these products to the exclusion of other products for which the consumer may qualify.

Institutions should have procedures and systems in place to monitor compliance with appropriate laws and regulations, applicable third-party agreements and internal policies. An institution's controls also should include appropriate corrective actions in the event of failure to comply with applicable laws, regulations, third-party agreements or internal policies. In addition, institutions should initiate procedures to review consumer complaints to identify potential compliance problems or other negative trends.

Supervisory Review

The Agencies will carefully scrutinize risk management and consumer compliance processes, policies, and procedures at regularly scheduled examinations. Institutions that do not adequately manage these functions will be asked to take remedial action. The Agencies will take action against institutions that fail to implement or adhere to safe and sound standards, exhibit predatory lending practices, or violate consumer protection laws, such as the Federal Trade Commission Act's prohibition against unfair or deceptive practices or the fair lending laws.

III. Request for Comment

The Agencies recognize that the structural evolution of subprime mortgage lending in recent years has introduced some products that are intended at their outset to be temporary credit accommodations in anticipation of early sale or refinancing, rather than longer-term amortizing accounts. Such loans typically involve terms that exceed the borrower's ability to service the debt without refinancing or selling the property. The motivations for these arrangements vary. They may include financing in anticipation of the borrower's intended temporary residency, expected future earnings growth, or need for a period of ''credit repair.'' Because of this fundamental shift in the purpose and actual repayment expectations of such loan programs, the Agencies are particularly interested in public comment on the following specific questions:

1. The proposed qualification standards are likely to result in fewer borrowers qualifying for the type of subprime loans addressed in this Statement, with no guarantee that such borrowers will qualify for alternative loans in the same amount. Do such loans always present inappropriate risks to lenders or borrowers that should be discouraged, or alternatively, when and under what circumstances are they appropriate?

2. Will the proposed Statement unduly restrict the ability of existing subprime borrowers to refinance their loans and avoid payment shock? The Agencies also are specifically interested in the availability of mortgage products that would not present the risk of payment shock.

3. Should the principles of this proposed Statement be applied beyond the subprime ARM market?

4. We seek comment on the practice of institutions that limit prepayment penalties to the initial fixed rate period. Additionally, we seek comment on how this practice, if adopted, would assist consumers and impact institutions, by providing borrowers with a timely opportunity to determine appropriate actions relating to their mortgages. We also seek comment on whether an institution's limiting of the expiration of prepayment penalties such that they occur within the final 90 days of the fixed rate period is a practice that would help meet borrower needs.

In addition to the foregoing questions, the Agencies request comment on all other aspects of the proposed Statement.

Dated: February 28, 2007.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, March 2, 2007.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, the 28th day of February, 2007.

By order of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: February 28, 2007.

[10] To illustrate: A borrower earning $36,000 per year obtains a $200,000 ''2/28'' mortgage loan. The loan has a two-year introductory fixed interest rate of 7%, resulting in an initial payment of $1,331 and a 44% debt-to-income (DTI) ratio, based on principal and interest only; and would be higher after the inclusion of taxes and insurance. The spread is 6% over the six-month London Interbank Offered Rate (LIBOR), which is 5.5% at the time of loan origination. The fully indexed interest rate at origination of 11.5% (6% + 5.5%) would cause the borrower's monthly payment to increase to $1,956 (or 47%), a 65% DTI ratio, based on principal and interest only.

[11] Institutions generally can address these concerns most directly by requiring borrowers to escrow funds for real estate taxes and insurance.

[12] Federal credit unions are prohibited from charging prepayment penalties. 12 CFR 701.21.

By the Office of Thrift Supervision.

John M. Reich,

Director.

By the National Credit Union Administration on February 28, 2007.

JoAnn M. Johnson,

Chairman.

[FR Doc. 07–1083 Filed 3–7–07; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P; 7535–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Retraction of a Modified System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of Retraction of a Modified System of Records.

SUMMARY: The Centers for Medicare & Medicaid Services CMS inadvertently published a modification to its existing system of records titled ''Medicare Drug Data Processing System (DDPS)'' System No. 09–70–0553 in the **Federal Register** on Thursday, February 22, 2007 (72 FR 7993). CMS is withdrawing the February 22, 2007 modification to the DDPS system of records pending the conclusion of rulemaking that will support the routine uses of data contained in the system of records. The existing notice established at 70 FR 58436 (October 6, 2005) will remain the effective notice for the DDPS system of records.

FOR FURTHER INFORMATION CONTACT: Inquiries may be directed to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. He can also be reached at 410–786–5357 or by e-mail at *walter.stone@cms.hhs.gov.*

Dated: February 28, 2007.

William Saunders,

Acting Deputy Director, Office of Information Services, Centers for Medicare & Medicaid Services.

[FR Doc. E7–4133 Filed 3–7–07; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a Modified System of Records

AGENCY: Department of Health and Human Services (HHS), Center for Medicare & Medicaid Services (CMS).

ACTION: Notice of a Modified System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify an existing system titled, ''Medicare Learning Network (MLN) Registration and Product Ordering System (REPOS),'' No. 09–70–0542, most recently modified at 68 FR 35897 (June 17, 2003). We propose to modify existing routine use number 1 that permits disclosure to agency contractors and consultants to include disclosure to CMS grantees who perform a task for the agency. CMS grantees, charged with completing projects or activities that require CMS data to carry out that activity, are classified separate from CMS contractors and/or consultants. The modified routine use will remain as routine use number 1. We will delete routine use number 2 authorizing disclosure to support constituent requests made to a congressional representative. If an authorization for the disclosure has been obtained from the data subject, then no routine use is needed. The Privacy Act allows for disclosures with the ''prior written consent'' of the data subject.

Finally, we will delete the section titled ''Additional Circumstances Affecting Routine Use Disclosures,'' that addresses ''Protected Health Information (PHI)'' and ''small cell size.'' The requirement for compliance with HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' does not apply because this system does not collect or maintain PHI. In addition, our policy to prohibit release if there is a possibility that an individual can be identified through ''small cell size'' is not applicable to the data maintained in this system.

We are modifying the language in the routine uses to provide a proper explanation as to the need for the routine use and to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization or because of the impact of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) provisions and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the system of records is to collect and maintain information on health care providers, and other individuals ordering provider educational materials who voluntarily register for computer/web-based training courses, satellite broadcasts and train-the-trainer sessions. Information in this system will also be used to: (1) support regulatory and policy functions performed within the Agency or by a contractor, consultant, or grantee; and (2) to support litigation involving the Agency related to this system. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

DATES: *Effective Date:* CMS filed a modified SOR report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on February 7, 2007. To ensure that all parties have adequate time in which to comment, the modified system will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and the Congress, whichever is later. We may defer implementation of this system or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., Eastern Time zone.

FOR FURTHER INFORMATION CONTACT: Mary Case, Technical Advisor, Division

of Provider Information Planning and Development (DPIPD), Providers Communications Group, Center for Medicare Management, CMS, Mail Stop C4–13–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. She can be reached by telephone at 410–786–0021 or e-mail *mary.case@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System of Records

A. Statutory and Regulatory Basis for SOR

Authority for this collection is given under the provisions of Title IV of the Benefits Improvement Protection Act of 2000 (Public Law (Pub. L.) 106–554, Appendix F), Title IV of the Balanced Budget Act of 1997 (Pub. L. 105–33), and §§ 1816(a) and 1842(a)(3) of the Social Security Act.

B. Collection and Maintenance of Data in the System

This system will collect and maintain individually identifiable information and other data collected on health care providers, and other individuals ordering provider educational materials who voluntarily register for computer/Web-based training courses, satellite broadcasts and train-the-trainer sessions. Information collected will include, but is not limited to, the health care provider's first and last name, mailing address, provider type, facility type, telephone number, fax number and e-mail address. If CMS becomes an accredited provider of continuing education credits, this system may also contain social security number, provider identification number (UPIN/NPI), or tax identification number.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The Government will only release REPOS information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use. We will only collect the minimum personal data necessary to achieve the purpose of REPOS.

CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; e.g., to collect and maintain information on health care providers, and other individuals ordering provider educational materials who voluntarily register for computer/Web-based training courses, satellite broadcasts and train-the-trainer sessions.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy, at the earliest time, all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Modified Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To Agency contractors, consultants, or CMS grantees who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS. We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS functions relating to purposes for this system.

CMS occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. CMS must be able to give a contractor, consultants, or grantees whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultants, or grantees from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information at the completion of the contract.

2. To the Department of Justice (DOJ), court or adjudicatory body when

a. The Agency or any component thereof; or

b. Any employee of the Agency in his or her official capacity; or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. The United States Government;

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to

protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Modified System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: February 7, 2007.

Charlene Frizzera,

Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0542

SYSTEM NAME:

''Medicare Learning Network (MLN) Registration and Product Ordering System (REPOS),'' HHS/CMS/CMM.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

The Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various contractor locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will collect and maintain individually identifiable information and other data collected on health care providers, and other individuals ordering provider educational materials who voluntarily register for computer/Web-based training courses, satellite broadcasts and train-the-trainer sessions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information collected will include, but is not limited to, the health care provider's first and last name, mailing address, provider type, facility type, telephone number, fax number and e-mail address. If CMS becomes an accredited provider of continuing education credits, this system may also contain social security number, provider identification number (UPIN/NPI), or tax identification number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this collection is given under the provisions of Title IV of the Benefits Improvement Protection Act of 2000 (Public Law (Pub. L.) 106–554, Appendix F), Title IV of the Balanced Budget Act of 1997 (Pub. L. 105–33), and §§ 1816(a) and 1842(a)(3) of the Social Security Act.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system of records is to collect and maintain information on health care providers, and other individuals ordering provider educational materials who voluntarily register for computer/web-based training courses, satellite broadcasts and train-the-trainer sessions. Information in this system will also be used to: (1) support regulatory and policy functions performed within the Agency or by a contractor, consultant, or grantee; and (2) to support litigation involving the Agency related to this system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants, or grantees who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

2. To the Department of Justice (DOJ), court or adjudicatory body when

a. The Agency or any component thereof; or

b. Any employee of the Agency in his or her official capacity; or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on electronic media.

RETRIEVABILITY:

The collected data are retrieved by an individual identifier; e.g., provider name or unique provider identification number.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not

to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain information for a total period not to exceed 8 years.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Provider Information Planning and Development, Providers Communications Group, Center for Medicare Management, CMS, Mail Stop C4–10–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, employee identification number, tax identification number, national provider number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), HICN, and/or SSN (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORDS SOURCE CATEGORIES:

The data collected and maintained in this is voluntary submitted and/or is self reported by the health care provider.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E7–4177 Filed 3–7–07; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the collection of information, which is necessary for assessment and improvement of the delivery of disaster assistance. The form serves as a survey tool used to evaluate customer perceptions of effectiveness, timeliness and satisfaction with FEMA Housing Inspection Services.

SUPPLEMENTARY INFORMATION: This collection is in accordance with Executive Order 12862 (September 11, 1993), that requires all Federal agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. In addition, the Government Performance and Results Act (GPRA) requires agencies to set missions and goals and measure performance against them. FEMA will fulfill these requirements, in part, by collecting customer service information through a survey of the FEMA Recovery Division's external customers.

Collection of Information

Title: Federal Emergency Management Agency Housing Inspection Services Customer Satisfaction Survey.

Type of Information Collection: New.

OMB Number: 1660–NW31.

Form Numbers: FEMA Form 86–26 (MW), SEP 04.

Abstract: FEMA Housing Inspection Services contracts inspectors to assess dwelling damage and verify personal information of applicants for FEMA disaster assistance in federally declared disasters areas. Because FEMA needs to evaluate the inspectors' performance, FEMA conducts surveys to measure the satisfaction level of the applicants with their inspection experience. FEMA Inspection Services Managers and Task Monitors generally use the survey results to gauge and make improvements to disaster services that increase customer satisfaction and program effectiveness. The information is shared with Regional staff specific to the federal declaration for which the survey is conducted.

Affected Public: Individuals or Households.

Estimated Total Annual Hour Burden:

ANNUAL HOUR BURDEN

Project/activity	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (hours) (C)	Annual responses (D) = (A × B)	Total annual hour burden (hours) (E) = (C × D)
Survey	10,608	1	.25	10,608	2,652
Total	10,608	1	.25	10,608	2,652

Estimated Cost: There is no expected cost to the respondents. The estimated annual cost to the Federal Government is $193,750.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments must be submitted on or before May 7, 2007.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 609, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Christopher Trice, Program Analyst, Federal Emergency Management Agency, at 540–678–2109 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: March 1, 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. E7–4161 Filed 3–7–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting/Conference Call, Board of Visitors for the National Fire Academy

AGENCY: U.S. Fire Administration, Federal Emergency Management Agency, DHS.

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Federal Emergency Management Agency announces the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy.

Date of Meeting: March 28–29, 2007.

Place: Building H, Room 300, National Emergency Training Center, Emmitsburg, Maryland.

Time: 9 a.m.–5 p.m. on March 28; 8:30 a.m.–12 p.m. on March 29.

Proposed Agenda: Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, the Federal Emergency Management Agency announces that the committee meeting will be open to the public in the Emmitsburg commuting area with seating available on a first-come, first-served basis. Members of the general public who plan to participate in the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before March 21, 2007.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

The National Fire Academy Board of Visitors is administered by the U.S. Fire Administration, which is currently part of the Preparedness Directorate of the Department of Homeland Security. In the near future, the U.S. Fire Administration will be transferred to the Federal Emergency Management Agency, also part of the Department of Homeland Security. During this transition, the Federal Emergency Management Agency will continue to support this program.

Dated: March 1, 2007.

Charlie Dickinson,

Acting U.S. Fire Administrator.

[FR Doc. E7–4151 Filed 3–7–07; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2404–07; DHS Docket No. USCIS–2007–0002]

RIN 1615–ZA46

Extension of the Designation of Sudan for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Sudanese TPS Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice of extension of temporary protected status designation of Sudan.

SUMMARY: This Notice alerts the public that the designation of Sudan for Temporary Protected Status (TPS) has been extended for 18 months to November 2, 2008, from its current expiration date of May 2, 2007. This Notice also sets forth procedures necessary for nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) with TPS to re-register and to apply for an extension of their Employment Authorization Documents (EADs) for the additional 18-month period. Re-registration is limited to persons who have previously registered for TPS under the designation of Sudan and whose application has been granted or remains pending. Certain nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions.

Given the timeframes involved with processing TPS re-registrants, the Department of Homeland Security (DHS) recognizes that re-registrants may not receive a new EAD until after their current EAD expires on May 2, 2007. Accordingly, this Notice automatically extends the validity of EADs issued under the TPS designation of Sudan for six months, through November 2, 2007, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended. New EADs with the November 2, 2008 expiration date will be issued to eligible TPS beneficiaries who timely re-register and apply for an EAD.

DATES: The extension of the TPS designation of Sudan is effective May 3, 2007, and will remain in effect until 11:59 p.m. on November 2, 2008. The 60-day re-registration period begins March 8, 2007, and will remain in effect

until May 7, 2007. To facilitate processing of their applications, applicants are strongly encouraged to file as soon as possible after the start of the 60-day re-registration period beginning on March 8, 2007.

FOR FURTHER INFORMATION CONTACT: Matthew Horner, Status and Family Branch, Office of Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529, telephone (202) 272–1505. This is not a toll-free call. Further information will also be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at *http://uscis.gov.*

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

Act—Immigration and Nationality Act
ASC—USCIS Application Support Center
DHS—Department of Homeland Security
EAD—Employment Authorization Document
Secretary—Secretary of Homeland Security
SAF—Sudanese Armed Forces
SPLM/A—Sudan People's Liberation Movement/Army
USCIS—U.S. Citizenship and Immigration Services
UNHCR—United Nations High Commissioner for Refugees

What authority does the Secretary of Homeland Security have to extend the designation of Sudan for TPS?

Section 244(b)(1) of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a(b)(1), authorizes the Secretary of Homeland Security (Secretary), after consultation with appropriate agencies of the Government, to designate a foreign state (or part thereof) for TPS. The Secretary may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of the TPS designation, or any extension thereof, the Secretary, after consultations with appropriate agencies of the Government, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met and, if so, the length of an extension. 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for the TPS designation, he must terminate the designation. 8 U.S.C. 1254a(b)(3)(B).

Why did the Secretary decide to extend the TPS designation of Sudan?

On November 4, 1997, the Attorney General published a Notice in the **Federal Register** at 62 FR 59737 designating Sudan for TPS based on an ongoing armed conflict and extraordinary and temporary conditions within that country. The Attorney General extended this designation the next year, determining that the conditions warranting such designation continued to be met. 63 FR 59337 (Nov. 3, 1998). On November 9, 1999, the Attorney General extended and re-designated Sudan by publishing a Notice in the **Federal Register**, based upon the ongoing armed conflict and extraordinary and temporary conditions. 64 FR 61128. Subsequent to that date, the Attorney General and the Secretary of Homeland Security have extended the TPS designation of Sudan four times, determining in each instance that the conditions warranting the designation continued to be met. 65 FR 67407 (Nov. 9, 2000); 66 FR 46031 (Aug. 31, 2001); 67 FR 55877 (Aug. 30, 2002); 68 FR 52410 (Sept. 3, 2003). On October 7, 2004, the Secretary extended and re-designated Sudan for TPS due to the ongoing armed conflict in the Darfur region and the extraordinary and temporary conditions resulting from the ongoing conflict. 69 FR 60168. The most recent extension of Sudan for TPS became effective on November 2, 2005, and is due to expire at 11:59 p.m. May 2, 2007. 70 FR 52429 (Sept. 2, 2005).

Over the past year, DHS and the Department of State have continued to review conditions in Sudan. Based on this review, the Secretary has concluded that an 18-month extension is warranted because the armed conflict and extraordinary and temporary conditions that prompted redesignation of Sudan for TPS in October 2004 persist. Further, the Secretary has determined that it is not contrary to the national interest of the United States to permit aliens who are eligible for TPS based on the designation of Sudan to remain temporarily in the United States. *See* 8 U.S.C. 1254a(b)(1)(C).

Despite the signing of a comprehensive peace agreement between the government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A), conditions in Sudan continue to be volatile and dangerous in large parts of Western and Southern Sudan. Sporadic violence continues in Southern Sudan, with fighting among armed elements associated with the Sudanese Armed Forces (SAF), the SAF itself, and the SPLM/A. The humanitarian crisis in the Darfur region of Western Sudan continues to cause concern, with an estimated 250,000 people displaced since the beginning of 2006, and armed clashes have intensified since September 2006. In November 2006, 10,000 civilians were displaced during joint government/Janjaweed attacks on 12 villages in the Jebel Mara region of Darfur and the deliberate targeting of civilians continues. Since the beginning of the conflict, approximately 2 million people have been forced to leave their homes and live in displaced person camps while hundreds of thousands have been killed.

There have also been incidents of violence and instability in southern Sudan. It is estimated that 250 civilian and military deaths resulted from fighting that erupted between the SPLA and a faction of the South Sudan Defense Forces and that an additional 300–400 civilians were wounded. Some of the violence was attributed to the forces of the Ugandan rebel Lord's Resistance Army, which, despite having signed a cessation of hostilities agreement with the government of Uganda on August 26, 2006, was reported by the former United Nations Secretary-General to continue to pose a military threat. The Government of Southern Sudan has since stepped up efforts to restore security in the region.

Access to humanitarian relief is limited by security concerns and Government of Sudan-imposed constraints on relief organizations. While the Office of the United Nations High Commissioner for Refugees (UNHCR) facilitated the return of approximately 91,000 southern Sudanese refugees and displaced persons to Sudan through direct repatriation assistance and reintegration programs in 2006, return is not risk free; civilians have continued to be victims of episodic violence, and UNHCR has not yet moved into a phase of actively promoting refugee returns.

Based upon this review, the Secretary finds, after consultation with the appropriate Government agencies, that the conditions that prompted the designation of Sudan for TPS continue to be met. *See* 8 U.S.C. 1254a(b)(3)(A). The armed conflict is ongoing and there are extraordinary and temporary conditions in Sudan that prevent aliens who are nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) from returning in safety. *See* 8 U.S.C. 1254a(b)(1)(A), (C). The Secretary also finds that it is not contrary to the national interest of the United States to

permit aliens who meet the eligibility requirements of TPS to remain in the United States temporarily. *See* 8 U.S.C. 1254a(b)(1)(C). On the basis of these findings, the Secretary concludes that the designation of Sudan for TPS should be extended for an additional 18-month period. *See* 8 U.S.C. 1254a(b)(3)(C).

Notice of Extension of the TPS Designation of Sudan

By the authority vested in me as Secretary of Homeland Security under section 244 of the Act, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, that the conditions that prompted redesignation of Sudan for TPS in October 2004 continue to be met. *See* 8 U.S.C 1254a(b)(3)(A), (C). There are approximately 520 nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who have been granted TPS and who may be eligible for re-registration. Accordingly, I am extending the TPS designation of Sudan for 18 months from May 3, 2007 to November 2, 2008. For instructions on this extension, please refer to the following attachments, which include filing and eligibility requirements for Temporary Protected Status and Employment Authorization Documents.

Dated: March 1, 2007.

Michael Chertoff,

Secretary.

Temporary Protected Status Filing Guidelines

If I currently have benefits through the TPS designation of Sudan for TPS and would like to maintain them, do I need re-register for TPS?

Yes. If you already have received TPS benefits through the designation of Sudan for TPS, your benefits will expire at 11:59 p.m. on May 2, 2007. All TPS beneficiaries must comply with the re-registration requirements described in this Notice in order to maintain TPS benefits through November 2, 2008. TPS benefits include temporary protection against removal from the United States and employment authorization during the TPS designation period. 8 U.S.C. 1254a(a)(1). Failure to re-register without good cause will result in the withdrawal of your temporary protected status and possibly your removal from the United States. 8 U.S.C. 1254a(c)(3)(C).

If I am currently registered for TPS or have a pending application for TPS, how do I re-register to renew my benefits for the duration of the extension period?

Please submit the proper forms and fees according to the Table 1 below. Aliens who have previously registered for TPS but whose applications remain pending should follow these instructions if they wish to renew their TPS benefits. All TPS re-registration applications submitted without the required fees will be returned to the applicant. All fee waiver requests should be filed in accordance with 8 CFR 244.20. If you received an EAD during the most recent registration period, please submit a photocopy of the front and back of your EAD.

TABLE 1.—APPLICATION FORMS AND APPLICATION FEES

If	And	Then
You are re-registering for TPS	You are applying for an extension of your EAD valid through November 2, 2008.	You must complete and file the Form I–765, Application for Employment Authorization, with the $180 fee or a fee waiver request. You must also submit Form I–821, Application for Temporary Protected Status, with no fee.
You are re-registering for TPS	You are NOT applying for renewal of your EAD.	You must complete and file the Form I–765 with no fee and Form I–821 with no fee Note: DO NOT check any box for the question "I am applying for" listed on Form I–765 as you are NOT requesting an EAD benefit.
You are applying for TPS as a late initial registrant and you are between the ages of 14 and 65 (inclusive).	You are applying for a TPS-related EAD	You must complete and file Form I–821 with the $50 fee or fee waiver request and Form I–765 with the $180 fee or a fee waiver request.
You are applying for TPS as a late initial registrant and are under age 14 or over age 65.	You are applying for a TPS-related EAD	You must complete and file Form I–821 with the $50 fee or fee waiver request. You must also submit Form I–765 with no fee.
You are applying for TPS as a late initial registrant, regardless of age.	You are NOT applying for an EAD	You must complete and file Form I–821 with the $50 fee or fee waiver request and Form I–765 with no fee.
Your previous TPS application is still pending	You are applying to renew your temporary treatment benefits (i.e., an EAD with category "c–19" on its face).	You must complete and file the Form I–765 with the $180 fee or a fee waiver request. You must also submit Form I–821, Application for Temporary Protected Status, with no fee.

Certain applicants must also submit a Biometric Service Fee (See Table 2). The Biometric Service Fee will not be waived. 8 CFR 103.2(e)(4)(i), (iii).

TABLE 2.—BIOMETRIC SERVICE FEES

If	And	Then
You are 14 years of age or older	1. You are re-registering for TPS, or 2. You are applying for TPS under the late initial registration provisions, or. 3. Your TPS application is still pending and you are applying to renew temporary treatment benefits.	You must submit a Biometric Service fee of $70.
You are younger than 14 years of age	You are applying for an EAD	You must submit a Biometric Service fee of $70.

What edition of the Form I–821 should be submitted?

Only the edition of Form I–821 dated November 5, 2004, or later will be accepted. The revision date can be found in the bottom right corner of the form. The proper form can be found on the Internet at *http://www.uscis.gov* or by calling the USCIS forms hotline at 1–800–870–3676.

Where should an applicant submit his or her application for TPS?

Please reference table 3 below to see where to mail your specific application.

TABLE 3.—APPLICATION MAILING DIRECTIONS

If	Then mail to	Or, for non-United States Postal Service (USPS) deliveries, mail to
You are applying for re-registration or applying to renew your temporary treatment benefits.	U.S. Citizenship and Immigration Services Attn: TPS Sudan P.O. Box 8677 Chicago, IL 60680–8677.	U.S. Citizenship and Immigration Services Attn: TPS Sudan 427 S. LaSalle—3rd Floor Chicago, IL 60605–1029.
You are applying for TPS for the first time, as a late initial registrant.	U.S. Citizenship and Immigration Services Attn: TPS Sudan P.O. Box 8677 Chicago, IL 60680–8677.	U.S. Citizenship and Immigration Services Attn: TPS Sudan Late Initial Registrant 427 S. LaSalle—3rd Floor, Chicago, IL 60605–1029.

Can an applicant file their application electronically?

If you are filing for re-registration and *do not* need to submit supporting documentation with your application, you may file your application electronically. To file your application electronically, follow directions on the USCIS Web site at: *http://www.uscis.gov*.

Who should submit supporting documentation?

See Table 4 below to determine if you need to submit supporting documentation.

TABLE 4.—WHO SHOULD SUBMIT SUPPORTING DOCUMENTATION?

If	Then
One or more of the questions listed in Part 4, Question 2 of Form I–821 applies to you.	You must submit an explanation, on a separate sheet(s) of paper, and/or additional documentation must be provided. You may NOT file electronically.

TABLE 4.—WHO SHOULD SUBMIT SUPPORTING DOCUMENTATION?—Continued

If	Then
You were granted TPS by an Immigration Judge or the Board of Immigration Appeals.	You must include evidence of the grant of TPS (such as an order from the Immigration Judge) with your application package. You may NOT file electronically.

What is late initial registration?

Some persons may be eligible for late initial registration under 8 CFR 244.2. In order to be eligible for late initial registration an applicant must:

(1) Be a national of Sudan (or alien who has no nationality and who last habitually resided in Sudan);

(2) Have continuously resided in the United States since October 7, 2004;

(3) Have been continuously physically present in the United States since October 7, 2004; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the initial registration period (from November 4, 1997 to November 3, 1998), during the registration period for the first re-designation (from November 9, 1999 to November 2, 2000), or during the registration period for the most recent re-designation (from October 7, 2004 to April 5, 2005), he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Is the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the conditions described above. 8 CFR 244.2(g). All late initial registration applications for TPS, pursuant to the TPS designation of Sudan, should be submitted to the appropriate address in Chicago, Illinois as defined in Table 3.

Are certain aliens ineligible for TPS?

Yes. There are certain criminal and terrorism-related inadmissibility grounds that render an alien ineligible for TPS. *See* 8 U.S.C. 1254a(c)(2)(A)(iii). Further, aliens who have been convicted of any felony or two or more

misdemeanors committed in the United States are ineligible for TPS under section 244(c)(2)(B)(i) of the Act, 8 U.S.C. 1254a(c)(2)(B)(i), as are aliens described in the bars to asylum in section 208(b)(2)(A) of the Act, 8 U.S.C. 1158(b)(2)(A). *See* 8 U.S.C. 1254a(c)(2)(B)(ii). An individual granted TPS will have his or her TPS withdrawn if the alien is not in fact eligible for TPS, if the alien fails to timely re-register for TPS without good cause, or if the alien fails to maintain continuous physical presence in the United States. *See* 8 U.S.C. 1254a(c)(3)(A)–(C).

Does TPS lead to lawful permanent residence?

No. TPS is a temporary benefit that does not lead to lawful permanent residence or confer any other immigration status. 8 U.S.C. 1254a, (f)(1), and (h). When a country's TPS designation is terminated, TPS beneficiaries will maintain the same immigration status they held prior to TPS (unless that status has since expired or been terminated), or any other status they may have acquired while registered for TPS. Accordingly, if an alien held no lawful immigration status prior to being granted TPS and did not obtain any other status during the TPS period, he or she will revert to unlawful status upon the termination of the TPS designation. Once the Secretary determines that a TPS designation should be terminated, aliens who had TPS under that designation are expected to plan for their departure from the United States.

May I apply for another immigration benefit while registered for TPS?

Yes. Registration for TPS does not prevent you from applying for non-immigrant status, filing for adjustment of status based on an immigrant petition, or applying for any other immigration benefit or protection. 8 U.S.C. 1254a(a)(5). For the purposes of change of status and adjustment of status, an alien is considered as being in, and maintaining, lawful status as a nonimmigrant during the period in which the alien is granted TPS. *See* 8 U.S.C. 1254a(f)(4).

How does an application for TPS affect my application for asylum or other immigration benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. *See* 8 U.S.C. 1158(b)(2)(A)(ii) and 8 U.S.C. 1254a(c)(2)(B)(ii).

Does this extension allow nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who entered the United States after October 7, 2004, to file for TPS?

No. An extension of a TPS designation does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS eligibility to those beyond the current TPS eligibility requirements of Sudan. To be eligible for benefits under this extension, nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) must have continuously resided and been continuously physically present in the United States since October 7, 2004, the date of the most recent designation of Sudan for TPS.

Employment Authorization Document Extension Guidelines

Who is eligible to receive an automatic extension of his or her EAD from May 2, 2007 to November 2, 2007?

To receive an automatic extension of an EAD, an individual must be a national of Sudan (or an alien having no nationality who last habitually resided in Sudan) who has applied for and received an EAD under the designation of Sudan for TPS and who has not had TPS withdrawn or denied. This automatic extension is limited to EADs issued on Form I–766, Employment Authorization Document, bearing an expiration date of May 2, 2007. The EAD must also be a Form I–766 bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.''

If I am currently registered under the designation of Sudan for TPS and am re-registering for TPS, how do I receive an extension of my EAD after the automatic six-month extension?

TPS re-registrants will receive a notice in the mail with instructions to appear at a USCIS Application Support Center (ASC) for biometrics collection. When you report to the ASC, you must bring the following documents: (1) Your receipt notice for your re-registration application; (2) your ASC appointment notice; and (3) your current EAD. If no further action is required for your case, you will receive a new EAD, valid through November 2, 2008, through the mail. If your case requires further resolution, USCIS will contact you in writing to explain what additional information, if any, is necessary to resolve your case. If your application is approved, you will receive a new EAD in the mail with an expiration date of November 2, 2008.

May I request an interim EAD at my local District Office?

No. USCIS will not be issuing interim EADs to TPS applicants and re-registrants at District Offices.

How may employers determine whether an EAD has been automatically extended for six months through November 2, 2007, and is therefore acceptable for completion of the Form I–9?

An EAD that has been automatically extended for six months by this Notice through November 2, 2007, will actually contain an expiration date of May 2, 2007, and must be a Form I–766 bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.'' New EADs or extension stickers showing the November 2, 2007, expiration date of the six-month automatic extension will not be issued. Employers should not request proof of Sudanese citizenship.

Employers should accept an EAD as a valid ''List A'' document and not ask for additional I–9 documentation if presented with an EAD that has been extended pursuant to this **Federal Register** Notice, and the EAD reasonably appears on its face to be genuine and to relate to the employee. This does not affect the right of an applicant for employment or an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Note to Employers: Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those setting forth re-verification requirements. *See* 8 CFR 274a.2(b)(1)(vii). For questions, employers may call the USCIS Office of Business Liaison Employer Hotline at 1–800–357–2099. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155 or 1–800–362–2735 (TDD). Employees or applicants may call the OSC Employee Hotline at 1–800–255–7688 or 1–800–237–2515 (TDD) for information regarding the automatic extension. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html*.

How may employers determine an employee's eligibility for employment once the automatic extension has expired on November 2, 2007?

Eligible TPS aliens will possess an EAD with an expiration date of November 2, 2008. The EAD will be a Form I–766 bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category,'' and should be accepted for the purposes of verifying identity and employment authorization.

What documents may a qualified individual show to his or her employer as proof of employment authorization and identity when completing Form I–9, Employment Eligibility Verification?

During the first six months of this extension, qualified individuals who have received a six-month automatic extension of their EADs by virtue of this **Federal Register** Notice may present their TPS-based EAD to their employer, as described above, as proof of identity and employment authorization through November 2, 2007. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present a copy of this **Federal Register** Notice regarding the automatic extension of employment authorization documentation through November 2, 2007.

After the first six months of this extension, and continuing until the end of the extension period, November 2, 2008, a qualified individual may present their new EAD valid through November 2, 2008.

In the alternative, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility.

[FR Doc. E7–4097 Filed 3–7–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Friday, March 9, 2007—1:30 p.m. to 4 p.m.

Address: Emrick Technology Center, 2750 Hugh Moore Park Road, Easton, PA 18042.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Pub. L. 100–692, November 18, 1988 and extended through Pub. L. 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 2750 Hugh Moore Park Road, Easton, PA 18042, (610) 923–3548.

Dated: March 2, 2007.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 07–1078 Filed 3–7–07; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Construction of Six Single-Family Homes in Volusia County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice: receipt of applications for five incidental take permits; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of five Incidental Take Permit (ITP) Applications and Habitat Conservation Plans (HCPs) from the following four applicants: Formosa Homes, Inc., LaPalma Construction, Inc., Vincent Scorpio, and Today Homes Development, Inc. Each requests one or more ITPs for a duration of 2 years under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applicants collectively anticipate taking a total of approximately 1.5 acres (ac) of Florida scrub-jay (*Alphelocoma coerulescens*)—occupied habitat incidental to constructing six single-family homes in Volusia County, Florida (Projects). The applicants' HCPs describe the mitigation and minimization measures the applicants propose to address the effects of the Projects to the scrub-jay.

DATES: We must receive any written comments on the ITP applications and HCPs on or before April 9, 2007.

ADDRESSES: If you wish to review the applications and HCPs, you may write the Field Supervisor at our Jacksonville Field Office, 6620 Southpoint Drive, South, Suite 310, Jacksonville, FL 32216, or make an appointment to visit during normal business hours. If you wish to comment, you may mail or hand deliver comments to the Jacksonville Field Office, or you may e-mail comments to *paula__sisson@fws.gov*. For more information on reviewing documents and public comments and submitting comments, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Paula Sisson, Fish and Wildlife Biologist, Jacksonville Field Office (see **ADDRESSES**); *telephone:* 904/232-2580, ext. 126.

SUPPLEMENTARY INFORMATION:

Public Review and Comment

Please reference permit numbers TE135675–0 for Formosa Homes, Inc.; TE145181–0 for LaPalma Construction, Inc.; TE143409–0 for Victor Scorpio; and TE143407–0 and TE143408–0 for Today Homes Development, Inc., in all requests or comments. Please include your name and return address in your e-mail message. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Background

The Florida scrub-jay (scrub-jay) is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which have adversely affected the distribution and numbers of scrub-jays.

The total estimated population is between 7,000 and 11,000 individuals. The decline in the number and distribution of scrub-jays in east-central Florida has been exacerbated by tremendous urban growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils which previously supported scrub-jay habitat. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded due to the exclusion of fire, which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Applicants' Proposals

The four (4) applicants are requesting take of approximately 1.5 ac of combined occupied scrub-jay habitat incidental to the construction of six single-family homes in Volusia County, Florida. Residential construction for one single-family home for Formosa Homes, Inc., is located within parcel #8115–00–00–0204, in Deltona, Florida. Residential construction for two single-family homes for LaPalma Construction, Inc., would occur within parcel #8009–05–04–0010; one single-family home for Vincent Scorpio would be located within parcel #8009–05–19–0400; and two single-family homes for Today Homes, Inc., would be located within parcels #8009–02–15–0190 and #8009–02–14–0340. All are located in Orange City, Florida.

The lots combined encompass about 1.5 ac, and the footprint of the homes,infrastructure, and landscaping preclude retention of scrub-jay habitat. In order to minimize take on site, the applicants propose to mitigate for the loss of 1.5 ac of scrub-jay habitat by contributing a total of $70,974 ($12,045 from Formosa Homes, Inc.; $22,726 from LaPalma Construction, Inc.; $11,363 from Scorpio; and $24,840 from Today Homes, Inc.) to the Florida Scrub-jay Conservation Fund administered by The Nature Conservancy. Funds in this account are earmarked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management.

We have determined that the applicants' proposals, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCPs. Therefore, the ITPs are ''low-effect'' projects and qualify for categorical exclusions under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

We will evaluate the HCPs and comments submitted thereon to determine whether the applications meet the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the applications meet those requirements, we will issue the ITPs for incidental take of the Florida scrub-jay. We will also evaluate whether issuance of the section 10(a)(1)(B) ITPs complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in the final analysis to determine whether or not to issue the ITPs.

Authority: We provide this notice under Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

Dated: February 28, 2007.

David L. Hankla,

Field Supervisor, Jacksonville Field Office.

[FR Doc. E7–4135 Filed 3–7–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Reviews of 71 Species in Oregon, Hawaii, Commonwealth of the Northern Mariana Islands, and Territory of Guam

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the initiation of a 5-year review of 71 species under section 4(c)(2)(B) of the Endangered Species Act (Act). The purpose of a 5-year review is to ensure that the classification of a species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants is accurate and consistent with the best scientific and commercial data currently available. We are requesting submission of any such information that has become available since the original listing of each of the 71 species identified in Table 1 below. Based on the results of these 5-year reviews, we will determine whether any species should be proposed for removal from the list or its listing status should be changed pursuant to section 4(c)(2)(B) of the Act.

DATES: We must receive your information no later than May 7, 2007. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: See ''Public Solicitation of New Information'' section for instructions on how to submit information.

FOR FURTHER INFORMATION CONTACT: For species-specific information, contact the appropriate individual named in ''Public Solicitation of New Information.''

SUPPLEMENTARY INFORMATION:

Why Is a 5-year Review Conducted?

Under the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*), we maintain a List of Endangered and Threatened Wildlife and Plants (List) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. These Actions must be supported by the best scientific and commercial data available, delisting a species is considered only if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error (50 CFR 424.11(d)). Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal**

Register announcing those species currently under active review. This notice announces our active review of the 71 species listed in Table 1.

TABLE 1.—SUMMARY OF THE LISTING INFORMATION FOR THE FOLLOWING 71 SPECIES IN OREGON (OR)

[Hawaii (HI), Commonwealth of the Northern Mariana Islands (MP), and Territory of Guam (GU). **Note:** Common names are listed as published in the CFR and may not reflect all or current common names.]

Common name	Scientific name	Status	Where listed	Final listing rule
Animals				
Bat, little Mariana fruit	*Pteropus tokudae*	Endangered	U.S.A. (GU)	49 FR 33881 (27–Aug–84).
White-eye, Bridled (Guam)	*Zosterops conspicillatus conspicillatus*	Endangered	U.S.A. (GU)	49 FR 33881 (27–Aug–84).
Rail, Guam	*Rallus owstoni*	Endangered	U.S.A. (GU)	49 FR 33881 (27–Aug–84).
Crow, Hawaiian	*Corvus hawaiiensis*	Endangered	U.S.A. (HI)	32 FR 4001 (11–Mar–67).
Duck, Hawaiian	*Anas wyvilliana*	Endangered	U.S.A. (HI)	32 FR 4001 (11–Mar–67).
Hawk, Hawaiian	*Buteo solitarius*	Endangered	U.S.A. (HI)	58 FR 41684 (11–Mar–67).
Moorhen, Mariana common	*Gallinula chloropus guami*	Endangered	U.S.A. (GU, MP)	49 FR 33881 (27–Aug–84).
Warbler, nightingale reed, (old world warbler).	*Acrocephalus luscinia*	Endangered	U.S.A. (MP)	35 FR 18319 (02–Jun–70).
Elepaio, Oahu	*Chasiempis sandwichensis ibidis*	Endangered	U.S.A. (HI)	65 FR 20760 (19–Apr–00).
Palila (honeycreeper)	*Loxioides bailleui*	Endangered	U.S.A. (HI)	32 FR 4001 (11–Mar–67).
Thrush, small Kauai	*Myadestes palmeri*	Endangered	U.S.A. (HI)	32 FR 4001 (11–Mar–67).
Snail, Newcomb's	*Erinna newcombi*	Endangered	U.S.A. (HI)	65 FR 4162 (26–Jan–00).
Moth, Blackburn's sphinx	*Manduca blackburni*	Endangered	U.S.A. (HI)	65 FR 4770 (01–Feb–00).
Chub, Oregon	*Oregonichthys crameri*	Threatened	U.S.A. (OR)	58 FR 53800 (18–Oct–93).
Plants				
No common name	*Achyranthes mutica*	Endangered	U.S.A. (HI)	61 FR 53108 (10–Nov–96).
Round-leaved chaff-flower	*Achyranthes splendens* var.*rotundata*	Endangered	U.S.A. (HI)	51 FR 10518 (07–Apr–86).
No common name	*Alsinidendron trinerve*	Endangered	U.S.A. (HI)	56 FR 55770 (29–Oct–91).
No common name	*Alsinidendron viscosum*	Endangered	U.S.A. (HI)	61 FR 53070 (10–Oct–96).
Mauna Loa Silversword	*Argyroxiphium kauense*	Endangered	U.S.A. (HI)	58 FR 18029 (07–Apr–93).
Kamanomano	*Cenchrus agrimonioides*	Endangered	U.S.A. (HI)	61 FR 53108 (10–Oct–96).
Haha	*Cyanea acuminata*	Endangered	U.S.A. (HI)	61 FR 53089 (10–Oct–96).
Haha	*Cyanea asarifolia*	Endangered	U.S.A. (HI)	59 FR 9304 (25–Feb–94).
No common name	*Cyanea crispa*	Endangered	U.S.A. (HI)	59 FR 14482 (28–Mar–94).
Haha	*Cyanea hamatiflora ssp. carlsonii*	Endangered	U.S.A. (HI)	59 FR 10305 (04–Mar–94).
Haha	*Cyanea hamatiflora ssp. hamatiflora*	Endangered	U.S.A. (HI)	64 FR 48307 (03–Sep–99).
Haha	*Cyanaea longiflora*	Endangered	U.S.A. (HI)	61 FR 53089 (10–Oct–96).
Haha	*Cyanea shipmanii*	Endangered	U.S.A. (HI)	59 FR 10305 (04–Mar–94).
Haiwale	*Cyrtandra polyantha*	Endangered	U.S.A. (HI)	59 FR 14482 (28–Mar–94).
Haiwale	*Cyrtandra viridiflora*	Endangered	U.S.A. (HI)	61 FR 53089 (10–Oct–96).
Naenae	*Dubautia pauciflorula*	Endangered	U.S.A. (HI)	56 FR 47695 (20–Sep–91).

TABLE 1.—SUMMARY OF THE LISTING INFORMATION FOR THE FOLLOWING 71 SPECIES IN OREGON (OR)—Continued

[Hawaii (HI), Commonwealth of the Northern Mariana Islands (MP), and Territory of Guam (GU). **Note:** Common names are listed as published in the CFR and may not reflect all or current common names.]

Common name	Scientific name	Status	Where listed	Final listing rule
Naenae	*Dubautia plantaginea ssp. humilis*	Endangered	U.S.A. (HI)	64 FR 48607 (03–Sep–99).
Mehamehame	*Flueggea neowawraea*	Endangered	U.S.A. (HI)	59 FR 56333 (10–Nov–94).
Na Pali beach hedyotis	*Hedyotis st.-johnii*	Endangered	U.S.A. (HI)	56 FR 49639 (30–Sep–91).
No common name	*Hesperomannia arborescens*	Endangered	U.S.A. (HI)	59 FR 14482 (28–Mar–94).
No common name	*Hesperomannia arbuscula*	Endangered	U.S.A. (HI)	56 FR 55770 (29–Oct–91).
Kauai hau kuahiwi	*Hibiscadelphus distans*	Endangered	U.S.A. (HI)	51 FR 5903 (29–Apr–86).
Mao hau hele	*Hibiscus brackenridgei*	Endangered	U.S.A. (HI)	59 FR 56333 (10–Nov–94).
Aupaka	*Isodendrion laurifolium*	Endangered	U.S.A. (HI)	61 FR 53108 (10–Oct–96).
Koki‘o	*Kokia drynarioides*	Endangered	U.S.A. (HI)	49 FR 47394 (12–Apr–84).
Kamakahala	*Labordia lydgatei*	Endangered	U.S.A. (HI)	56 FR 47695 (20–Sep–91).
Kamakahala	*Labordia tinifolia var. wahiawaensis*	Endangered	U.S.A. (HI)	61 FR 53070 (10–Oct–96).
Anaunau	*Lepidium arbuscula*	Endangered	U.S.A. (HI)	61 FR 53089 (10–Oct–96).
Nehe	*Lipochaeta kamolensis*	Endangered	U.S.A. (HI)	57 FR 20772 (15–May–92).
No common name	*Lobelia gaudichaudii ssp. koolauensis*	Endangered	U.S.A. (HI)	61 FR 53089 (10–Oct–96).
No common name	*Lysimachia filifolia*	Endangered	U.S.A. (HI)	59 FR 9304 (25–Feb–94).
Alani	*Melicope haupuensis*	Endangered	U.S.A. (HI)	59 FR 9304 (25–Feb–94).
Alani	*Melicope knudsenii*	Endangered	U.S.A. (HI)	59 FR 9304 (25–Feb–94).
Alani	*Melicope lydgatei*	Endangered	U.S.A. (HI)	59 FR 14482 (28–Mar–94).
Aiea	*Nothocestrum peltatum*	Endangered	U.S.A. (HI)	59 FR 9304 (25–Feb–94).
No common name	*Phyllostegia knudsenii*	Endangered	U.S.A. (HI)	61 FR 53070 (10–Oct–96).
No common name	*Phyllostegia mollis*	Endangered	U.S.A. (HI)	56 FR 55770 (29–Oct–91).
No common name	*Phyllostegia wawrana*	Endangered	U.S.A. (HI)	61 FR 53070 (10–Oct–96).
No common name	*Platanthera holochila*	Endangered	U.S.A. (HI)	61 FR 53108 (10–Oct–96).
Loulu	*Pritchardia remota*	Endangered	U.S.A. (HI)	61 FR 43178 (21–Aug–96).
Loulu	*Pritchardia schattaueri*	Endangered	U.S.A. (HI)	61 FR 53137 (10–Oct–96).
Maui remya	*Remya mauiensis*	Endangered	U.S.A. (HI)	56 FR 1450 (14–Jan–91).
No common name	*Schiedea kauaiensis*	Endangered	U.S.A. (HI)	61 FR 53108 (10–Oct–96).
No common name	*Schiedea nuttallii*	Endangered	U.S.A. (HI)	61 FR 53108 (10–Oct–96).
No common name	*Schiedea verticillata*	Endangered	U.S.A. (HI)	61 FR 43178 (21–Aug–96).
Aiakeakua, popolo	*Solanum sandwicense*	Endangered	U.S.A. (HI)	59 FR 9304 (30–Oct–92).
No common name	*Stenogyne campanulata*	Endangered	U.S.A. (HI)	57 FR 20580 (13–May–92).
No common name	*Tetramolopium lepidotum ssp. lepidotum*	Endangered	U.S.A. (HI)	56 FR 55770 (29–Oct–91).
Thelypody, Howell’s Spectacular	*Thelypody howellii var. spectabilis*	Threatened	U.S.A. (OR)	64 FR 28393 (26–MAY–99).
No common name	*Trematalobelia singularis*	Endangered	U.S.A. (HI)	61 FR 53089 (10–Oct–96).

TABLE 1.—SUMMARY OF THE LISTING INFORMATION FOR THE FOLLOWING 71 SPECIES IN OREGON (OR)—Continued

[Hawaii (HI), Commonwealth of the Northern Mariana Islands (MP), and Territory of Guam (GU). **Note:** Common names are listed as published in the CFR and may not reflect all or current common names.]

Common name	Scientific name	Status	Where listed	Final listing rule
Nani waialeale	*Viola kauaensis var. wahiawaensis*	Endangered	U.S.A. (HI)	61 FR 53070 (10–Oct–96).
No common name	*Xylosma creantum*	Endangered	U.S.A. (HI)	57 FR 20580 (13–May–92).
Ae	*Zanthoxylum dipetalum var. tomentosum.*	Endangered	U.S.A. (HI)	51–FR 53137 (25–Sep–96).
Pauoa	*Ctenitis squamigera*	Endangered	U.S.A. (HI)	59 FR 49025 (26–Sep–94).
No common name	*Diellia erecta*	Endangered	U.S.A. (HI)	59 FR 56333 (25–Sep–96).
Wawaeiole	*Phlegmariurus (=Huperzia) nutans*	Endangered	U.S.A. (HI)	59 FR 14493 (28–Mar–94).
No common name	*Pteris lydgatei*	Endangered	U.S.A. (HI)	59 FR 49025 (26–Sep–94).

What Information Is Considered in the Review?

A 5-year review considers all new information available at the time of the review. In conducting these reviews, we consider the best scientific and commercial data that has become available since the current listing determination or most recent status review, such as:

A. Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends (see five factors under heading ''How Do We Determine Whether a Species is Endangered or Threatened?''); and

E. Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

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

Section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Our assessment of these factors is required, under section 4(b)(1) of the Act, to be based solely on the best scientific and commercial data available.

What Could Happen as a Result of This Review?

If we find information concerning the 71 species listed in Table 1 indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from threatened to endangered; (b) reclassify the species from endangered to threatened; or (c) remove the species from the List. If we find that a change in classification is not warranted, the species will remain on the List under its current status.

Public Solicitation of New Information

To ensure that these 5-year reviews are complete and based on the best available scientific and commercial information, we solicit new information from the public, governmental agencies, Tribes, the scientific community, environmental entities, industry, and any other interested parties concerning the status of the species.

If you wish to provide information for any species included in these 5-year reviews, submit your comments and materials to the Field Supervisors at the appropriate Fish and Wildlife Office listed below. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are submitted.

For the species under review, submit information and direct species specific questions to the addresses and individuals as follows:

For the Oregon chub and the Howell's spectacular thelypody, submit information to the following address: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266, or at *FW1OR5yearReview@fws.gov*. For information concerning these species, Contact Rollie White at 503–231–6179.

For the species in Hawaii, Commonwealth of the Northern Mariana Islands, and Territory of Guam, submit information to the following address: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Blvd., Room 3–122, Box 50088, Honolulu, HI 96850, or at *pifwo-5yr-review@fws.gov*. For information concerning these species, contact Marilet A. Zablan at 808–792–9400.

Authority: This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 1, 2007.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E7–3624 Filed 3–7–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Copper Mountain College Habitat Conservation Plan, San Bernardino, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Copper Mountain Community College District (District) has applied to the Fish and Wildlife Service (Service or ''we'') for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). We are considering issuing a 16-year permit to the District that would authorize take of the federally threatened desert tortoise (*Gopherus agassizii*) incidental to otherwise lawful activities associated with the expansion of their existing campus onto 71.57 acres of their 156.53-acre property.

We are requesting comments on the permit application, Habitat Conservation Plan (Plan), Environmental Assessment (EA), and Implementing Agreement (IA). The District's Plan describes the mitigation and minimization measures they would implement, as required in Section 10(a)(2)(B) of the Act, to address the effects of the project on the desert tortoise (see **SUPPLEMENTARY INFORMATION**). The EA describes the project's impacts on the human environment and analyzes the significance of those impacts. The IA describes the roles and responsibilities of District, the Service, and Joshua Tree National Park (Park) in implementation of the Plan. The draft Plan, EA, and IA are available for public review.

DATES: Written comments should be received on or before May 7, 2007.

ADDRESSES: Please address written comments to Diane K. Noda, Field Supervisor, Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. You may also send comments by facsimile to 805–644–3958.

FOR FURTHER INFORMATION CONTACT: Brian Croft, Fish and Wildlife Biologist, (see **ADDRESSES**) telephone: 805–644–1766, extension 302.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of these documents for review by contacting the office under **ADDRESSES**. Documents also will be available for public inspection, by appointment, during normal business hours at our Ventura office (see **ADDRESSES**) and at the Joshua Tree Public Library. The address for the Joshua Tree Public Library is 6465 Park Blvd., Joshua Tree, California 92252. These documents are also available on the Ventura Fish and Wildlife Office internet site: *http://www.fws.gov/ventura.*

Background

Section 9 of the Act and Federal regulations prohibit the ''take'' of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Service, under limited circumstances, may issue permits to cover incidental take, (i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively. Among other criteria, issuance of such permits must not jeopardize the existence of federally listed fish, wildlife, or plants.

The proposed Copper Mountain College Expansion Project is 156.53 acres in the unincorporated community of Joshua Tree, San Bernardino County, California. The District proposes to expand the Copper Mountain Community College campus from the existing 8.59 acres onto 71.57 acres that it owns in adjacent areas. It would begin the phased construction with a solar field immediately after permit issuance, followed by a multi-use sports complex, various roads, and a parking area in 2007. During the next 12 years, the District would construct additional parking lots, new sports fields, additional classroom facilities, and other buildings on the remaining portions of the 71.57-acre site.

The District proposes to implement measures to minimize adverse effects to the desert tortoise during construction and operation of these facilities, additional measures to mitigate adverse effects, and post-construction measures to minimize indirect effects from ongoing use of the new facilities. To minimize adverse effects to the desert tortoise and its habitat, the District would provide on-site biological monitoring during construction, perform pre-project clearance surveys, conduct a desert tortoise education program for project personnel, and use desert tortoise exclusion fencing to prevent desert tortoises from entering work areas. In addition, the District would meet a schedule of reporting requirements and appoint a field contact representative to oversee compliance.

After permit issuance, the District would also establish an 84.96-acre desert tortoise translocation area (Translocation Area) on land that it owns immediately adjacent to the 71.57-acre project site. The District would manage this Translocation Area as a habitat preserve and fund the maintenance and monitoring of the desert tortoises that are translocated there during Project Site development.

To mitigate adverse effects, the District would purchase an 80-acre private in-holding in the Thermal Canyon area of Joshua Tree National Park. The District would transfer this parcel to Joshua Tree National Park and provide funds to assure adequate management for desert tortoise conservation on the 80-acre site. The District would also implement one of the following mitigation measures within 12 months following permit issuance: (1) Provide funding to a designated management entity for the improved management of desert tortoise habitat on a 605-acre desert park near Coyote Hole Spring or (2) provide funding to the Desert Tortoise Preserve Committee for the acquisition and management of 30-acres of desert tortoise habitat at the Desert Tortoise Natural Area. The District is providing this additional mitigation because habitat on the 80-acre Thermal Canyon parcel is of lower quality than habitat the District would disturb on the project site.

The EA considers the environmental consequences of two alternatives, including: (1) The No Action Alternative, which consists of no campus expansion, no mitigation, and no permit issuance and (2) the Project Development Alternative to the taking, which consists of the development of the project site and implementation of the minimization and mitigation measures described in the previous paragraphs. Under the Project Development Alternative, a third party would be selected to work as the District's agent under their incidental take permit within 12 months of initial permit issuance. This would cover the third party for take during management of some mitigation lands described in the Plan.

Public Review and Comment

We are providing this notice pursuant to section 10(a) of the Act and the regulations of the National

Environmental Policy Act (NEPA) of 1969 (40 CFR 1506.6). All comments that we receive, including names and addresses, will become part of the official administrative record and may be made available to the public. We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If we determine that those requirements are met, we will issue a permit to the District for the incidental take of desert tortoises. We will make our final permit decision no sooner than 60 days from the date of this notice.

If you wish to comment on the permit application, draft EA, Plan, or IA you may submit your comments to the address listed in the **ADDRESSES** section of this document. Our practice is to make comments, including names, home addresses, etc., 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 provide a rationale demonstrating and documenting that disclosure would constitute a clearly unwarranted invasion of privacy. In the absence of exceptional, documented circumstances, we will release this information. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

Dated: March 2, 2007.

Polly Wheeler,

Acting Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. E7–4138 Filed 3–7–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice Terminating the Exclusion of Indian Allotted Leases in the Uintah and Ouray Reservation From Valuation Under 30 CFR 206.172

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: The Minerals Management Service (MMS) with Bureau of Indian Affairs (BIA) concurrence is terminating the exclusion from valuation under the rules at 30 CFR 206.172 for gas produced from the Ute allotted leases in the Uintah and Ouray Reservation (Reservation), Utah. The final rule was published in the **Federal Register** on August 10, 1999 (64 FR 43506).

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

FOR FURTHER INFORMATION CONTACT: John Barder, Manager, San Juan Basin Region, Indian Oil and Gas Compliance and Asset Management, Minerals Revenue Management, Minerals Management Service, P.O. Box 25165, MS 396B2, Denver, CO 80225–0165, telephone number (303) 231–3702, fax number (303) 231–3755, e-mail *john.barder@mms.gov.*

SUPPLEMENTARY INFORMATION: The MMS published in the **Federal Register** on August 10, 1999 (64 FR 43506), a final rule titled ''Amendments to Gas Valuation Regulations for Indian Leases'' with an effective date of January 1, 2000. Indian leases in the Reservation were excluded from index-based valuation (§ 206.172). This exclusion was based on the results of a cost benefit analysis MMS performed in 1999. In the 1999 cost benefit analysis, MMS estimated individual Indian mineral owners would receive more revenue under the non-index-based valuation methodology (§ 206.174) than under the index-based valuation methodology (§ 206.172).

Effective January 2000, MMS has valued gas production from the Reservation under the non-index-based valuation methodology at § 206.174. However, MMS recently performed a cost benefit analysis for calendar years 2004 through 2005 and estimated that revenues using the index-based valuation formula at § 206.172 exceed the estimated revenues using the non-index-based valuation method at § 206.174. Therefore, as required under § 206.172(g), MMS received written concurrence from BIA to terminate the exclusion from index-based valuation of gas production from Indian allotted leases in the Reservation.

As a result, gas production from Ute allotted leases in the Reservation must be valued under the index-based valuation method (§ 206.172), beginning with production on the first day of the second month following the date MMS publishes notice of its decision in the **Federal Register**. Lessees must value gas production from Ute allotted leases in the Reservation on the index-based valuation formula at § 206.172(d) using MMS-approved publications and indexes for the Central Rocky Mountain Index Zone to determine the index zone price; or lessees may obtain the index-based values from the MRM Internet Web site at: *http://www.mrm.mms.gov.*

Approved publications and index pricing points for the Central Rocky Mountain Index Zone are shown in the following table:

APPROVED PUBLICATIONS AND INDEX PRICING POINTS FOR THE CENTRAL ROCKY MOUNTAIN INDEX ZONE

Index zone	MMS-approved publications		Index-pricing points
	Platts gas daily price guide	NGI's bidweek survey	
Central Rocky Mountains	X		Kern River Gas Trans. Co. for Wyoming.
	X		Northwest Pipeline Corp. for Rocky Mountains.
	X		Questar Pipeline Co. for Rocky Mountains.
	X		Colorado Interstate Gas Co. for Rocky Mountains.
		X	Rocky Mountains • CIG. • Questar. • Kern River. • Northwest Domestic.

Dated: January 16, 2007.

Lucy Querques Denett,

Associate Director for Minerals, Revenue Management.

[FR Doc. E7–4150 Filed 3–7–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on an extension of a currently approved collection of information (OMB No. 1024–0236).

DATES: Public comments on the proposed Information Collection Request (ICR) will be accepted on or before May 7, 2007.

ADDRESSES: *Send Comments To:* Dr. John G. Dennis, Natural Resources (Room 1160), NPS, 1201 Eye Street, NW., Washington, DC 20005; Phone: 202/513–7174; fax: 202/371–2131; e-mail *WASO_NRSS_researchcoll@nps.gov*. Also, please send a copy of your comments to Leonard Stowe, Information Collection Clearance Officer, NPS, 1849 C St., NW (2605), Washington, DC 20240, or by e-mail at *Leonard_Stowe@nps.gov*. All responses to this notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Bill Commins, NPS, Natural Resources (Room 25), 1201 Eye St., NW., Washington, DC 20005. Phone 202/513–7166; Fax: 202/317–2131; E-mail: *bill_commins@nps.gov*. You may obtain additional information about the application and annual reporting forms and existing guidance and explanatory material from the NPS Research Permit and Reporting System Web site at: *http://science.nature.nps.gov/research*. You are entitled to a copy of the entire ICR package free of charge.

SUPPLEMENTARY INFORMATION:

Title: Research Permit and Reporting System Collection of Information Package: Application for a Scientific Research and Collecting Permit: Application for a Science Education Permit; Investigator's Annual Report.

Bureau Form Number(s): Application for a Scientific Research and Collecting Permit: 10–741a; Application for a Science Education Permit: 10–741b; Investigator's Annual Report: 10–226.

OMB Number: 1024–0236.

Expiration Date: 6/30/2007.

Type of Request: Revision of a previously approved information collection.

Description of Need: The currently approved information collection responds to the statutory requirement that NPS preserve park resources and regulate the use of units of the National park System. The information currently collected identifies: (1) Names and business contact information for people who seek a permit to conduct natural or social science research and collection activities in individual units of the National Park System, (2) what activities they wish to conduct, (3) where they wish to conduct the activities, (4) whether or not they wish to collect specimens as part of the activities they propose to conduct, and (5) for applicants who have received a permit, annual summaries of the actual results of their permitted activities. NPS uses the collected information for managing the use and preservation of park resources and for reporting the status of permitted research and collecting activities. NPS is considering proposing to develop the Internet software for, and implement, the Application for a Science Education Permit that OMB reviewed and approved in 2004. NPS is proposing to leave the current Application for a Scientific Research and Collecting Permit and the Investigator's Annual Report collection of information forms largely unchanged unless responses to this request for comments identify areas in the two collections of information that warrant change.

In response to suggestions for changes identified prior to and during the review of this information collection package in 2004, NPS added entries to obtain more specific information about project scope and status, including expected total time span of the project, specific identification of project personnel who will be working in the park, status of processing of collected specimens, planned schedules for the field work phases of the project, and expected end date for the project. NPS also split the Application into two versions to improve the ability to use the Internet to process applications for both scientific research and collecting and scientific education activities, but has not yet modified the Internet software to implement the science education component. NPS changed the scientific research and collecting application to improve the clarity of information provided to, and obtained from, respondents who request use of a non-NPS repository regarding the duty the respondents have for securing acceptance by the proposed non-NPS repository of becoming responsible for collections authorized in the permit. NPS changed the Investigator's Annual Report to reduce the complexity of the form by assigning responsibility to NPS, not the respondent, for determining the appropriate activity code for each permitted project. NPS also designed the Investigator's Annual Report to accommodate in a single form progress reports from both science research and collecting and science education permittees.

At this time, NPS is not proposing to make any changes to any of these three collections of information. NPS is considering updating some of the guidance documents and specifically is considering creating a separate guidance document regarding science education activities. NPS specifically requests comments on the clarity and utility of the guidance documents and on desired content of a separate guidance document for the science education activities. NPS also is considering whether to create a new component of this collection of information package specifically to offer users of the Internet site an opportunity to provide comments online regarding the usability of the Internet site and working relationships with parks in which permittees conduct science activities.

Based on growth in use of this collection of information system over the past six years, NPS is proposing to request an increase in the burden hour budget. At the onset of the system, NPS estimated that there would be approximately 3,000 applications and 3,000 Investigator's Annual Reports submitted each year. The average numbers reported for 2004 and 2005 permitted activities, which are the latest two years with complete information for numbers of active permits and submitted Investigator's Annual Reports, show 4,472 studies per year under permit, 5,046 active permits per year, and 3,657 Investigator's Annual Reports. Experience with using this system shows that, for a variety of reasons related to both applicants and parks, a number of studies apply for and obtain more than one permit per year for the same study while other studies receive permits that are active for more than one year at a time. These situations

lead to the result that there are more active permits in a year than there are active studies.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the validity and accuracy of the reporting burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made public available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Automated Data Collection: The information collection and status reporting system for which the renewal of three components of a single collection of information package is being proposed in this notice currently is available to applicants, permittees, and the public through the NPS Research Permit and Reporting System Web site (*http://science.nature.nps.gov/research*). In addition to considering the renewal of the three information collection forms without changes, NPS is considering what development of modifications to the Internet site, if any, are needed to increase the effectiveness and efficiency of this automation system to facilitate the permit application and progress reporting process. If NPS were to adopt a component by which users could provide comments to NPS, NPS would make that component available online through the Internet site.

Description of Respondents: Representatives of: Academic and other research institutions, Federal, state, or local agencies, research businesses; other scientific parties seeking an NPS research and collecting or science education permit; permittees who submit the annual report of accomplishment that is one of the permit conditions.

Estimated Average Number of Respondents: NPS estimates the average number of respondents to be 6,500 by 2010.

Estimated Average Number of Responses: NPS estimates an average number of 13,000 responses by 2010.

Estimated Average Burden Hours Per Two-Part Response: 1,625 hours per year total for responding to both parts of this collection of information was the estimate in 2004. NPS does not expect this burden hour estimate to change, even if the proposed opportunity for permit system users to offer comments to NPS is adopted, because returning users are expected to be able to spend less time on the two existing parts and the goal for the collection of information for the comments is to make that collection of information short and focused.

Frequency of Response: 2 times per respondent per year—once to submit the application and once to submit the Investigator's Annual Report. A small number of respondents is expected to submit a third response, should the proposed collection of information for comments be added to the system.

Estimated Annual Reporting Burden: NPS estimates the estimated annual reporting burden will be 10,560 hours by the year 2010.

Dated: February 7, 2007.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 07–1079 Filed 3–7–07; 8:45 am]

BILLING CODE 4310–EJ–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on an extension of a currently approved collection of information (OMB No. 1024–0021).

DATES: Public comments on the proposed Information Collection Request (ICR) will be accepted on or before May 7, 2007.

ADDRESSES: Richard Merryman, National Capital Region, 1100 Ohio Dr., Rm. 128, SW., Washington, DC 20242. Phone: 202–619–7225, Fax: 202–401–2430. Also, you may send comments to Leonard Stowe, NPS Information Collection Clearance Officer, 1849 C St., NW. (2605), Washington, DC 20240, or by e-mail at *Leonard_Stowe@nps.gov*. All responses to this notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Richard Merryman, National Capital Region, 1100 Ohio Dr., Rm. 128, SW., Washington, DC 20242, via phone at 202/619–7225, or via fax at 202/401–2430, or via e-mail at *Rick_Merryman@nps.gov*. You are entitled to a copy of the entire ICR package free of charge.

SUPPLEMENTARY INFORMATION:

Title: National Capital Region Application for Public Gathering, 36 CFR 7.96(g).

Departmental Form Number: None.

OMB Number: 1024–0021.

Expiration Date: 06/30/07.

Type of Request: Extension of a currently approved collection.

Description of Need: The information collection responds to the statutory requirement that the NPS preserve park resources and regulate the use of units of the National Park System. The information to be collected identifies: (1) Those individuals and/or organizations that wish to conduct a public gathering on NPS property in the National Capital Region, (2) the logistics of a proposed demonstration or special event that aid the NPS in regulating activities to insure that they are consistent with the NPS mission, (3) potential civil disobedience and traffic control issues for the assignment of United States Park Police personnel, and (4) circumstances which may warrant a bond to be assigned to the event for the purpose of covering potential cost to repair damage caused by the event.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be publicly available at any time. While you can ask in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

Description of Respondents: Respondents are those individuals or organizations that wish to conduct a

special event or demonstration on NPS properties within the National Capital Region that lie within the geographical limits set forth in 36 CFR 7.96(a).

Estimated average number of annual respondents: 2500.

Estimated average burden hours per response: 5 minutes.

Estimated annual reporting burden: 1250 hours.

Dated: February 6, 2007.

Leonard E. Stowe,

NPS Information Collection Clearance Officer.

[FR Doc. 07–1080 Filed 3–7–07; 8:45 am]

BILLING CODE 4312–JK–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Information Collection: Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) and 5 CFR Part 1320, the National Park Service (NPS) invites public comment on an extension of a currently approved collection of information (OMB No. 1024–0022)

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before May 7, 2007.

ADDRESSES: Send comments to Lee Dickinson, Special Park Uses Program Manager, National Park Service (NPS), 1849 C Street, NW., (org. code 2460), Washington, DC 20240 or by e-mail at *Lee_Dickinson@nps.gov.* Also, please send a copy of your comments to Leonard Stowe, Information Collection Clearance Officer, NPS, 1849 C St., (org. code 2605), Washington, DC 20240, or by e-mail at *Leonard Stowe@nps.gov.* All responses to this notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will become a matter of public record. Copies of this form may be obtained from the Internet at *http://www.nps.gov/policy/DOrders/BUP.pdf* or by contacting Lee Dickinson.

FOR FURTHER INFORMATION CONTACT: Lee Dickinson, Special Park Uses Manager, National Park Service, 1849 C Street, NW., (org. code 2460), Washington, DC 20240; Phone: 205–513–7092: E-mail: *Lee_Dickinson@nps.gov.*

SUPPLEMENTARY INFORMATION:

Title: Backcountry Use Permit (36 CFR 1.5, 1.6, and 2.10).

Form Numbers: 10–404A.

OMB Number: 1024–0022.

Expiration Date: 06/30/07.

Type of Request: Extension of a currently approved collection.

Description of Need: In 1976, the NPS initiated a backcountry registration system in accordance with the regulations found at 36 CFR 1.5, 1.6 and 2.10. The objective of the backcountry use permit system is to provide users access to backcountry areas of national parks with continuing opportunities for solitude, while enhancing resource protection and providing a means of disseminating public safety messages regarding backcountry travel.

NPS backcountry program managers, by designating access routes and overnight camping locations, can redistribute campers in response to user impact, high fire danger, flood or wind hazard, bear activity or other situations that may temporarily close a portion of the backcountry. The NPS may also use the permit system as a means of ensuring that each backcountry user receives up-to-date information on backcountry sanitation procedures, food storage, wildlife activity, trail conditions and weather projections so that concerns for visitor safety are met.

The Backcounty Use Permit is an extension of the NPS statutory authority responsibility to protect the park areas it administers and to manage the public use thereof (16 U.S.C. Sections 1 and 3). NPS regulations codified in 36 CFR Parts 1 through 7, 12 amd 13, are designated to implement statutory mandates that provide for resource protection and public enjoyment. The Backcountry Use Permit is the primary form used to provide access into NPS backcountry areas including those areas that require a reservation to enter where use limits are imposed in accordance with other NPS regulations. Such permitting enhances the ability to the NPS to education users on potential hazards, search and rescue efforts, and resource protection.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Description of Respondents: Individuals wishing to use backcountry areas within national parks.

Estimated annual number of respondents: 285,000.

Estimated annual number of responses: 285,000.

Estimated average burden hours per response: 5 minutes.

Estimated frequency of response: 1 time.

Estimated annual resorting burden: 22,800 hours per year.

Dated: January 29, 2007.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 07–1081 Filed 3–7–07; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan and Environmental Impact Statement for Sagamore Hill National Historic Site, New York

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–109 section 102(2)(C)), the National Park Service (NPS) announces the availability of a Draft General Management Plan (GMP) and Environmental Impact Statement (EIS) for Sagamore Hill National Historic Site (NHS), located in the town of Oyster Bay, Nassau County, New York. Consistent with National Park Service rules, regulations, and policies, and the park's mission, the Draft GMP/EIS describes and analyzes two action alternatives to guide the management and development of Sagamore Hill NHS over the next 15 to 20 years. The action alternatives incorporate various management prescriptions to ensure protection and enjoyment of the park's resources. A status quo alternative (see below) is also evaluated. The Draft GMP/EIS evaluates potential environmental consequences of implementing the alternatives. Impact topics include cultural and natural resources, visitor experience, park

operations, and the socioeconomic environment.

DATES: The Draft GMP/EIS will be available for public review for 60 days from the date of publication of the EPA notice of availability in the **Federal Register.** The National Park Service will hold a public meeting during the public review period to solicit comments. Meeting date, time, and location will be announced in local media in advance of the meeting date. Comments on the Draft GMP/EIS must be received at one of the addresses below no later than 60 days from the date of publication of the EPA notice of availability in the **Federal Register.**

ADDRESSES: Comments on the Draft GMP/EIS should be mailed to: Superintendent, Sagamore Hill National Historic Site, 20 Sagamore Hill Road, Oyster Bay, NY 11771–1809, or sent by e-mail to: *ellen_carlson@nps.gov*. Comments may also be submitted at the park's Web site: *http://www.nps.gov/sahi.*

FOR FURTHER INFORMATION CONTACT: Copies of the Draft GMP/EIS are available upon request by writing to: Ellen Carlson, Project Planner, National Park Service, Northeast Region, 15 State Street, Boston, MA 02109; e-mailing *ellen_carlson@nps.gov*, or calling (617) 223–5048. The Draft GMP/EIS also is available for pick up in person at Sagamore Hill National Historic Site at 20 Sagamore Hill Road, Oyster Bay, New York, at the park's administrative offices in the Old Orchard Museum during regular business hours. It is also available on the park's Web site at *http://www.nps.gov/sahi.*

SUPPLEMENTARY INFORMATION: NPS planning staff, staff at Sagamore Hill, and key park partners collaborated in the development of the Draft GMP/EIS. A previous master plan was prepared for the park in 1963 but was not approved. Project scoping for the GMP began in May 2003. Formal public scoping sessions were held in Oyster Bay and NYC in April 2004. A preliminary alternatives newsletter was prepared and distributed in April 2005 followed by two community meetings.

The Draft GMP/EIS addresses the following issues—improving the visitor experience, broadening and diversifying the park audience, improving operational efficiency, and enhancing resource protection. Key park partners closely involved in the development of planning alternatives include the Theodore Roosevelt Association, the Friends of Sagamore Hill, and the park's Volunteer Advisory Board.

In addition to *Alternative 1—Status Quo,* which describes the continuation of current management practices, the plan includes two action alternatives. *Alternative 2—Building Capacity* emphasizes building the park's capacity to address its basic visitor services and operational needs. Alternative 3 is the National Park Service's preferred alternative. *Alternative 3—Past Meets Present* emphasizes rehabilitation of the park's cultural resources and improvements to its visitor services and facilities to offer expanded opportunities for visitors to explore the site's contemporary relevance in the same context in which they explore its history.

After public review of the Draft GMP/EIS, the National Park Service will consider public comments, and a Final GMP/EIS will be prepared. The Final GMP/EIS is scheduled for completion in 2007. Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 26, 2007.

Dennis Reidenbach,

Acting Regional Director, Northeast Region.

[FR Doc. E7–4134 Filed 3–7–07; 8:45 am]

BILLING CODE 4310–D9–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–739 (Second Review)]

Clad Steel Plate From Japan; Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on clad steel plate from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Jennifer A. Hillman and Irving A. Williamson not participating.

Background

The Commission instituted this review on October 2, 2006 (71 FR 57996), and determined on January 5, 2007, that it would conduct an expedited review (72 FR 2554, January 19, 2007).

The Commission's public report Clad Steel Plate from Japan (Inv. No. 731–TA–739) (Second Review), USITC Publication 3907, March 2007) will contain the views of the Commission developed during the review.

By order of the Commission.

Issued: March 5, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–4144 Filed 3–7–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1088 (Preliminary) (Remand)]

Polyvinyl Alcohol From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Notice of remand proceedings.

SUMMARY: The U.S. International Trade Commission (''Commission'') hereby gives notice of the court-ordered remand of its preliminary determination in the antidumping Investigation No. 731–TA–1088 concerning polyvinyl alcohol from Taiwan. For further information concerning the conduct of this proceeding 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, subpart A (19 CFR part 207).

DATES: *Effective Date:* March 2, 2007.

FOR FURTHER INFORMATION CONTACT: George Deyman, Office of Investigations, telephone 202–205–3197, or Mary Jane Alves, Office of General Counsel, telephone 202–708–2969, 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 of Investigation No. 731–TA–1088 may be

viewed on the Commission's electronic docket (''EDIS'') at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—In October 2004, the Commission determined that there was no reasonable indication that a U.S. industry was materially injured or threatened with material injury by reason of imports of certain polyvinyl alcohol from Taiwan that were allegedly sold in the United States at less than fair value. The Commission's determination was appealed to the CIT. The CIT issued an opinion in the matter on January 29, 2007. *Celanese Chemicals, Ltd.* v. *United States*, Slip Op. 07–16 (Ct. Int'l Trade Jan. 29, 2007). In its opinion, the CIT remanded the matter to the Commission for further proceedings not inconsistent with that opinion.

Participation in the proceeding.—Only those persons who were interested parties to the original investigation (*i.e.*, persons listed on the Commission Secretary's service list) and were parties to the appeal may participate in the remand proceeding. Such persons need not make any additional filings with the Commission to participate in the remand proceeding. Business proprietary information (''BPI'') referred to during the remand proceeding will be governed, as appropriate, by the administrative protective order issued in the original investigation.

Written submissions.—The Commission is not reopening the record in this proceeding for submission of new factual information. The Commission will, however, permit the parties to file comments solely pertaining to the inquiries that are the subject of the CIT's remand instructions. Comments should be limited to no more than twenty (20) double-spaced and single-sided pages of textual material. The parties may not submit any new factual information and may not address any issue other than the inquiries that are the subject of the CIT's remand instructions. Any such comments must be filed with the Commission no later than March 12, 2007.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing 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 FR 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Parties are also advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

By order of the Commission.

Issued: March 2, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–4145 Filed 3–7–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on February 28, 2007, a proposed Consent Judgment in *United States* v. *AGI–VR Wesson Co. et al.*, Civil Action No. CV–07–825, was lodged with the United States District Court for the Eastern District of New York.

The proposed Consent Judgment will settle the United States' claims on behalf of the U.S. Environmental Protection Agency (''EPA'') brought against defendants AGI–VR/Wesson Co., Alloy Carbide Company, Chi Mei Corporation, Climax Molybdenum Company, Climax Molybdenum Marketing Corporation, County of Nassau, New York, Cyprus Amax Minerals Company, General Electric Company, GTE Corporation, H.C. Starck, Inc., Kennametal Inc., M&R Industries, Inc., Minmetals Inc., Osram Sylvania Inc., Philips Electronics North America Corporation, Sandvik, AB, TDY Holding, LLC; and TDY Industries, Inc., (along with Adamas Carbide Corporation and Kulite Tungsten Corp.) pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, with respect to the Li Tungsten Superfund Site in Glen Cove, New York.

Pursuant to the Consent Judgment, a total of $5.11 million will be paid by settling defendants. Of this amount, $1.5 million will be denominated as a civil penalty for failure to comply with an administrative order. In addition, TDY will perform the remaining work at the Site (other than that which EPA has reserved to perform itself), which is estimated by EPA at $10.7 million. The Consent Decree also resolves claims against four agencies of the United States, the Department of Commerce, the Department of Defense, the Department of the Treasury, and the General Services Administration (''Settling Federal Agencies''). Pursuant to the Consent Judgment, the Settling Federal Agencies shall pay $25 million to EPA and $1 million to TDY, and also receive contribution protection.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *AGI–VR Wesson Co., et al.*, Civil Action No. CV–07–835, D.J. Ref. 90–11–3–09093.

The proposed Consent Judgment may be examined at the Office of the United States Attorney, Eastern District of New York, One Pierrepont Plaza, 14th Fl., Brooklyn, New York 11201, and at the United States Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. During the public comment period, the proposed Consent Judgment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decress.html*. A copy of the proposed Consent Judgment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy by mail from the Consent Decree Library, please enclose a check in the amount of $208.00 ($0.25 per page reproduction cost) payable to the United States Treasury or, if requesting by e-mail or fax, forward the check in that amount to the Consent Decree Library at the stated address. If requesting a copy exclusive of exhibits, please enclose a check in the amount of $32.25 ($0.25

per page reproduction cost) payable to the United States Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–1070 Filed 3–7–07; 8:45 am]

BILLING CODE 4140–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, notice is hereby given that a proposed consent decree in *United States* v. *Franks Petroleum Corp., et al.,* Civil Action No. 2:07–CV–0337, was lodged with the United States Court for the Western District of Louisiana on February 23, 2007.

In a complaint filed with the consent decree, the United States seeks reimbursement for costs incurred in connection with the Castex oilfield waste disposal facility located near Jennings, Louisiana (the ''Site''), from 11 settling defendants pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607. These 11 settling defendants agree to pay $2,000,000 to resolve federal claims relating to the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, P.O. Box 7611, Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Franks Petroleum Corp., et al.,* DOJ Ref. #90–5–1–1–08095.

The proposed consent decree may be examined at the office of the United States Attorney, Western District of Louisiana, 800 Lafayette Street, Suite 2200, Lafayette, LA 70501, and National Pollution Funds Centers, 4200 Wilson Blvd, Ste 1000, Arlington, VA 22203–1804. A copy of the consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the consent decree without signature pages and appendices, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the U.S. Treasury. Comments may be sent to: *pubcomment-ees.enrd@usdoj.gov.*

Thomas A. Mariani, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–1069 Filed 3–7–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice corrects the Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance which was published in the **Federal Register** on February 27, 2007 (72 FR 8794–8795).

This revises the reporting period dates on pages 8794–8795 to read February 12 through February 16, 2007 instead of January 12 through January 16, 2007.

Signed in Washington, DC, this 1st day of March 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–4058 Filed 3–7–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,136; TA–W–59,136B]

Cranston Print Works Company, Design and Engraving Division, Cranston, RI; Cranston Print Works Company, Corporate Headquarters, Cranston, RI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 21, 2006, applicable to workers of Cranston Print Works Company, Design and Engraving Division, Cranston, Rhode Island. The notice was published in the **Federal Register** on May 10, 2006 (71 FR 27291).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of artwork designs used by the subject firm to engrave rotary screens for printing textile fabrics.

The company reports that worker separations occurred at the Corporate Headquarters facility of the subject firm where the workers provide administrative support functions for the subject firm's production plant located in Cranston, Rhode Island.

Based on these findings, the Department is amending the certification to include workers of the Cranston Print Works Company, Corporate Headquarters, Cranston, Rhode Island.

The intent of the Department's certification is to include all workers of Cranston Print Works Company, Design and Engraving Division who were adversely affected by increased company imports. The amended notice applicable to TA-W–59,136 is hereby issued as follows:

All workers of Cranston Print Works Company, Design and Engraving Division, Cranston, Rhode Island (TA–W–59,136) and Cranston Print Works Company, Corporate Headquarters, Cranston, Rhode Island (TA–W–59,136B), who became totally or partially separated from employment on or after March 6, 2005, through April 21, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of February 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–4062 Filed 3–7–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,318]

Delphi Corporation, Automotive Holdings Group, Anaheim, CA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Delphi Corporation, Automotive Holdings Group, Anaheim, California. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued:

TA–W–60,318; Delphi Corporation, Automotive Holdings Group, Anaheim, California (February 23, 2007)

Signed at Washington, DC, this 27th day of February 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–4063 Filed 3–7–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,936]

Duro Textiles, LLC, Fall River, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 12, 2007 in response to a petition filed by a company official on behalf of workers at Duro Textiles, LLC, Fall River, Massachusetts. The workers at the subject facility produce dyed, coated, and finished fabric.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 26th day of February 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–4065 Filed 3–7–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,982]

Eaton Corporation—Truck Components, Galesburg, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 20, 2007 in response to a worker petition filed a company official on behalf of workers at Eaton Corporation, Truck Components, Galesburg, Michigan.

The petitioner has withdrawn the petition. Hence, this investigation is terminated.

Signed at Washington, DC, this 22nd day of February 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–4066 Filed 3–7–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 19, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 19, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC. 20210.

Signed at Washington, DC, this 27th day of February 2007.

Ralph Dibattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 2/20/07 and 2/23/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60978	First Alert/BRK Brands Inc. (Union)	Aurora, IL	02/20/07	02/16/07
60979	Bright Wood Corporation (State)	Madras, OR	02/20/07	02/16/07
60980	WestPoint Home (Comp)	Abbeville, AL	02/20/07	02/14/07
60981	Sunbeam Products Inc. d/b/a Jarden Consumer Solutions (State)	Milford, MA	02/20/07	02/16/07
60982	Eaton Corporation (Comp)	Galesburg, MI	02/20/07	02/15/07
60983	United States Ceramic Tile Company (USW)	East Sparta, OH	02/20/07	02/15/07
60984	Westby Moulding and Millwork Company LLC (Wkrs)	Westby, WI	02/20/07	02/07/07

APPENDIX—Continued

[TAA petitions instituted between 2/20/07 and 2/23/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60985	Collins & Aikman (State)	Havre de Grace, MD	02/20/07	02/15/07
60986	Sardelli International LLC (Comp)	Providence, RI	02/21/07	02/14/07
60987	Stant Manufacturing Co., Inc. (UAW)	Connersville, IN	02/21/07	02/16/07
60988	Collins & Aikman (Wkrs)	Americus, GA	02/21/07	02/15/07
60989	National Lumber #5 (Div. of Silvacor Inc.) (Comp)	Glasgow, KY	02/21/07	02/09/07
60990	Andersen Corporation (State)	Menomenie, WI	02/21/07	02/15/07
60991	Heinz North America /Lea and Perrins (Wkrs)	Fairlawn, NJ	02/21/07	02/14/07
60992	Kimberly-Clark/Ballard Medical Products (Comp)	Draper, UT	02/21/07	02/19/07
60993	Guardian Automotive (Wkrs)	LaGrange, GA	02/21/07	02/14/07
60994	Yoder Brothers Inc. (Comp)	Pendleton, SC	02/21/07	02/15/07
60995	Distinctive Designs Furniture Inc. USA (Wkrs)	Granite Falls, NC	02/21/07	02/19/07
60996	Yamaha Music Manufacturing, Inc. (Comp)	Grand Rapids, MI	02/21/07	02/20/07
60997	Employment Solutions (Comp)	Fort Collins, CO	02/21/07	02/21/07
60998	Continental Industries, LLC (Comp)	Benzonia, MI	02/22/07	02/20/07
60999	Columbus Dispatch (The) (Comp)	Columbus, OH	02/22/07	02/05/07
61000	Gibraltar DFC Strip Steel LLC (USWA)	Farrell, PA	02/22/07	02/20/07
61001	Optera Colorado (Wrks)	Longmont, CO	02/22/07	02/16/07
61002	Reddog Industries, Inc. (Comp)	Erie, PA	02/22/07	02/16/07
61003	Yamaha Corporation of America (Comp)	Grand Rapids, MI	02/22/07	02/20/07
61004	Seydel-Wolley and Co., Inc. (Wkrs)	Pendergrass, GA	02/22/07	02/12/07
61005	United States Sugar Processing, LLC (Comp)	Clewiston, FL	02/22/07	02/16/07
61006	CST, Inc. (Comp)	Mt. Carmel, IL	02/22/07	02/14/07
61007	Venture Lighting International (Wkrs)	Solon, OH	02/22/07	02/09/07
61008	Hutchens Ind. (Wkrs)	Springfield, MO	02/22/07	02/08/07
61009	Con Agra Foods (State)	Edina, MN	02/22/07	02/21/07
61010	Avon Automotive (Comp)	Manton, MI	02/22/07	02/16/07
61011	Shafer Electronics (State)	Shafer, MN	02/22/07	02/21/07
61012	Avan Tech Manufacturing LLC (Comp)	Mt. Pleasant, TN	02/22/07	02/21/07
61013	Elder Manufacturing Inc. (Wkrs)	St. Louis, MO	02/22/07	02/21/07
61014	Burma S Bibas (UNITE)	Long Island City, NY	02/22/07	01/23/07
61015	Dan D Company (State)	Tillamook, OR	02/22/07	02/21/07
61016	Modine Manufacturing Company (Wkrs)	Racine, WI	02/23/07	02/20/07
61017	Catawissa Lumber & Specialty Co. Inc. (Comp)	Catawissa, PA	02/23/07	02/15/07
61018	International Truck and Engine Corporation/TDTC (UAW)	Fort Wayne, IN	02/23/07	02/22/07

[FR Doc. E7–4059 Filed 3–7–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of February 19 through February 23, 2007.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) All of the Following Must Be Satisfied

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) Both of the Following Must Be Satisfied

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding

eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–60,704; Hewlett Packard Company, Technology Solutions Group Division, Mahwah, NJ: December 29, 2005

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,785; Transportation Research Center, Inc., Contract Services, Moraine, OH: December 29, 2005

TA–W–60,848; WestPoint Home, Inc., Graphics Facility, West Point, GA: January 27, 2006

TA–W–60,901; Perfect Fit Glove Company, LLC, Subsidiary of Bacou Dalloz SA, Spherion, Adecco, EGW, Ablest, Buffalo, NY: February 1, 2006

TA–W–60,907; Ski Country Imports, Inc., dba Ouray Sportswear, Denver, CO: February 2, 2006

TA–W–60,913; Reed Sportswear, Detroit, MI: January 30, 2006

TA–W–60,962; Mitchel Manufacturing, Div. of Quaker Lave, Honea Path, SC: February 6, 2006

TA–W–60,506; Kelsey Hayes Company, A Subsidiary TRW Automotive, Mt. Vernon, OH: November 27, 2005

TA–W–60,684; Mohican Mills, Inc., Fab Industries Corp, Lincolnton, NC: October 14, 2006

TA–W–60,875; Vescom Corporation, Working at Georgia Pacific Corp., Ft. James Operating Division , Koch Ind., Hampden, ME: January 29, 2006

TA–W–60,742; Jordan Alexander, Inc., Granite Falls, NC: January 10, 2006

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,783; Lear Corporation, Interior Systems Division, Carlisle, PA: February 5, 2007

TA–W–60,838; Goodyear Tire and Rubber Corporation, Engineered Products Division, Lincoln, NE: January 18, 2007

TA–W–60,864; Elcom, Inc., A Subsidiary of Yazaki International Corp., El Paso, TX: January 29, 2006

TA–W–60,869; International Legwear Group, Also Know As Neuville Industries, Hickory Facility Division, Hickory, NC: January 30, 2006

TA–W–60,943; Teamlinden, Div. of Fisher & Company, Linden, TN: January 23, 2006

TA–W–60,578; Loud Technologies, Inc., Whitinsville, MA: December 11, 2005

TA–W–60,744; Worthington Precision Metals, Franklin, TN: January 10, 2006

TA–W–60,781; Hearth and Home Technologies, Colville, WA: January 12, 2006

TA–W–60,795; Pride Manufacturing Company, Burnham, ME: January 19, 2006

TA–W–60,833; Master Halco, Inc., Fontana, CA: January 23, 2006

TA–W–60,845; Maida Development Company, Integrity Staffing Services, Hampton, VA: March 13, 2006

TA–W–60,888; Triplett Corporation, Bluffton, OH: February 1, 2006

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,854; Unifi, Inc., Yadkinville, NC: January 29, 2006

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

None

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

TA–W–60,704; Hewlett Packard Company, Technology Solutions Group Division, Mahwah, NJ.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–60,763; Enkeboll Company (The), Raymond E Enkeboll, Carson, CA.

TA–W–60,765; Woodhead, A Division of Molex, Industrial Division, Northbrook, IL.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,863; Intier Seating Systems, Lewisburg, TN.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,471; Armstrong Wood Products, Nashville, TN.

TA–W–60,533; International Filing Company, Waukegan, IL.

TA–W–60,792; Dexter Centerless Grinding, LLC, Ann Arbor, MI.

TA–W–60,696; LeNature's, Inc., Latrobe, PA.

TA–W–60,770; Regal Cutting Tools, Inc., Roscoe, IL.

TA–W–60,347; Timken U.S. Corporation, Torrington, CT.

TA–W–60,681; Boeing Company (The), Boeing Commercial Airplane, Commercial Aircraft Components, Oak Ridge, TN.

TA–W–60,681A; Boeing Company (The), Boeing Commercial Airplane, Centrifuge Machine Components, Oak Ridge, TN.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

None

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–60,842; United Parcel Service Cartage, Inc., Dayton Hub Division, Dayton, OH.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None

I hereby certify that the aforementioned determinations were issued during the period of February 19 through February 23, 2007. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 27, 2007.

Ralph Dibattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–4060 Filed 3–7–07; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,442]

Weyerhaeuser Company, Aberdeen, WA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 25, 2006, applicable to workers of Weyerhaeuser Company, Large Log Mill, Aberdeen, Washington. The notice was published in the **Federal Register** on February 10, 2006 (71 FR 7077).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The Department limited the certification coverage to only workers of the Large Log Mill of the subject firm. New corrected information revealed that the Aberdeen, Washington location of Weyerhaeuser Company operates as a fully integrated work site and that the workers are not separately identifiable by product or location at the production complex.

The intent of the Department's certification is to cover all workers manufacturing softwood dimensional lumber at Weyerhaeuser Company, Aberdeen, Washington, who were adversely affected by increased customer imports.

Accordingly, the Department is amending the certification determination to properly reflect this matter.

The amended notice applicable to TA-W–58,442 is hereby issued as follows:

- All workers of Weyerhaeuser Company, Aberdeen, Washington, who became totally or partially separated from employment on after November 21, 2004, through January 25, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade Adjustment assistance under Section 246 of the Trade Act of 1997.

Signed at Washington, DC, this 23rd day of January 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–4061 Filed 3–7–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,793]

Weyerhaeuser Company, Aberdeen, WA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 19, 2007, in response to a petition filed by the United Brotherhood of Carpenters Industrial Union on behalf of workers at Weyerhaeuser Company, Aberdeen, Washington.

This petitioning group of workers is covered by an active certification, (TA–W–58,442) that expires on January 25, 2008. Since the Department of Labor recently discovered that the workers are not separately identifiable by product line the Department of Labor amended

on January 23, 2007 certification to include all workers of Weyerhaeuser Company, Aberdeen, Washington engaged in the production of softwood dimensional lumber. Consequently, further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation has been terminated.

Signed in Washington, DC, this 26th day of February 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–4064 Filed 3–7–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,003]

Yamaha Corporation of America, Grand Rapids, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 22, 2007, in response to a petition filed by a company official on behalf of workers at Yamaha Corporation of America, Grand Rapids, Michigan.

This petitioning group of workers is covered by an earlier petition (TA–W–60,996) filed on February 21, 2007 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation has been terminated.

Signed in Washington, DC, this 27th day of February 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–4067 Filed 3–7–07; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 07–022]

Notice of Intent To Grant Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive license worldwide to practice the inventions described and claimed in U.S. Patent Nos. 5,155,035, entitled '' Method for Culturing Mammalian Cells in a Perfused Bioreactor''; 5,153,133, entitled ''Method for Culturing Mammalian Cells in a Horizontally Rotated Bioreactor''; 5,155,034, entitled ''Three Dimensional Cell to Tissue Assembly Process''; 5,153,132, entitled ''Three-Dimensional Co-culture Process''; 5,308,764, entitled ''Multi-Cellular Three-Dimensional Living Mammalian Tissue''; 5,627,021, entitled ''Three-Dimensional Co-Culture Process''; 5,153,131, entitled ''High Aspect Reactor Vessel and Method of Use''; 5,496,722, entitled ''Method for Producing Non-neoplastic, Three-dimensional, Mammalian Tissue and Cell Aggregates under Microgravity Culture Conditions and the Products Produced Therefrom''; 5,846,807, entitled ''Media Compositions for Three-dimensional Mammalian Tissue Grown under Microgravity Culture Conditions''; 5,858,783, entitled ''Production of Normal Mammalian Organ Culture Using a Medium Containing MEM-alpha, Leibovitz L–15, Glucose Galactose Fructose''; 5,962,324, entitled ''Three Dimensional Optic Tissue Culture and Process''; 6,485,963, entitled ''Growth Stimulation of Biological Cells and Tissue by Electromagnetic Fields and Uses Thereof'', 6,673,597, entitled ''Growth Stimulation of Biological Cells and Tissue by Electromagnetic Fields and Uses Thereof''; 6,730,498, entitled ''Production of Functional Proteins: Balance of Shear Stress and Gravity''; 6,946,246, entitled ''Production of Functional Proteins: Balance of Shear Stress and Gravity'', U.S. Patent Application Serial Number 10/734,759, entitled ''Production of Functional Proteins: Balance of Shear Stress and Gravity'', U.S. Patent Application Serial Number 10/947,786, entitled ''Production of Functional Proteins: Balance of Shear Stress and Gravity'', Foreign Patent No. 0423277 ''Bio-Reactor Cell Culture Process'', Foreign Patent No. 1987294, ''Bio-Reactor Cell Culture Process'', International Application No. PCT/US98/06826, European Application No. 98915320.0 entitled ''Production of Functional Proteins: Balance of Shear Stress and Gravity'', International Application No. PCT/US98/06826, Japanese Application No. 10–540983 entitled ''Production of Functional Proteins: Balance of Shear Stress and Gravity'', International Application No. PCT/US98/06826, Canadian Application No. 2286349 entitled ''Production of Functional Proteins: Balance of Shear Stress and Gravity'', International Application No. PCT/US98/06826, Israeli Application No. 132264 entitled ''Production of Functional Proteins: Balance of Shear Stress and Gravity'', International Application No. PCT/US98/06826, Mexican Application No. 999265 entitled ''Production of Functional Proteins: Balance of Shear Stress and Gravity'', and International Application No. PCT/US98/06826, Brazilian Application No. 98915320.0 entitled ''Production of Functional Proteins: Balance of Shear Stress and Gravity'', to Aedifico Biosciences, Inc., having its principal place of business in Beverly Hills, California. The fields of use may be limited to cosmetics and personal care products. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, Mail Code AL, 2101 NASA Parkway, Houston, TX 77058, (281) 483–4871; (281) 483–6936 [Facsimile].

FOR FURTHER INFORMATION CONTACT: Kurt G. Hammerle, Patent Attorney, Office of Chief Counsel, Johnson Space Center, Mail Code AL, 2101 NASA Parkway, Houston, TX 77058, (281)483–1001; (281)483–6936 [Facsimile]. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Dated: March 1, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration & Management.

[FR Doc. E7–4099 Filed 3–7–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board Meeting

AGENCY: National Institute for Literacy.

ACTION: Notice of Open Meeting With Partially Closed Session.

SUMMARY: This notice sets forth the schedule and a summary of the agenda for an upcoming meeting of the National Institute for Literacy Advisory Board (Board). The notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, or materials in alternative format) should notify Steve Langley at telephone number (202) 233–2043 no later than March 19, 2007. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

DATE AND TIME: *Open sessions*—March 28, 2007, from 8:30 a.m. to 5:30 p.m. *Closed sessions*—March 28, 2007, from 5:30 p.m. to 6 p.m.; and March 29, 2007, from 8:30 a.m. to 2 p.m.

ADDRESSES: The National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Steve Langley, National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006; telephone number: (202) 233–2043; e-mail: *slangley@nifl.gov.*

SUPPLEMENTARY INFORMATION: The Board is established under section 242 of the Workforce Investment Act of 1998, P.L. 105–220 (20 U.S.C. 9252). The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board advises and makes recommendations to the Interagency Group that administers the Institute. The Interagency Group is composed of the Secretaries of Education, Labor, and Health and Human Services. The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in implementing any programs to achieve those goals. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Institute's Director.

The National Institute for Literacy Advisory Board will meet March 28–29, 2007. On March 28, 2007 from 8:30 a.m. to 5:30 p.m. and March 29, 2007 from 8:30 a.m. to 2 p.m., the Board will meet in open session to discuss strategic planning and the dissemination plan for the National Early Literacy Panel Report.

On March 28, 2007 from 5:30 p.m. to 6 p.m., the Board will meet in closed session to discuss personnel issues. This discussion will relate to the Institute's internal personnel practices, including consideration of the Director's performance and salary. The discussion is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personnel privacy. The discussion must therefore be held in closed session under exemptions 2 and 6 of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (6). A summary of the activities at the closed session and related matters that are informative to the public and consistent with the policy of 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Records are kept of all Advisory Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006, from 8:30 a.m. to 5 p.m.

Dated: March 2, 2007.

Sandra L. Baxter,

Director.

[FR Doc. E7–4132 Filed 3–7–07; 8:45 am]

BILLING CODE 6055–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 70–1257; License No. SNM–1227; EA–06–231]

In the Matter of Areva Np, Inc. Richland, WA and All Others Who Seek or Obtain Access to Safeguards Information; Described Herein: Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information (Effective Immediately)

I

AREVA NP, Inc., Richland, (AREVA NP—Richland) is the holder of Special Nuclear Material License No. SNM–1227 issued by the U.S. Nuclear Regulatory (NRC) pursuant to 10 CFR Part 70. AREVA NP—Richland is authorized, by its license, to receive, possess, and transfer byproduct, source material, and special nuclear material in accordance with the Atomic Energy Act (AEA) of 1954, as amended, and 10 CFR Part 70.

On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to Safeguards Information (SGI).[1] The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective on enactment of the EPAct. Although the EPAct permits the Commission, by rule, to except certain categories of individuals from the fingerprinting requirement, which the Commission has done [see 10 CFR 73.59, 71 **Federal Register** 33989 (June 13, 2006)], it is unlikely that licensee employees are excepted from the fingerprinting requirement by the ''fingerprinting relief'' rule. Individuals relieved from fingerprinting and criminal history checks under the relief rule include: Federal, State, and local officials and law enforcement personnel; Agreement State Inspectors who conduct security inspections on behalf of the NRC; members of Congress and certain employees of members of Congress or Congressional Committees, and representatives of the International

[1] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

Atomic Energy Agency or certain foreign government organizations. In addition, individuals who have had a favorably-decided U.S. Government criminal history check within the last five (5) years, and individuals who have active federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that affected licensees can obtain and grant access to SGI. This Order also imposes requirements for access to SGI by any person,[2] from any person, whether or not they are a licensee, applicant, or certificate holder of the Commission or an Agreement State.

Subsequent to the terrorist events of September 11, 2001, the NRC issued Orders requiring certain entities to implement Additional Security Measures or Interim Compensatory Measures for certain radioactive materials. The requirements imposed by these Orders, and certain measures that licensees have developed to comply with the Orders, were designated by the NRC as SGI. For some materials licensees, the storage and handling requirements for the SGI have been modified from the existing 10 CFR Part 73 SGI requirements for reactors and fuel cycle facilities that require a higher level of protection; such SGI is designated as Safeguards Information-Modified Handling (SGI–M). However, the information subject to the SGI–M handling and protection requirements is SGI, and licensees and other persons who seek or obtain access to such SGI are subject to this Order.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders as necessary to prohibit the unauthorized disclosure of SGI. Furthermore, Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, as required by existing Orders, which remain in effect, no person may have access to SGI unless the person has an established need-to-know and satisfies the trustworthiness and reliability requirements of those Orders.

To provide assurance that AREVA NP—Richland is implementing appropriate measures to comply with the fingerprinting and criminal history check requirements for access to SGI, AREVA NP—Richland shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 53, 62, 63, 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, 10 CFR Part 40, 10 CFR Part 70, and 10 CFR Part 73, it is hereby ordered, effective immediately, AREVA NP—Richland and all other persons who seek or obtain access to safeguards information described herein shall comply with the requirements set forth in this order.

A. 1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted, has a favorably-decided FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from that requirement by 10 CFR 73.59 [71 **Federal Register** 33989 (June 13, 2006)], or who has had a favorably-decided U.S. Government criminal history check within the last five (5) years, or who has an active federal security clearance, provided in each case that the appropriate documentation is made available to AREVA NP—Richland's NRC-approved reviewing official.

2. No person may have access to any SGI if the NRC, when making an SGI determination for a nominated reviewing official, has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C. AREVA NP—Richland shall comply with the following requirements:

1. AREVA NP—Richland shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of the Attachment to this Order.

2. AREVA NP—Richland shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who currently has access to SGI, in accordance with the previously-issued NRC Orders, who continues to need access to SGI, and whom AREVA NP—Richland nominates as the ''reviewing official'' for determining access to SGI by other individuals. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as AREVEA NP—Richland's reviewing official.[3] AREVA NP—Richland may, at the same time, or later, submit the fingerprints of other individuals to whom AREVA NP—Richland seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment to this Order.

3. AREVA NP—Richland may allow any individual who currently has access to SGI in accordance with the previously-issued NRC Orders to continue to have access to previously-designated SGI without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthiness and reliability determination) that the individual may continue to have access to SGI. AREVA NP—Richland shall make determinations on continued access to SGI within ninety (90) days of the date of this Order, in part on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. AREVA NP—Richland shall, in writing, within twenty (20) days of the

[2] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

[3] The NRC's determination of this individual's access to SGI, in accordance with the process described in Enclosure 3 to the transmittal letter of this Order, is an administrative determination that is outside the scope of this Order.

date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in the Order, including the Attachment; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide AREVA NP—Richland's justification for seeking relief from, or variation of, any specific requirement. AREVA NP—Richland responses to C.1., C.2., C.3., and C.4. above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, licensee responses shall be marked as ''Security-Related Information—Withhold Under 10 CFR. 2.390.''

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions on demonstration of good cause by AREVA NP—Richland.

IV

In accordance with 10 CFR 2.202, AREVA NP—Richland must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing regarding this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for an extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law by which AREVA NP—Richland, or other entities adversely affected, rely, and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to AREVA NP—Richland if the answer or hearing request is by an entity other than AREVA NP—Richland. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to 301–415–1101, or via e-mail to *hearingdocket@nrc.gov,* and also to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or via e-mail to *OGCMailCenter@nrc.gov.* If an entity other than AREVA NP—Richland requests a hearing, that entity shall set forth with particularity the manner in which its interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by AREVA NP—Richland or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), AREVA NP—Richland may, in addition to demanding a hearing, at the time the answer is filed, or sooner, move that the presiding officer set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified above in Section III shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions as specified above in Section III shall be final when the extension expires if a hearing request has not been received. An Answer or a Request for Hearing Shall Not Stay the Immediate Effectiveness of this Order.

Dated at Rockville, Maryland, this 1st day of March 2007.

For The Nuclear Regulatory Commission.

Jack R. Strosnider,

Director Office of Nuclear Material Safety and Safeguards.

Attachment 1—Requirements for Fingerprinting and Criminal History Records Checks of Individuals When Licensee's Reviewing Official is Determining Access to Safeguards Information

General Requirements

Licensees shall comply with the requirements of this attachment.

A. 1. Each licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has had a favorably-decided U.S. Government criminal history records check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history records check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the licensee's activities.

4. All fingerprints obtained by the licensee, pursuant to this Order, must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it in conjunction with the trustworthy and reliability established by the previous SGI Protection Order, dated November 5, 2004, when making a determination to grant access to SGI to individuals who have a need-to-know.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The licensee shall document the basis for its determination whether to grant access to SGI.

B. The licensee shall notify the NRC of any desired change in reviewing officials. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained, or new criminal history check and, therefore, will be permitted to serve as the licensee's reviewing official.

Prohibitions

A licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way which would discriminate among

individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing to the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint records submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with the NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

The Commission will forward, to the submitting licensee, all data received from the FBI as a result of the licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

Right to Correct and Complete Information

Prior to any final adverse determination, the licensee shall make available, to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (*i.e.*, law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation, Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee may make a final SGI access determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI, the licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to Safeguards Information. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another licensee if the licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI (whether access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E7–4158 Filed 3–7–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA–06–231; Docket No. 70–1201; License No. SNM–1168]

In the Matter of Areva NP, Inc., Lynchburg, Va, and All Others Who Seek or Obtain Access to Safeguards Information Described Herein; Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information (Effective Immediately)

I

AREVA NP, Inc., Lynchburg, (AREVA NP—Lynchburg) is the holder of Special Nuclear Material License No. SNM–1168, issued by the U.S. Nuclear Regulatory (NRC) pursuant to 10 CFR Part 70. AREVA NP—Lynchburg is authorized, by its license, to receive, possess, and transfer byproduct, source material, and special nuclear material in accordance with the Atomic Energy Act (AEA) of 1954, as amended, and 10 CFR Part 70.

On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct, amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to Safeguards Information (SGI).[1] The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective on enactment of the EPAct. Although the EPAct permits the Commission, by rule, to except certain categories of individuals from the fingerprinting

[1] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

requirement, which the Commission has done [see 10 CFR 73.59, 71 FR 33989 (June 13, 2006)], it is unlikely that licensee employees are excepted from the fingerprinting requirement by the ''fingerprinting relief'' rule. Individuals relieved from fingerprinting and criminal history checks under the relief rule include: Federal, State, and local officials and law enforcement personnel; Agreement State Inspectors who conduct security inspections on behalf of the NRC; members of Congress and certain employees of members of Congress or Congressional Committees, and representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, individuals who have had a favorably-decided U.S. Government criminal history check within the last five (5) years, and individuals who have active federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that affected licensees can obtain and grant access to SGI. This Order also imposes requirements for access to SGI by any person,[2] from any person, whether or not they are a licensee, applicant, or certificate holder of the Commission or an Agreement State.

Subsequent to the terrorist events of September 11, 2001, the NRC issued Orders requiring certain entities to implement Additional Security Measures or Interim Compensatory Measures for certain radioactive materials. The requirements imposed by these Orders, and certain measures that licensees have developed to comply with the Orders, were designated by the NRC as SGI. For some materials licensees, the storage and handling requirements for the SGI have been modified from the existing 10 CFR Part 73 SGI requirements for reactors and fuel cycle facilities that require a higher level of protection; such SGI is designated as Safeguards Information-Modified Handling (SGI-M). However, the information subject to the SGI-M handling and protection requirements is SGI, and licensees and other persons who seek or obtain access to such SGI are subject to this Order.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders, as necessary, to prohibit the unauthorized disclosure of SGI. Furthermore, Section 652 of the EPAct, amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, as required by existing Orders, which remain in effect, no person may have access to SGI unless the person has an established need-to-know and satisfies the trustworthiness and reliability requirements of those Orders.

To provide assurance that AREVA NP—Lynchburg is implementing appropriate measures to comply with the fingerprinting and criminal history check requirements for access to SGI, AREVA NP—Lynchburg shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 53, 62, 63, 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR part 30, 10 CFR part 40, 10 CFR part 70, and 10 CFR part 73, *it is hereby ordered*, effective immediately, Areva NP—Lynchburg and all other persons who seek or obtain access to safeguards information described herein shall comply with the requirements set forth in this order.

A.1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted, has a favorably-decided FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from that requirement by 10 CFR 73.59 [71 FR 33989 (June 13, 2006)], or who has had a favorably-decided U.S. Government criminal history check within the last five (5) years, or who has an active federal security clearance, provided in each case that the appropriate documentation is made available to AREVA NP—Lynchburg's NRC-approved reviewing official.

2. No person may have access to SGI if the NRC, when making a SGI access determination for a nominated reviewing official, has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C. AREVA NP—Lynchburg shall comply with the following requirements:

1. AREVA NP—Lynchburg shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of the Attachment to this Order.

2. AREVA NP—Lynchburg shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who currently has access to SGI, in accordance with the previously-issued NRC Orders, who continues to need access to SGI, and whom AREVA NP—Lynchburg nominates as the ''reviewing official'' for determining access to SGI by other individuals. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as AREVEA NP—Lynchburg's reviewing official.[3] AREVA NP—Lynchburg may, at the same time, or later, submit the fingerprints of other individuals to whom AREVA NP—Lynchburg seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment to this Order.

3. AREVA NP—Lynchburg may allow any individual who currently has access to SGI, in accordance with the previously-issued NRC Orders, to continue to have access to previously-designated SGI without being fingerprinted, pending a decision by the

[2] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

[3] The NRC's determination of this individual's access to SGI, in accordance with the process described in Enclosure 3 to the transmittal letter of this Order, is an administrative determination that is outside the scope of this Order.

NRC-approved reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthiness and reliability determination) that the individual may continue to have access to SGI. AREVA NP—Lynchburg shall make determinations on continued access to SGI, within ninety (90) days of the date of this Order, in part on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. AREVA NP—Lynchburg shall, in writing, within twenty (20) days of the date of this Order, notify the Commission: (1) if it is unable to comply with any of the requirements described in the Order, including the Attachment; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide AREVA NP—Lynchburg's justification for seeking relief from, or variation of, any specific requirement.

AREVA NP—Lynchburg responses to C.1., C.2., C.3., and C.4. above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, licensee responses shall be marked as ''Security-Related Information—Withhold Under 10 CFR. 2.390.''

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions on demonstration of good cause by AREVA NP—Lynchburg.

IV

In accordance with 10 CFR 2.202, AREVA NP—Lynchburg must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing regarding this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for an extension of time in which to submit an answer, or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law by which AREVA NP—Lynchburg, or other entities adversely affected, rely, and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to AREVA NP—Lynchburg if the answer or hearing request is by a person other than AREVA NP—Lynchburg. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to 301–415–1101, or via e-mail to *hearingdocket@nrc.gov,* and also to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or via e-mail to *OGCMailCenter@nrc.gov.* If an entity other than AREVA NP—Lynchburg requests a hearing, that entity shall set forth with particularity the manner in which its interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by AREVA NP—Lynchburg or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), AREVA NP—Lynchburg may, in addition to demanding a hearing, at the time the answer is filed, or sooner, move that the presiding officer set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified above in Section III shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions as specified above in Section III, shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 1st day of March 2007.

For the Nuclear Regulatory Commission.

Jack R. Strosnider,

Director, Office of Nuclear Material Safety and Safeguards.

Attachment 1—Requirements for Fingerprinting and Criminal History Records Checks of Individuals When Licensee's Reviewing Official Is Determining Access to Safeguards Information

General Requirements

Licensees shall comply with the requirements of this attachment.

A.1. Each licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has had a favorably-decided U.S. Government criminal history records check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history records check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the licensee's activities.

4. All fingerprints obtained by the licensee, pursuant to this Order, must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it in conjunction with the trustworthy and reliability established by the previous SGI Protection Order, dated November 5, 2004, when making a determination to grant access to SGI to individuals who have a need-to-know.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The licensee shall document the basis for its determination whether to grant access to SGI.

B. The licensee shall notify the NRC of any desired change in reviewing officials. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained, or new criminal history check and, therefore, will be permitted to serve as the licensee's reviewing official.

Prohibitions

A licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing to the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint records submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with the NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

The Commission will forward, to the submitting licensee, all data received from the FBI as a result of the licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Prior to any final adverse determination, the licensee shall make available, to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation, Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee may make a final SGI access determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI, the licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to Safeguards Information. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another licensee if the licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI (whether access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E7–4159 Filed 3–7–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 12, 2007:

A Closed Meeting will be held on Monday, March 12, 2007 at 2 p.m.

Commissioners, Counsels to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a) (3), (5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Monday, March 12, 2007 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

An adjudicatory matter; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: March 5, 2007,

Nancy M. Morris,

Secretary.

[FR Doc. 07–1105 Filed 3–6–07; 11:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55377; File No. SR–CBOE–2007–17]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend CBOE Rules Relating to CBOE's Determination to Trade Options on the S&P 100 (XEO) on the Hybrid 2.0 Platform

March 1, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 22, 2007, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules relating to CBOE's determination to trade options on the S&P 100 (XEO) on the Hybrid 2.0 Platform. The text of the proposed rule change is available on CBOE's Web site (*www.cboe.org/Legal*), at the CBOE's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend CBOE Rule 8.3 and Rule 8.4 in connection with CBOE's determination to trade options on the S&P 100 (XEO) on the Hybrid 2.0 Platform.[5] Presently, XEO and options on the S&P 100 (OEX) collectively have an appointment cost of 1.0. CBOE intends to ''decouple'' XEO from OEX for purposes of assigning an appointment cost when XEO trades on the Hybrid 2.0 Platform. On Hybrid 2.0, XEO's appointment cost will be .25 and XEO will be classified in Tier A+. In connection with this change, CBOE also proposes to amend OEX's appointment cost and assign it a cost of .75. OEX will continue to be classified as a Non-Hybrid option class. CBOE intends to trade XEO on the Hybrid 2.0 Platform beginning on March 1, 2007.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act,[7] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4[9] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b–4(f)(6) of the Act,[10] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date, so that XEO options may begin trading on the Hybrid 2.0 platform on March 1, 2007. The Commission believes that the proposed rule change does not raise any new regulatory issues and, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date, so that XEO options may

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] CBOE Rule 1.1(aaa) defines Hybrid Trading System and Hybrid 2.0 Platform.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] *Id.*

begin trading on the Hybrid 2.0 platform without delay.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–17 and should be submitted on or before March 29, 2007.[12]

[11] For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4053 Filed 3–7–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55392; File No. SR–CBOE–2006–112]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change as Modified by Amendment No. 1 Relating to Its Non-option Security Trading Rules

March 2, 2007.

I. Introduction

On December 29, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to modify its trading rules for non-option securities. The proposal was published for comment in the **Federal Register** on January 11, 2007.[3] The Commission received no comments on the proposal. The Exchange filed Amendment No. 1 with the Commission on March 2, 2007.[4] This order provides notice of and solicits comment on the proposed rule change as modified by Amendment No. 1 and approves the proposal on an accelerated basis.

II. Description of the Proposal

In September 2006, the Commission approved Exchange Chapters 50–55 governing the trading of non-option securities on the Exchange through a new electronic trading platform known as Stock Trading on CBOEdirect (''STOC''). Also in September 2006, the Commission approved [5]modifications[6] to the STOC rules to conform them to aspects of Regulation NMS.[7] In this filing, the Exchange proposes to further modify its trading rules for equity securities and rename its equity trading facility the CBOE Stock Exchange (''CBSX'').8 CBOE anticipates launching CBSX as of the compliance date for Regulation NMS. A full discussion of the proposed rule change is set forth in the Notice; significant aspects of the proposal are discussed below.

First, the Exchange has proposed to further automate order handling and trade-through prevention. Under the current rules, if CBOE receives an order in an equity security when it is not at the national best bid or offer (''NBBO''), the designated primary market-maker (''DPM'') for that security must route the order to the NBBO market for execution if no STOC trader steps up to match the NBBO. The Exchange now proposes to program CBSX to automatically route, via an unaffiliated routing broker, a marketable order in such circumstances (except if the order is labeled immediate-or-cancel (''IOC'')).[8] [9]

Second, the Exchange has proposed to move the CBSX opening from 8:30 a.m. Central Time (''CT'') to 8:15 a.m. CT and eliminate a DPM's obligation to open its assigned securities at a single price that matches the primary market or at a price that does not trade-through another exchange's quote. At the opening, the CBSX system would automatically execute pre-opening orders at a price that allows the greatest number of shares to trade.

Third, the Exchange is proposing to add a floor component to its electronic trading system. CBSX would dedicate a space on the Exchange's trading floor (the ''CBSX Floor Post'') that CBSX DPMs will be required to staff for the purpose of responding to price

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55034 (December 29, 2006), 72 FR 1350 (the ''Notice'').

[4] Amendment No. 1 amended the proposal: (i) To set forth restrictions on the use of hand signals between the CBSX Floor Post and the option trading posts; (ii) to limit the types of proprietary orders that may be submitted by non-DPM members at the CBSX Floor Post; and (iii) to allow CBSX traders to avail themselves of any exemptions from Rule 611 of Regulation NMS that are granted by the Commission.

[5] *See* Securities Exchange Act Release No. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (approving SR–CBOE–2004–21).

[6] Securities Exchange Act Release No. 54526 (September 27, 2006), 71 FR 58646 (October 4, 2006) (approving SR-CBOE–2006–70).

[7] 17 CFR 242.600 *et seq.*

[8] The Exchange separately filed with the Commission a proposal to establish a new corporate structure for CBSX (the ''CBSX Facility Filing''). *See* Securities Exchange Act Release No. 55172 (January 25, 2007), 72 FR 4745 (February 1, 2007) (notice of filing of SR-CBOE–2006–110). The Commission also approves the CBSX Facility Filing today. *See* Securities Exchange Act Release No. 55389 (March 2, 2007).

[9] IOC orders would be cancelled if a better-priced protected quotation existed on another exchange. See CBOE Rule 51.8(g)(4). In addition, the Commission notes that an Intermarket Sweep Order (''ISO'') received by CBSX will be executed or cancelled immediately and not ''flashed'' to CBSX traders for possible matching of the NBBO. See CBOE Rule 51.8(n).

discovery inquiries from brokers. Open-outcry trading is not permitted, and time priority would attach to the order only when it was entered into the system. Any order entered at the CBSX Floor Post would be executed electronically in the same manner as an order entered from any other location. In Amendment No. 1, the Exchange also proposed to amend the rule governing the CBSX Floor Post to permit only cross orders and IOC orders to be submitted by non-DPM members from the CBSX Floor Post.

The CBSX Floor Post would be located near the Exchange's index options pits in a location that is generally isolated from the equity options trading posts. Proposed Rule 51.12 stipulates that there shall be no direct sightlines between the CBSX Floor Post and the equity option trading posts. In Amendment No. 1, the Exchange is adding restrictions on the use of hand signals between the CBSX Floor Post and the equity option trading posts.

Fourth, the Exchange proposes to adopt the following new order types in connection with the establishment of CBSX:

A *Reserve Order* is a limit order in which the order originator designates a portion of the order for display and dissemination (the ''display amount'') and designates a portion of the order in ''reserve.'' A reserve portion is not displayed but is available for execution against incoming orders. If a quantity remains on the Reserve Order after an execution, the order would be refreshed to include the display amount while any remaining balance would remain in reserve.

A *Middle Market Cross Order* is an order submitted to trade at the midpoint of the NBBO. It must always be submitted with a contra order for the same size and could be entered only when the bid price for the stock is $1 or greater. These orders could be executed in increments as small as one-half the minimum quoting increment established under CBSX rules. However, proposed CBSX Rule 51.8(p) would prohibit a member from entering a Middle Market Cross Order as principal buyer (seller) if the NBBO spread is one cent wide and that member is an agent for any customer order resting at the prevailing national best bid (offer).

A *Cross Only Order* is an order that could be executed only against another Cross Only Order for the same size and price. These orders could be entered only at or between the NBBO, and when entered at the CBSX BBO, only when the terms of the orders meet the crossing parameters set forth in proposed CBSX Rule 52.11 relating to priority for crosses at the CBSX's disseminated market price.

A *Cross and Sweep Order* is an order that is priced outside of the NBBO and/or the BBO where the applicable side of the CBSX book is satisfied by the Cross and Sweep Order and any disseminated better-priced protected quotations at away market centers are swept with ISOs by the CBSX system. In other words, before executing the cross, a Cross and Sweep Order will satisfy (i) Any protected quotations that are priced better than the crossing price, and (ii) any interest on CBSX that is priced at or better than the crossing price. Any remaining imbalance on either side of a partially executed Cross and Sweep Order which results from satisfying protected quotations or other CBSX interest would be cancelled by the CBSX system.

The Exchange proposes to modify the manner in which Stop Orders (including Stop Limit Orders) are handled. CBOE rules currently provide that a stop buy (or sell) order is elected when the stock trades, or is bid (or offered), at or above (or below) the stop price on the Exchange. The Exchange proposes to change the provision that stipulates when a stop buy (or sell) order is elected to state that the order is elected (not when the stock is bid or offered) at, or above or below, the stop price. The Exchange also proposes to change the rule to provide that a stop buy (or sell) order is elected when the stop price is reached *on the primary market for the stock*, rather than on CBSX.

Fifth, in Amendment No. 1, the Exchange has proposed to amend CBOE Rule 52.7, ''Sweeping and Trading Through Away Markets,'' to incorporate any future exemptions from Rule 611 of Regulation NMS (the ''Order Protection Rule'') [10] granted by the Commission. Rule 52.7 already incorporates several of the exceptions codified in Rule 611(b) of Regulation NMS. With this provision, CBSX would automatically incorporate into its rules any future exemptions from the Order Protection Rule granted by Commission order.

Sixth, CBOE proposes to adopt a provision in Rule 53.55 stating that routine failure to qualify for the thresholds set forth in any fee incentive program [11] that may be employed by CBSX from time to time could subject a DPM to remedial action by CBSX under that rule.

Seventh, certain existing rules are being eliminated because the Exchange does not believe that they are necessary or relevant to the operation and regulation of the CBSX platform.[12] Most notably, all rules regarding the Intermarket Trading System are being deleted as the Exchange anticipates using private linkages with the CBSX platform and because the ITS Plan will terminate upon the trading phase date for Regulation NMS.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. The Commission did not receive any comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1, in its entirety, although only selected aspects of the proposed rules governing the CBSX system are discussed below.

A. Compliance With the Order Protection Rule

The Order Protection Rule of Regulation NMS provides that a trading center shall establish policies that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks that do not fall within one of the enumerated exceptions of the Rule. The Commission believes that the proposed CBSX rules are reasonably designed to promote compliance with the Order Protection Rule. The CBSX system is programmed to automatically process and route orders to avoid trading through any protected quotations on away markets. Like its predecessor, the STOC system, CBSX will automatically match a market

[10] 17 CFR 242.611.

[11] CBSX has also adopted, via a separate rule filing, a fee structure that would discount fees for CBSX Market-Makers that meet certain competitive quoting thresholds. See File No. SR–CBOE–2007–25 (filed March 1, 2007).

[12] *See* Notice, 72 FR at 1352 (discussing these proposed changes).

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

or marketable limit order against the best-priced orders in the CBSX book until the order is fully executed or until an execution would result in a trade-through of a protected quotation at another automated market center (unless an exception is available). An incoming order (other than an IOC order or ISO) in a security will be ''flashed'' to CBSX traders for a short period if CBSX is not at the NBBO for that security. If no CBSX trader determines to step up and match the NBBO, the order will be routed to the market center disseminating the protected quotation for execution. Under the existing rules, such orders would be routed manually by the DPM. CBOE now proposes that CBSX would route such orders automatically, via an unaffiliated routing broker. As a result, CBSX DPMs would no longer serve as agent for such orders.

B. CBSX Opening Procedures

Proposed Rule 51.2(a) provides that the CBSX system would open for trading at 8:15 a.m. CT (9:30 a.m. Eastern Time), 15 minutes before the primary markets. The Commission believes that establishing trading hours is generally within the business discretion of an exchange, and CBOE's proposal in this regard does not appear to raise any regulatory issues. The Commission notes that other exchanges have trading sessions before 9:30 a.m. Eastern Time.

Proposed Rule 52.2 provides that the CBSX system would automatically open each security at a price that provides the highest matched quantity of order volume. In connection with the automation of the opening, the Exchange also proposes to eliminate a DPM's obligation to open a security at a single price that matches the opening price on the primary market. The Commission believes that the proposed opening matching algorithm is reasonable and consistent with the Act.

C. Hybrid Trading Model

The Commission believes that CBOE's integration of the electronic CBSX system with a post on the Exchange floor is generally consistent with the Act and is within the business discretion of the Exchange. The Commission previously has found hybrid trading rules of other exchanges to be consistent with the Act.[15]

The CBSX Floor Post is near the posts where related options may be traded. CBOE has proposed to prohibit members from using hand signals or other like means of communication to communicate between the CBSX Floor Post and the equity options trading posts. CBOE's proposed rule is substantially similar to policies adopted by the American Stock Exchange in connection with its proposal to permit side-by-side trading that the Commission previously has found consistent with the Act.[16] For the same reasons, the Commission believes that the CBOE rule also is consistent with the Act.

CBOE also has proposed to prohibit members, except DPMs, from entering proprietary orders while at the CBSX Floor Post, unless such orders are cross orders or IOC orders. These restrictions appear reasonably designed to prevent a non-DPM CBOE member from executing a trade ahead of a non-member at the same price and thus are generally consistent with Section 11(a) of the Act.[17]

D. New Order Types

The Exchange proposes to adopt several new order types in connection with the establishment of CBSX: Reserve Orders, Middle Market Cross Orders, Cross Only Orders, and Cross and Sweep Orders. The Commission finds that the rules relating to these order types are consistent with the Act and should provide market participants with additional flexibility in executing transactions while protecting displayed interest on the CBSX book and protected quotations of other trading centers.

The Commission notes in particular that it previously has approved order types on other exchanges similar to what CBOE terms the Middle Market Cross Order.[18] The Commission notes that proposed CBSX Rule 51.8(p) prohibits a member from entering a Middle Market Cross Order as principal buyer (seller) if the NBBO spread is one cent wide and that member was an agent for any customer order resting at the prevailing NBBO bid (offer). This provision would preclude a member from trading as principal at a price that is less than one cent better than a price expressed by its customer. By requiring at least a one-cent improvement over the customer limit order that the member represents as agent, this rule promotes compliance by the member with its Manning obligation to the customer order.[19]

E. Accelerated Approval

Pursuant to Section 19(b)(2) of the Act,[20] the Commission finds good cause for approving the proposal prior to the thirtieth day after the publication of the proposal, as modified by Amendment No. 1, in the **Federal Register**. The revisions to the proposed rule change made by Amendment No. 1 do not raise any novel or substantive regulatory issues. Therefore, the Commission finds good cause for approving the amended proposal on an accelerated basis.

IV. Solicitation of Comments Concerning Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change as modified by Amendment No. 1, including whether it is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–112 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–112. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[15] *See* Securities Exchange Act Releases No. 54552 (September 29, 2006), 71 FR 59546 (October 10, 2006) (approving the Amex Auction & Electronic Market Integration hybrid market structure) and 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (approving the NYSE Hybrid Market).

[16] *See* Securities Exchange Act Release No. 39631 (February 9, 1998), 63 FR 8229 (February 18, 1998) (approving SR–Amex–97–37).

[17] 15 U.S.C. 78k(a).

[18] *See, e.g.*, Securities Exchange Act Releases No. 54528 (September 28, 2006), 71 FR 58650 (October 4, 2006) (approving SR–ISE–2006–48) and 54101 (July 5, 2006), 71 FR 39382 (July 12, 2006) (approving SR–NASD–2005–140).

[19] *See* NASD Interpretive Materials 2110–2.

[20] 15 U.S.C. 78s(b)(2).

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–112 and should be submitted on or before March 29, 2007.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (File No. SR–CBOE–2006–112), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4124 Filed 3–7–07; 8:45 am]

BILLING CODE 8010–01–P

[21] *Id.*

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55389; File No. SR–CBOE–2006–110]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 Relating to the Establishment of CBOE Stock Exchange, LLC

March 2, 2007.

I. Introduction

On December 26, 2006, the Chicago Board Options Exchange, Incorporated, (the ''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the establishment of the CBOE Stock Exchange (''CBSX''), which will be operated by CBOE Stock Exchange, LLC (''CBSX LLC''). On January 10, 2007, the CBOE filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on February 1, 2007.[3] The Commission received no comments regarding the proposal. On March 1, 2007, the CBOE filed Amendment No. 2 to the proposed rule change. On March 2, 2007, the CBOE filed Amendment No. 3 to the proposed rule change. This order approves the proposed rule change, grants accelerated approval to Amendment Nos. 2 and 3, and solicits comments from interested persons on Amendment Nos. 2 and 3.

II. Overview

The Exchange proposes to establish CBSX as a facility,[4] as that term is defined in Section 3(a)(2) of the Act,[5] of CBOE. As the self-regulatory organization (''SRO'') for CBSX, CBOE will have regulatory responsibility for the activities of CBSX.[6] CBSX will be a fully automated marketplace for the trading of securities other than options by CBOE members. CBSX will be operated by CBSX LLC, a Delaware limited liability company. In the instant proposed rule change, CBOE seeks the Commission's approval of the proposed governance structure of CBSX LLC as reflected in the Operating Agreement of CBSX LLC. CBOE has submitted separate proposed rule changes to establish rules relating to listing, membership and trading on CBSX and to establish a permit program in connection with CBSX.[7]

As a limited liability company, ownership of CBSX LLC is represented by limited liability membership interests. The holders of such interests are referred to as ''Owners.''[8] Initially, there are five Owners of CBSX LLC. CBOE is one of the Owners of CBSX LLC, and owns all ''Series A'' Voting Shares[9] of CBSX LLC, representing 50% of CBSX LLC.[10] The other four Owners and their respective ownership interests are: VDM Chicago, LLC (20%); LaBranche & Co., Inc. (10%); IB Exchange Corp. (10%); and Susquehanna International Group, LLP. (10%). Each of these four Owners owns ''Series B'' Voting Shares of CBSX LLC.

Under Section 3.2 of the Operating Agreement, the CBSX LLC Board of Directors (''Board of Directors'' or ''Board'') may authorize the issuance of ''Series C'' Non-Voting Restricted Shares[11] from time to time to employees, consultants, or officers of CBSX LLC, or any other person, each of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55172 (January 25, 2007), 72 FR 4745.

[4] Pursuant to Section 3(a)(2) of the Act, the term ''facility'' when used with respect to an exchange, includes ''its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.'' 15 U.S.C. 78c(a)(2). The Commission notes that although the Operating Agreement refers to CBSX LLC as a facility of CBOE, the scope of the CBSX facility is not limited to CBSX LLC.

[5] 15 U.S.C. 78c(a)(2).

[6] CBOE represents that it has adequate funds to discharge all regulatory functions related to the facility. CBOE further represents that CBSX LLC will not be entitled to any revenue generated in connection with penalties, fines, and regulatory fees that may be assessed by CBOE against CBOE members in connection with trading on CBSX. Rather, all regulatory fines, penalties and fees assessed against and paid by CBOE members to CBOE in connection with trading on CBSX will remain with CBOE.

[7] The Commission approved the Exchange's proposed rule change relating to the CBSX permit program. *See* Securities Exchange Act Release No. 55326 (February 21, 2007), 72 FR 8816 (February 27, 2007). The Commission also approved the Exchange's proposed rule change to establish the equity trading rules for CBSX. *See* Securities Exchange Act Release No. 34–55392 (March 2, 2007).

[8] ''Owner'' means a limited liability company ''member'' as that term is defined in § 18–101(11) of the Delaware Limited Liability Company Act (''DLLCA''), and shall include each Voting Owner and each Management Owner, but only so long as such person is shown on CBSX's books and records as the owner of at least one (1) Share (or fraction of one (1) Share). ''Owner'' shall include a ''Substituted Owner'' as defined in Section 6.5(a) of the Operating Agreement, but only upon compliance with all of the requirements of Sections 6.4 and 6.5 of the Operating Agreement. For purposes of clarity, no person shall become an ''Owner'' as to any Shares, if the acquisition of those Shares will require a change of ownership notice to the Commission, or will constitute a proposed rule change subject to the requirements of the rule filing process of Section 19 of the Act, until all of the requirements of such notice or rule filing process have been accomplished and, if necessary, approved by the Commission. *See* Section 2.1(16) of the Operating Agreement.

[9] ''Voting Shares'' means those Shares entitled to vote on matters submitted to the Owners, which Voting Shares are held by the Voting Owners. *See* Section 2.1(27) of the Operating Agreement.

[10] As noted in Section 3.2 of the Operating Agreement, it is the intention of the Owners that no other members of CBSX LLC (other than Affiliates of CBOE) be owners of Series A Voting Shares, and that no additional Series A Voting Shares be authorized, created or issued for such purpose; provided however, that this provision is not intended to limit or restrict any rights of CBOE to transfer any of its Series A Voting Shares with the prior approval of the Commission as provided for in Article VI, including Section 6.14 of the Operating Agreement, or any other provision thereof, or any rights to be acquired by a transferee of those Shares as provided therein.

[11] ''Non-Voting Restricted Share'' means a Share held by a Management Owner containing the voting limitations and other restrictions described in the Operating Agreement. *See* Section 2.1(15) of the Operating Agreement.

whom would become a Management Owner[12] of CBSX LLC.

As provided in Section 8.9 of the Operating Agreement, the outstanding Series A Voting Shares will, in the aggregate (and without being deemed to be a voting trust), be entitled to a number of votes equal to 50% of the total number of Voting Shares outstanding, on each matter submitted to a vote of the Owners. Each outstanding Series B Voting Share will be entitled to one vote on each matter submitted to a vote of the Owners. The Series C Non-Voting Restricted Shares will not be entitled to vote on any matter submitted to a vote of the Owners.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[14] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules or regulations thereunder, and the rules of the exchange.

The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and are not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

A. CBSX as a Facility of the Exchange

The Commission believes that the proposed rule change is consistent with Section 6(b)(1) of the Act[16] in that upon establishing CBSX as a facility of the Exchange and entering into the relationship with CBSX LLC described above, CBOE will remain so organized, and have the capacity to be able, to carry out the purposes of the Act. The Commission notes that it previously approved similar structures with respect to the operation of exchange facilities.[17]

The Commission believes that CBSX LLC can be approved as the operator of the CBSX facility since CBOE will be the SRO for the CBSX facility, and CBSX LLC will conduct the facility's business operations in a manner consistent with the regulatory and oversight responsibilities of CBOE.[18]

Although CBSX LLC itself will not carry out any regulatory functions, all its activities must be consistent with the Act. Under Section 5.7 of the Operating Agreement, each CBSX LLC Owner agrees to comply with the federal securities laws and rules and regulations thereunder; to cooperate with the Commission and CBOE pursuant to their regulatory authority and the provisions of the Operating Agreement; and to engage in conduct that fosters and does not interfere with CBSX LLC's and CBOE's ability to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest. In addition, under Section 9.16 each Director agrees to comply with the federal securities laws and the rules and regulations thereunder, and to cooperate with the Commission and CBOE pursuant to the respective regulatory authority of the Commission and CBOE. In addition, each Director will take into consideration whether any actions taken or proposed to be taken as a Director for or on behalf of CBSX LLC, or any failure or refusal to act (including a failure to be present to constitute a quorum, or to reasonably provide an affirmative vote or consent) would constitute interference with CBOE's regulatory functions and responsibilities in violation of the Operating Agreement or the Act. These provisions reinforce the notion that CBSX, as a facility of an exchange, is not solely a commercial enterprise; it is an integral part of an SRO registered pursuant to the Act and, as such, is subject to obligations imposed by the Act.

These obligations endure as long as CBSX is a facility of the Exchange, regardless of the size of CBOE's ownership interest in CBSX LLC, the operator of the facility. The Exchange currently owns 50% interest in the operator of the facility and if, in the future, it wishes to reduce its interest in CBSX LLC to below 20%, pursuant to Section 6.12(d) of the Operating Agreement the Exchange would be required to file a proposed rule change with the Commission under Section 19(b) of the Act. The Commission believes that this is a reasonable measure to alert the Commission to a significant reduction of CBOE's interest in CBSX LLC. Such a reduction in ownership could warrant additional review of the Operating Agreement to ensure that CBOE's responsibilities as the SRO of the CBSX facility are not compromised.

The Operating Agreement includes additional provisions that make special accommodations for CBOE as the SRO of the CBSX facility. Section 1.8 of the Operating Agreement sets forth CBOE's authority with respect to any action, transaction or aspect of an action or transaction that relates to CBOE's regulatory responsibilities, by requiring CBOE's affirmative vote before such action or transaction or aspect thereof can be authorized, undertaken or effective. For example, Section 9.15(a) provides that CBSX LLC may not take certain specific actions without the approval of a Super Majority of the Owners,[19] and the additional approving vote of CBOE.

[12] "Management Owner" means a natural person who is identified on Exhibit A of the Operating Agreement (Exhibit 5C to the proposed rule change) as a Management Owner, who subsequently becomes a Management Owner pursuant to the provisions of Section 3.2(c) of the Operating Agreement, or who is a transferee or assignee of Non-Voting Restricted Shares (other than a Voting Owner). *See* Section 2.1(13) of the Operating Agreement.

[13] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(1).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(1).

[17] *See* Securities Exchange Act Release No. 54399 (September 1, 2006), 71 FR 53728 (September 12, 2006) (order approving the ISE Stock Exchange, LLC as a facility of the International Securities Exchange, Inc.); Securities Exchange Act Release No. 54364 (August 25, 2006), 71 FR 52185 (order approving the Boston Equities Exchange as a facility of the Boston Stock Exchange, Inc.); and Securities Exchange Act Release No. 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (order approving the Boston Options Exchange as a facility of the Boston Stock Exchange, Inc.).

[18] As the SRO, CBOE will have regulatory responsibility for the facility.

[19] "Super Majority of the Owners" means, subject to the provisions of Section 1.8 of the Operating Agreement as to Regulatory Requirements, the affirmative vote of both (i) all of the Owners of the Series A Voting Shares at the time, and (ii) any two (2) of the Initial Owners of Series B Voting Shares who then retain ownership of Series B Voting

In addition, Section 9.2(b) of the Operating Agreement provides that, in light of its ownership of the Series A Voting Shares, CBOE is entitled to designate a number of Directors equal to the aggregate number of Directors designated by those Owners owning Series B Voting Shares. Section 9.2(d) also gives CBOE the right, as long as CBSX remains a facility of CBOE, to designate at least one Director regardless of whether it maintains any ownership interest in CBSX LLC. In addition, despite a statement of a general prohibition against Owners committing or acting on behalf of CBSX LLC contained in Section 5.6 of the Operating Agreement, Section 9.15(a) would permit CBOE to act on behalf of CBSX LLC in regulatory matters. Finally, CBOE has complete access to information through provisions such as Section 15.2 of the Operating Agreement, which allows CBOE, the other Owners, and their respective officers, directors, agents, and employees, to disclose confidential information to the Commission or CBOE.

Because the Exchange has proposed to operate CBSX as its facility, CBOE's obligations under the Act extend to its members' activities on CBSX, as well as to the operation and administration of CBSX. The Commission believes that the provisions described above are consistent with the Act and enhance the ability of CBOE to carry out its self-regulatory responsibilities with respect to its CBSX facility.

B. Changes in Control of CBSX LLC

The Commission believes that the restrictions in the Operating Agreement on direct and indirect changes in control of CBSX LLC are sufficient so that CBOE would be able to carry out its self-regulatory responsibilities and that the Commission can fulfill its responsibilities under the Act.

Exhibit A of the Operating Agreement lists all CBSX LLC Owners, the Series of shares owned, and the percentage ownership interest in CBSX LLC. A change to this exhibit (as well as any other provision of the Operating Agreement) would need to be filed with the Commission if so required under Section 19(b) of the Act and Rule 19b–4 thereunder. In addition, Section 6.14 of the Operating Agreement provides that any proposed transfer of CBSX LLC shares that would cause any person, alone or together with any Affiliate, to meet or cross the 20% ownership threshold or any subsequent 5% ownership interest level (*e.g.*, 25%, 30%, 35%, *etc.*) would require CBOE to file a proposed rule change with the Commission pursuant to Section 19(b) of the Act and be subject to approval by the Commission. Any proposed transfer of Series A Voting Shares would also require CBOE to file a proposed rule change under Section 19(b) of the Act and Rule 19b–4 thereunder.

Furthermore, Section 6.13 of the Operating Agreement requires CBOE to inform the Commission in writing at least ten days prior to the closing date of any transaction that results in a person's percentage ownership interest, alone or together with any Affiliate, in CBSX LLC that would result in such person meeting or crossing the 5%, 10%, or 15% ownership thresholds. The Commission believes that this approach is consistent with the Act in that it is analogous to the ongoing reporting requirements of Form 1,[20] the application for (and amendments to the application for) registration as a national securities exchange. Exhibit K of Form 1 requires any exchange that is a corporation or partnership to list any persons that have an ownership interest of 5% or more in the exchange;[21] and Rule 6a–2(a)(2) under the Act[22] requires an exchange to update its Form 1 within ten days after any action that renders inaccurate the information previously filed in Exhibit K.

Exhibit K imposes no obligation on an exchange to report parties whose ownership interest in the exchange is less than 5%. Similarly, Section 6.13 of the Operating Agreement requires CBOE to notify the Commission of an interest in CBSX LLC only when that interest reaches 5% or more. The Commission does not believe that the identity of a party that has less than a 5% interest in a facility of a national securities exchange is a ''rule of the exchange'' that must be filed pursuant to Section 19(b) of the Act and Rule 19b–4(b) thereunder.

In addition, Section 15.16 of the Operating Agreement would require an indirect controlling party to become a party to the Operating Agreement upon establishing a controlling interest in any Owner who, alone or together with any Affiliate, holds a Percentage Interest in CBSX LLC equal to or greater than 20%. Any such amendment to the Operating Agreement would require a proposed rule change to be filed with the Commission pursuant to Section 19(b) of the Act. The proposed rule change would alert the Commission to the existence of a proposed indirect controlling party and present the Commission and CBOE with an opportunity to determine what additional measures, if any, might be necessary to provide sufficient regulatory jurisdiction over the proposed indirect controlling party. The Commission understands that Section 15.16 of the Operating Agreement would apply to any ultimate parent of CBSX LLC, no matter how many levels of ownership are involved, provided that a controlling interest exists between each link of the ownership chain.

In conclusion, the Commission believes that Sections 6.13, 6.14, and 15.16 of the Operating Agreement, together with the requirements of Section 19(b) of the Act and Rule 19b–4 thereunder, provide the Commission with sufficient authority over changes in control of CBSX LLC to enable the Commission to carry out its regulatory oversight responsibilities with respect to CBOE and the CBSX facility.

C. Regulatory Jurisdiction Over CBSX LLC Owners

The Commission believes that the terms of the Operating Agreement provide the Commission and CBOE with sufficient regulatory jurisdiction over the controlling parties and Owners to carry out their responsibilities under the Act. In Section 6.15(a), each Owner acknowledges that—to the extent that they are related to CBSX LLC activities—the books, records, premises, officers, directors, agents, and employees of the Owner are deemed to be the books, records, premises, officers, directors, agents, and employees of CBOE for the purpose of and subject to oversight pursuant to the Act. Moreover, in Section 6.15(b) of the Operating Agreement, each Owner acknowledges that the books, records, premises, officers, directors, agents, and employees of CBSX LLC are deemed to be the books, records, premises, officers, directors, agents, and employees of CBOE for the purpose of and subject to oversight pursuant to the Act. These provisions would enable the Commission to exercise its authority under Section 19(h)(4)[23] of the Act with

Shares. *See* Section 2.1(25) of the Operating Agreement.

[20] 17 CFR 249.1 and 17 CFR 249.1a.

[21] This reporting requirement applies only to exchanges that have one or more owners, shareholders, or partners that are not also members of the exchange. *See* Form 1, Exhibit K. Exhibit K applies only to the exchange itself, not to entities that operate facilities of the exchange.

[22] 17 CFR 240.6a–2(a)(2).

[23] 15 U.S.C. 78s(h)(4). Section 19(h)(4) authorizes the Commission, by order, to remove from office or censure any officer or director of a national securities exchange if it finds, after notice and an opportunity for hearing, that such officer or director has: (1) Willfully violated any provision of the Act or the rules and regulations thereunder, or the rules

Continued

respect to the officers and directors of CBSX LLC and of all Owners, since all such officers and directors—to the extent that they are acting in matters related to CBSX LLC activities—would be deemed to be the officers and directors of CBOE itself. Furthermore, the records of any Owner—to the extent that they are related to CBSX LLC activities—are subject to the Commission's examination authority under Section 17(b)(1) of the Act,[24] as these records would be deemed to be the records of CBOE itself.

In addition, under the terms of Section 6.15(c) of the Operating Agreement, CBSX LLC and each Owner (other than CBOE for so long as CBSX is a facility of CBOE) [25]—and their respective officers and directors and their agents and employees whose principal place of business and residence is outside of the United States—must irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and CBOE for the purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws and the rules or regulations thereunder, commenced and initiated by the Commission arising out of or relating to CBSX LLC activities. In addition, CBSX LLC and each Owner (other than CBOE for so long as CBSX LLC is a facility of CBOE)—and their respective officers and directors and their agents and employees whose principal place of business and residence is outside of the United States—must waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action, or proceeding, any claim that it is not personally subject to the jurisdiction of the Commission; that the suit, action or proceeding is an inconvenient forum; that the venue of the suit, action, or proceeding is improper; or that the subject matter of the suit, action, or proceeding may not be enforced in or by such courts or agency. Moreover, pursuant to Section 6.15(d) of the Operating Agreement, the CBSX LLC and each Owner (other than CBOE for so long as CBSX LLC is a facility of CBOE) are required to take such action as is necessary to ensure that such Owner's officers and directors and their agents and employees whose principal place of business and residence is outside the United States, consent to the application of these requirements with respect to their CBSX LLC-related activities. Finally, under Section 5.7 of the Operating Agreement, CBSX LLC and each Owner agree to cooperate with the Commission and CBOE pursuant to their respective regulatory authority.

The Commission also notes that, even in the absence of these provisions of the Operating Agreement, Section 20(a) of the Act [26] provides that any person with a controlling interest in CBSX LLC would be jointly and severally liable with and to the same extent that CBSX LLC is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

The Commission believes that, together, these provisions grant the Commission sufficient jurisdictional authority over CBSX LLC and its Owners. Moreover, CBOE is required to enforce compliance with these provisions because they are ''rules of the exchange'' within the meaning of Section 3(a)(27) of the Act.[27] A failure on the part of CBOE to enforce its rules could result in suspension or revocation of registration under Section 19(h)(1) of the Act.[28]

D. Ownership and Voting Restrictions on CBSX LLC Owners

Section 6.12(a) of the Operating Agreement prohibits a person (other than CBOE), either alone or together with its Affiliates, from directly or indirectly owning more than a 20% Percentage Interest in the Company (''Concentration Limitation''). Although Section 6.12(b) permits this limitation to be waived by the Board, as long as such waiver has been filed with and approved by the Commission, it precludes such a waiver if the person or its Affiliates is a CBOE member. Further, Section 8.10 of the Operating Agreement states that if an Owner of Voting Shares that is also a CBOE member owns more than 20% of the Outstanding Voting Shares (''Excess Shares''), alone or together with any Affiliate, such Owner shall have no voting rights with respect to the Excess Shares.

In addition, proposed CBOE Rule 3.32 sets forth ownership concentration limitations for CBOE members and permits the Exchange to take appropriate disciplinary action in the event a violation of the ownership concentration limitation is not cured within a specified time frame. Proposed Rule 3.32 also sets forth restrictions on affiliations between the Exchange and its members.

The Commission believes that the ownership concentration and voting limitations contained in the Operating Agreement and the provisions of proposed CBOE Rule 3.32 are reasonable and consistent with the Act. It is common for members who trade on an exchange to have ownership interests in the exchange. However, a member's interest could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member. A member that is also a controlling shareholder of an exchange might be tempted to exercise that controlling influence by directing the exchange to refrain from diligently surveilling the member's conduct or from punishing any conduct that violates the rules of the exchange or the federal securities laws. An exchange also might be reluctant to surveil and enforce its rules zealously against a member that the exchange relies on as its largest source of capital.

Finally, the Commission believes that the restriction on voting trust agreements in Section 8.8 of the Operating Agreement is reasonable and consistent with the Act. In the absence of such a provision, unaffiliated parties could act in concert and evade the Operating Agreement's provisions regarding changes in control of CBSX LLC.[29] A voting trust agreement would not necessarily be inconsistent with the Act, but any Owner wishing to establish a voting trust agreement first would need to have the Operating Agreement amended to enable a voting trust to be established. Any such amendment would require a proposed rule change under Section 19(b) of the Act, thus affording the Commission an opportunity to review the matter.

E. Accelerated Approval of Amendment Nos. 2 and 3

The Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after publishing notice of Amendment Nos. 2 and 3 in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[30]

of a national securities exchange; (2) willfully abused his or her authority; or (3) without reasonable justification or excuse, has failed to enforce compliance with any such provision by a member or person associated with a member of the national securities exchange.

[24] 15 U.S.C. 78q(b)(1).

[25] The Commission notes that CBOE and its officers, directors and employees are subject to the Commission's jurisdiction because CBOE is an SRO and as such is subject to the Act and the rules and regulations thereunder.

[26] 15 U.S.C. 78t(a).

[27] 15 U.S.C. 78c(a)(27).

[28] 15 U.S.C. 78s(h)(1).

[29] The Operating Agreement treats as belonging to a single person any shares held by affiliated parties of the person. *See* Sections 6.13, 6.14, and 15.16 of the Operating Agreement.

[30] 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any

In Amendment No. 2, CBOE: (i) Amended Section 1.7 to clarify the role of CBOE, as the SRO, for the activities of CBSX LLC; (ii) amended Section 5.7 to add a reference to CBOE; (iii) amended Section 6.14 to clarify that any transfer of Series A Voting Shares would require a rule filing under Section 19 of the Exchange Act, subject to approval by the Commission; (iv) amended Section 6.15 by, among other things, revising paragraphs (c) and (d) to indicate that those paragraphs are inapplicable in the case of CBOE and its respective officers, directors, agents and employees for so long as CBSX LLC is a facility of CBOE and to clarify the application of these paragraphs in the case of the agents and employees of CBSX LLC and its Owners whose principal place of business and residence is outside of the United States; and (v) amended various sections of the Operating Agreement to refer to CBOE rather than ''Regulatory Services Provider.'' Amendment No. 2 also updated Exhibit A–1 of the Operating Agreement. Amendment No. 3 amended Section 6.15(c) to clarify the U.S. agent for service of process.

The Commission believes that Amendment Nos. 2 and 3 serve to clarify and enhance the proposal and that publication of its provisions would needlessly delay the implementation of the proposal. The Commission therefore finds good cause exists to accelerate approval of Amendment Nos. 2 and 3, pursuant to Section 19(b)(2) of the Act.[31]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment Nos. 2 and 3 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–110 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–110. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to Amendment Nos. 2 and 3 of File Number SR–CBOE–2006–110 and should be submitted on or before March 29, 2007.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–CBOE–2006–110), as modified by Amendment No. 1, be, and it hereby is approved and Amendment Nos. 2 and 3 are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Florence E. Harmon,

Deputy Secretary.

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proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

[31] 15 U.S.C. 78s(b)(2).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55365; File No. SR–DTC–2006–07]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the Wind-Down of a Participant

February 27, 2007.

I. Introduction

On March 28, 2006, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on September 29, 2006, amended proposed rule change SR–DTC–2006–07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on December 20, 2006.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change as modified by Amendment No. 1.

II. Description

The proposed rule change would add a new Rule 32, Wind-Down of a Participant, to DTC's Rules to address a situation where a participant notifies DTC that it intends to wind down its activities, and DTC determines in its discretion that it must take special action in order to protect itself and its participants.[3]

The proposed rule change would allow DTC to make a determination that a participant is a wind-down participant and would set forth the conditions DTC using its discretion may place on a wind-down participant and the actions DTC using its discretion may take with respect to a wind-down participant to protect itself and its participants. Such actions may include restricting or modifying the wind-down participant's use of any or all of DTC's services and requiring the wind-down participant to post increased participants fund deposits. DTC will retain all of its other rights set forth in its rules and participant agreements, including the right to cease to act for the wind-down participant.

The rule is designed to ensure that DTC has the needed flexibility to appropriately manage the risks

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 54927 (December 13, 2006), 71 FR 76397.

[3] Similar proposed rule changes have been filed by the Fixed Income Clearing Corporation [File No. SR–FICC–2006–05] and the National Securities Clearing Corporation [File No. SR–NSCC–2006–05].

presented by an entity in crisis that remains a participant of DTC. This is particularly important to preserve orderly settlement in the marketplace and to minimize the risk of loss to DTC and its participants. The rule sets forth in a single rule DTC's rights and the actions it may take in such a situation. Currently, these rights and actions are either permitted elsewhere in DTC's rules or are permitted pursuant to DTC's emergency authority. By placing DTC's rights in a single rule, however, the proposed rule change should provide clarity and a clear legal basis for DTC's rights or actions taken with respect to a wind-down participant. DTC also believes that the rule is designed to minimize the need for rule waivers.

III. Discussion

Section 17A(b)(3)(F) of the Act provides that the rules of a clearing agency should be designed to safeguard securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[4] The sudden or unanticipated financial or operational difficulties of a participant or the termination of its trading activities may create uncertainty among industry participants about DTC's ability to meet its settlement obligations on time and concern about the risk to the assets of the clearing agency or of its participants. The proposed rule change clarifies that DTC has discretionary power in a wind-down situation to take certain actions to assure the ongoing operations of itself and to protect the securities and funds of DTC and of its participants. By making clear in a single rule the authority DTC has under its rules to facilitate the orderly wind down of a participant's activities, the proposed rule change is designed to assure the safeguarding of securities or funds which are in DTC's control or for which it is responsible.[5]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.[6]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2006–07), as modified by Amendment No. 1, be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

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[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 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).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55364; File No. SR–FICC–2006–05]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Wind-Down of a Participant

February 27, 2007.

I. Introduction

On March 28, 2006, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on September 28, 2006 and October 13, 2006, amended proposed rule change SR–FICC–2006–15 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on December 20, 2006.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change as modified by Amendment Nos. 1 and 2.

II. Description

The rule change adds new Rule 21A, Wind-Down of a Netting Member, to the Rules of FICC's Government Securities Division (''GSD'') and new Rule 2A, Wind-Down of a Participant, to the Rules of FICC's Mortgage-Backed Securities Division (''MBSD'') to address a situation where a member or participant notifies FICC that it intends to wind down its activities, and FICC determines, in its discretion, that it must take special action in order to protect itself and its members and participants.[3]

The new rules allow FICC to determine that a participant is a wind-down member or wind-down participant and sets forth the conditions FICC using its discretion may place on a wind-down member or participant and the actions FICC using its discretion may take with respect to a wind-down member or participant to protect itself and its members or participants. Such actions may include restricting or modifying the wind-down member or participant's use of any or all of FICC's services and may include requiring the wind-down member or participant to post increased clearing fund deposits. FICC will retain all of its other rights set forth in its rules and membership and participant agreements, including the right to declare the wind-down member or participant insolvent, if applicable, and to cease to act for it.

The rules are designed to ensure that FICC has the needed flexibility to appropriately manage the risks presented by an entity in crisis that remains a participant of FICC. This is particularly important to preserve orderly settlement in the marketplace and to minimize the risk of loss to FICC and its members and participants. Each rule sets forth in a single rule FICC's rights and the actions it may take in such a situation. Currently, these rights and actions are either permitted elsewhere in FICC's rules or are permitted pursuant to FICC's emergency authority. By placing FICC's rights in a single rule for each division, however, the rule change should provide clarity and a clear legal basis for FICC's rights or actions taken with respect to a wind-down member or participant. FICC also believes that the rules are designed to minimize the need for rule waivers.

III. Discussion

Section 17A(b)(3)(F) of the Act provides that the rules of a clearing agency should be designed to safeguard securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[4] The sudden or unanticipated financial or operational difficulties of a clearing member or participant or the termination of its trading activities may create uncertainty among industry participants about FICC's ability to meet its settlement obligations on time and concern about the risk to the assets of the clearing agency or of its members or participants. The proposed rule change clarifies that FICC has discretionary power in a wind-down situation to take certain actions to assure the ongoing operations of itself and to protect the securities and funds of FICC and of its members and participants. By making clear in a single rule of each of its divisions the authority FICC has under its rules to facilitate the orderly wind down of a member or participant's

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 54929, (December 13, 2006), 71 FR 76398.

[3] Similar proposed rule changes have been filed by The Depository Trust Company [File No. SR–DTC–2006–07] and the National Securities Clearing Corporation [File No. SR–NSCC–2006–05].

[4] 15 U.S.C. 78q–1(b)(3)(F).

activities, the proposed rule change is designed to assure the safeguarding of securities or funds which are in FICC's control or for which it is responsible.[5]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.[6]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2006–05), as modified by Amendment Nos. 1 and 2, be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4055 Filed 3–7–07; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 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).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55366; File No. SR–NSCC–2006–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Wind-Down of a Member

February 27, 2007.

I. Introduction

On March 28, 2006, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on September 28, 2006, amended proposed rule change SR–NSCC–2006–05 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on December 20, 2006.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change as modified by Amendment No. 1.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 54928 (December 13, 2006), 71 FR 76414.

II. Description

The rule change adds a new Rule 42, Wind-Down of a Member, Fund Member, or Insurance Carrier Member, to NSCC's Rules to address a situation where a member notifies NSCC that it intends to wind down its activities, and NSCC determines in its discretion that it must take special action in order to protect itself and its participants.[3]

The rule allows NSCC to determine that a member is a wind-down member and sets forth the conditions NSCC using its discretion may place on a wind-down member and the actions NSCC using its discretion may take with respect to a wind-down member to protect itself and its members. Such actions may include restricting or modifying the wind-down member's use of any or all of NSCC's services and requiring the wind-down member to post increased clearing fund deposits. NSCC will retain all of its other rights set forth in its rules and membership agreements, including the right to declare the wind-down member insolvent, if applicable, and to cease to act for the member.

The rule is designed to ensure that NSCC has the needed flexibility to appropriately manage the risks presented by an entity in crisis that remains a member of NSCC. This is particularly important to preserve orderly settlement in the marketplace and to minimize the risk of loss to NSCC and its members. The rule sets forth in a single rule NSCC's rights and the actions it may take in such a situation. Currently, these rights and actions are either permitted elsewhere in NSCC's rules or are permitted pursuant to NSCC's emergency authority. By placing NSCC's rights in a single rule, however, the rule change should provide clarity and a clear legal basis for NSCC's rights or actions taken with respect to a wind-down member. NSCC also believes that the proposed rule is designed to minimize the need for rule waivers.

III. Discussion

Section 17A(b)(3)(F) of the Act provides that the rules of a clearing agency should be designed to safeguard securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[4] The sudden or unanticipated financial or operational difficulties of a clearing member or the termination of its trading activities may create uncertainty among industry participants about NSCC's ability to meet its settlement obligations on time and concern about the risk to the assets of the clearing agency or of its members. The proposed rule change clarifies that NSCC has discretionary power in a wind-down situation to take certain actions to assure the ongoing operations of itself and to protect the securities and funds of NSCC and of its members. By making clear in a single rule the authority NSCC has under its rules to facilitate the orderly wind down of a member's activities, the proposed rule change is designed to assure the safeguarding of securities or funds which are in NSCC's control or for which it is responsible.[5]

[3] Similar proposed rule changes have been filed by The Depository Trust Company [File No. SR–DTC–2006–07] and the Fixed Income Clearing Corporation [File No. SR–FICC–2006–05].

[4] 15 U.S.C. 78q–1(b)(3)(F).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.[6]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2006–05), as modified by Amendment No. 1, be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–4054 Filed 3–7–07; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 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).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Administrator's Line of Succession Designation, No. 1–A, Revision 28

This document replaces and supersedes ''Line of Succession Designation No. 1–A, Revision 27.''

Line of Succession Designation, No. 1–A, Revision 28:

Effective immediately, the Administrator's Line of Succession Designation is as follows:

(a) In the event of my inability to perform the functions and duties of my position, or my absence from the office, the Deputy Administrator will assume all functions and duties of the Administrator. In the event the Deputy Administrator and I are both unable to perform the functions and duties of the

position or are absent from our offices, I designate the officials in listed order below, if they are eligible to act as Administrator under the provisions of the Federal Vacancies Reform Act of 1998, to serve as Acting Administrator with full authority to perform all acts which the Administrator is authorized to perform:

(1) Chief of Staff.

(2) General Counsel.

(3) Associate Administrator for Management and Administration.

(4) Chief Financial Officer.

(5) Regional Administrator for Region 6.

(b) Notwithstanding the provisions of SBA Standard Operating Procedure 00 01 2, ''absence from the office,'' as used in reference to myself in paragraph (a) above, means:

(1) I am not present in the office and cannot be reasonably contacted by phone or other electronic means, and there is an immediate business necessity for the exercise of my authority; or

(2) I am not present in the office and, upon being contacted by phone or other electronic means, I determine that I cannot exercise my authority effectively without being physically present in the office.

(c) An individual serving in an acting capacity in any of the positions listed in subparagraphs (a)(1) through (5), unless designated as such by the Administrator, is not also included in this Line of Succession. Instead, the next non-acting incumbent in the Line of Succession shall serve as Acting Administrator.

(d) This designation shall remain in full force and effect until revoked or superseded in writing by the Administrator, or by the Deputy Administrator when serving as Acting Administrator.

(e) Serving as Acting Administrator has no effect on the officials listed in subparagraphs (a)(1) through (5), above, with respect to their full-time position's authorities, duties, and responsibilities (except that such official cannot both recommend and approve an action).

Dated: February 28, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–4180 Filed 3–7–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5715]

60-Day Notice of Proposed Information Collection: DS 4079, Questionnaire—Information for Determining Possible Loss of United States Citizenship, New-OMB No. 1405–XXXX

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Questionnaire: Information for Determining Possible Loss of United States Citizenship.
- *OMB Control Number:* New-OMB No. 1405–XXXX.
- *Type of Request:* New Information Collection.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS 4079.
- *Respondents:* United States Citizens.
- *Estimated Number of Respondents:* 2,298.
- *Estimated Number of Responses:* 2,298.
- *Average Hours Per Response:* 15 minutes.
- *Total Estimated Burden:* 575 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to obtain or retain benefits.

DATES: The Department will accept comments from the public up to 60 days from May 7, 2007.

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

- *E-mail: ASKPRI@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* U.S. Department of State, CA/OCS/PRI, SA–29, 4th Floor, Washington, DC 20520.
- *Fax:* 202–736–9111.
- *Hand Delivery or Courier:* U.S. Department of State, CA/OCS/PRI, 2100 Pennsylvania Avenue, 4th Floor, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Derek A. Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PRI), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20520, who may be reached on (202) 736–9082 or *ASKPRI@state.gov.*

SUPPLEMENTARY INFORMATION: *We are soliciting public comments to permit the Department to:*

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The purpose of the DS–4079 questionnaire is to determine current citizenship status and the possibility of loss of United States citizenship. The information provided in the questionnaire assists consular officers and the Department of State in determining if the U.S. citizen has lost his or her nationality by voluntarily performing an expatriating act with the intention of relinquishing United States nationality.

Methodology: The information is collected in person, by fax, or via mail. The Bureau of Consular Affairs is currently exploring options to make this information collection available electronically.

Dated: February 15, 2007.

Maura Harty,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E7–4160 Filed 3–7–07; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Compatibility Program Notice; Laredo International Airport, Laredo, TX

AGENCY: Federal Aviation Administration.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was

submitted for Laredo International Airport under the provisions of 49 U.S.C. 47501 et seq. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR part 150 by the city of Laredo, Texas. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Laredo International Airport were in compliance with applicable requirements, effective September 22, 2005, and announced in the **Federal Register**/Vol. 70, Nos. 189/Friday, September 30, 2005. The proposed noise compatibility program will be approved or disapproved on or before August 27, 2007.

DATES: *Effective Date:* The effective date of the start of FAA's review of the noise compatibility program is February 28, 2007. The public comment period ends April 29, 2007.

FOR FURTHER INFORMATION CONTACT: Paul Blackford, Federal Aviation Administration, Airports Division, 2601 Meacham Blvd., Fort Worth, Texas 76137–0650, telephone (817) 222–5607. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Laredo International Airport, which will be approved or disapproved on or before August 27, 2007. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has formally received the noise compatibility program for Laredo International Airport, effective on February 28, 2007. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to FAR Part 150 requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 27, 2007.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas; Laredo International Airport, 5210 Bob Bullock Loop, Laredo, Texas, 78041. Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, February 28, 2007.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 07–1076 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Government/Industry Aeronautical Charting Forum Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the bi-annual meeting of the Federal Aviation Administration (FAA) Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight procedures development policy and design criteria.

DATES: The ACF is separated into two distinct groups. The Instrument Procedures Group (IPG) will meet May 1, 2007, from 9 a.m. to 5 p.m. The Charting Group will meet May 2 and 3 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be hosted by the National Geospatial-Intelligence Agency (NGA) and held at the US Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 20192.

FOR FURTHER INFORMATION CONTACT: For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, FAA, Flight Procedures Standards Branch, AFS–420, 6500 South MacArthur Blvd, P.O. Box 25082, Oklahoma City, OK 73125; telephone (405) 954–5852; fax: (405) 954–2528.

For information relating to the Charting Group, contact John A. Moore, FAA, National Aeronautical Charting Group, Requirements and Technology Team, AJW–3521, 1305 East-West Highway, SSMC4—Station 5544, Silver Spring, MD 20910; telephone: (301) 713–2631, fax: (301) 713–1960.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aeronautical Charting Forum to be held from May 1, 2007 through May 3, 2007, from 9 a.m. to 5 p.m. at the US Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 20192.

The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures.

The Charting Group agenda will include briefings and discussions on recommendations regarding aeronautical charting specifications, flight information products, as well as new aeronautical charting and air traffic control initiatives.

Attendance is open to the interested public, but will be limited to the space available.

The public must make arrangements by April 6, 2007, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the committee by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by April 6, 2007. Public statements will only be considered if time permits.

Issued in Washington, DC, on March 2, 2007.

John A. Moore,

Co-Chair, Aeronautical Charting Forum.

[FR Doc. 07–1075 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighth Meeting: RTCA Special Committee 206/EUROCAE WG 44/53 Plenary: Aeronautical Information Services Data Link

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 206 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 206: Aeronautical Information Services Data Link.

DATES: The meeting will be held April 2–5, 2007 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Crowne Plaza Hotel 2605 N Highway A 1 a, Indialantic, FL 32903–23013–1000

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org;* (2) Hosted by Rockwell Collins; Onsite Contact: Telephone 1–321–777–4100; fax 1–321–773–6132; Web site: *http://www.ichotelsgroup.com/h/d/cp/1/en/hotel/mlboc?_requestid=97569.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 206 meeting. The agenda will include:

- April 2:
- Opening Session (Chairman's Remarks and Introductions, Review and Approve Meeting Agenda and Minutes, Discussion, Action Item Review, Presentations).
- Presentations: Pending.
- Breakout meetings of Subgroup 1 and Subgroup 2.
- April 3:
- Subgroup 1 and Subgroup 2 Meetings.
- April 4:
- Subgroup 1 and Subgroup 2 Meetings.
- April 5:
- Subgroup 1 and Subgroup 2 Meetings.
- Closing Session (Other Business, Date and Place of Next Meeting, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 1, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–1074 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Revised Record of Decision and Notice of Final Federal Agency Actions on the West 11th Street to Garfield Street, Florence-Eugene Highway: Lane County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Availability of a revised Record of Decision for transportation improvements in Lane County, OR and Notice of Limitations on Claims for Judicial Review of Actions by FHWA.

SUMMARY: The FHWA is issuing this notice to advise the public that a revised record of decision (ROD) has been made for the West 11th Street to Garfield Street, Florence-Eugene-Highway Final Environmental Impact Statement. This notice also announces actions taken by the FHWA that are final agency actions within the meaning of 23 U.S.C. 139(l)(1). These final agency actions relate to a proposed highway project, West 11th Street to Garfield Street, Florence-Eugene Highway in Lane County, Oregon where the revised ROD amends FHWA's April 16, 1990 ROD that had selected Alternative 1 Modified, and selects the no-build alternative.

The Final Environmental Impact Statement was approved and published by FHWA in January 1990 and a ROD was issued on April 16, 1990. This revised ROD amends FHWA's April 16, 1990 ROD that had selected Alternative 1 Modified, and selects the no-build alternative. In large part, FHWA selects the no-build alternative in the revised ROD based on: public and resource agency input, including the Oregon DOT; a Lane Council of Governments resolution; and, a conflict assessment report prepared by FHWA and the City of Eugene. While the no-build does not satisfy an existing transportation need in the area, selecting the no-build alternative is in the best overall public interest at this time.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before September 4, 2007. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Michelle Eraut, Environmental Program Manager, Federal Highway Administration, 530 Center Street, NE., Suite 100, Salem, Oregon 97301, Telephone: (503) 587–4716, or Ken Kohl, Project Manager, Oregon Department of Transportation, 644 ''A'' Street, Eugene, Oregon 97477, Telephone: (541) 747–1496. The FEIS, revised ROD, and other project records are available upon written request from the Federal Highway Administration at the address shown above. Comments or questions concerning this proposed action and the revised ROD should be directed to the FHWA at the address provided above.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency action subject to 23 U.S.C. 139(l)(1) by issuing a decision for the following highway project in the State of Oregon: West 11th Street to Garfield Street, Florence-Eugene Highway. This project identified a need to address capacity constraints and safety considerations on the current Florence-Eugene Highway on the western edge of Eugene, Oregon. The federal-aid identifier for this project is F 025(003). The actions by the Federal agency and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved in January 1990, in the FHWA Revised ROD issued on October 24, 2006, and in other documents in the FHWA project records. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (DSWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act, [16 U.S.C. 3921, 3931]; Wetlands Mitigation [23 U.S.C. 103(b)(6)(M) and 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites, E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139(l)(1))

Issued on: March 1, 2007.

Michelle Eraut,

Environmental Program Manager, Salem, Oregon.

[FR Doc. E7–4136 Filed 3–7–07; 8:45 am]

BILLING CODE 4910–22–P

Federal Register

Thursday,
March 8, 2007

Part II

The President

Executive Order 13426—Establishing a Commission on Care for America's Returning Wounded Warriors and a Task Force on Returning Global War on Terror Heroes

Federal Register
Vol. 72, No. 45
Thursday, March 8, 2007

Presidential Documents

Title 3—

The President

Executive Order 13426 of March 6, 2007

Establishing a Commission on Care for America's Returning Wounded Warriors and a Task Force on Returning Global War on Terror Heroes

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to provide a comprehensive review of the care provided to America's returning Global War on Terror service men and women from the time they leave the battlefield through their return to civilian life, it is hereby ordered as follows:

Section 1. *Establishment of Commission*. There is established the President's Commission on Care for America's Returning Wounded Warriors (Commission).

Sec. 2. *Membership of Commission*. The Commission shall be composed of nine members appointed by the President. The President shall designate two Co-Chairs from among the members of the Commission.

Sec. 3. *Mission of Commission*. The mission of the Commission shall be to:

(a) examine the effectiveness of returning wounded service members' transition from deployment in support of the Global War on Terror to successful return to productive military service or civilian society, and recommend needed improvements;

(b) evaluate the coordination, management, and adequacy of the delivery of health care, disability, traumatic injury, education, employment, and other benefits and services to returning wounded Global War on Terror service members by Federal agencies as well as by the private sector, and recommend ways to ensure that programs provide high-quality services;

(c) (i) analyze the effectiveness of existing outreach to service members regarding such benefits and services, and service members' level of awareness of and ability to access these benefits and services, and (ii) identify ways to reduce barriers to and gaps in these benefits and services; and

(d) consult with foundations, veterans service organizations, non-profit groups, faith-based organizations, and others as appropriate, in performing the Commission's functions under subsections (a) through (c) of this section.

Sec. 4. *Administration of Commission*.

(a) The Secretary of Defense shall, to the extent permitted by law, provide administrative support and funding for the Commission. To the extent permitted by law, office space, analytical support, and staff support for the Commission shall be provided by the Department of Defense.

(b) Members of the Commission shall serve without any compensation for their work on the Commission. Members of the Commission appointed from among private citizens of the United States, while engaged in the work of the Commission, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707), consistent with the availability of funds.

(c) The Co-Chairs of the Commission shall select an Executive Director to coordinate administration of the Commission.

(d) The heads of executive branch departments and agencies shall, to the extent permitted by law, provide the Commission with information as requested by the Co-Chairs.

(e) The Co-Chairs of the Commission shall convene and preside at the meetings of the Commission, determine its agenda, and direct its work.

(f) The functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.)(Act), except for those in section 6 of that Act, that are applicable to the Commission, shall be performed by the Secretary of Defense, in accordance with the guidelines that have been issued by the Administrator of General Services.

Sec. 5. *Report of Commission*. The Commission shall report its recommendations to the President through the Secretary of Defense and the Secretary of Veterans Affairs. The Commission shall issue a final report by June 30, 2007, unless the Co-Chairs provide written notice to the President that an extension is necessary, in which case the Commission shall issue the final report by July 31, 2007.

Sec. 6. *Termination of Commission*. The Commission shall terminate 30 days after submitting its final report, unless extended by the President prior to that date.

Sec. 7. *Establishment of Task Force*. The Secretary of Veterans Affairs (Secretary) shall establish within the Department of Veterans Affairs for administrative purposes only an Interagency Task Force on Returning Global War on Terror Heroes (Task Force).

Sec. 8. *Membership and Operation of Task Force*. The Task Force shall consist exclusively of the following members, or their designees who shall be at the Under Secretary level (or its equivalent) or higher:

(a) the Secretary of Veterans Affairs, who shall serve as Chair;

(b) the Secretary of Defense;

(c) the Secretary of Labor;

(d) the Secretary of Health and Human Services;

(e) the Secretary of Housing and Urban Development;

(f) the Secretary of Education;

(g) the Director of the Office of Management and Budget;

(h) the Administrator of the Small Business Administration; and

(i) other officers or employees of the United States, as determined by the Secretary.

The Secretary or the Secretary's designee shall convene and preside at meetings of the Task Force and direct its work. The Secretary shall designate an official of the Department of Veterans Affairs to serve as the Executive Secretary of the Task Force, and the Executive Secretary shall head any staff assigned to the Task Force.

Sec. 9. *Mission of Task Force*. The mission of the Task Force shall be to:

(a) identify and examine existing Federal services that currently are provided to returning Global War on Terror service members;

(b) identify existing gaps in such services;

(c) seek recommendations from appropriate Federal agencies on ways to fill those gaps as effectively and expeditiously as possible using existing resources; and

(d) (i) ensure that in providing services to these service members, appropriate Federal agencies are communicating and cooperating effectively, and (ii) facilitate the fostering of agency communications and cooperation through informal and formal means, as appropriate.

Sec. 10. *Administration of Task Force.* The Secretary of Veterans Affairs shall, to the extent permitted by law, provide administrative support and funding for the Task Force.

Sec. 11. *Action Plan of Task Force.* Consistent with applicable law, the Task Force shall outline a Government-wide action plan that identifies existing Federal services for returning Global War on Terror service men and women and that ensures the provision of such services to those service members as effectively and expeditiously as possible. The Task Force shall submit the action plan to the President within 45 days of the date of this order.

Sec. 12. *Termination of Task Force.* The Secretary, with the approval of the President, shall terminate the Task Force upon the completion of its duties.

Sec. 13. *General Provisions.*

(a) Nothing in this order shall be construed to impair or otherwise affect (i) authority granted by law to an agency or the head thereof, or (ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, entities, officers, employees, agents, or any other person.

THE WHITE HOUSE,
March 6, 2007.

[FR Doc. 07–1137
Filed 3–7–07; 10:57 am]
Billing code 3195–01–P

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