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9:00 a.m.–Noon

WHERE: Office of the Federal Register
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Washington, DC 20002

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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-26585; Directorate Identifier 2006-NE-44-AD; Amendment 39-15087; AD 2007-12-09]

RIN 2120-AA64

Airworthiness Directives; General Electric Company CF34-10E Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CF34-10E series turbofan engines. This AD requires revising the combustor case published life limit and removing combustor cases from service before reaching a reduced life limit. This AD results from GE's evaluation of the effects to the combustor case due to installing version 5.10 software in the full-authority digital electronic control (FADEC), and revising the combustor case published life limit. We are issuing this AD to prevent uncontained combustor case failure resulting in an in-flight engine shutdown and possible damage to the airplane.

DATES: This AD becomes effective July 10, 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: Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803;

e-mail: tara.chaidez@faa.gov; telephone (781) 238-7773; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GE CF34-10E series turbofan engines. We published the proposed AD in the **Federal Register** on January 17, 2007 (72 FR 1946). That action proposed to require revising the combustor case published life limit and removing combustor cases from service before reaching a reduced life limit.

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 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Comments

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

Elimination of Paragraph (g)

After we issued the proposed AD, our review indicated that we should simplify the compliance by eliminating paragraph (g). That paragraph is redundant to paragraph (f), and would only add an additional requirement for the operators to show compliance after removal of every affected part. We eliminated the proposed AD paragraph (g), and re-codified the paragraphs, in this AD.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 42 CF34-10E series turbofan engines installed on airplanes of U.S. registry. This combustor case removal does not impose any additional labor costs if performed at the time of scheduled

engine overhaul. The financial burden to the operators (prorate) is about \$140,080 per engine due to the reduction in the life limit. Based on these figures, and on the prorating for the usage of the combustor cases, we estimate the cost of the AD on U.S. operators to be \$5,886,720.

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 adding the following new airworthiness directive:

2007-12-09 General Electric Company:
Amendment 39-15087. Docket No. FAA-2006-26585; Directorate Identifier 2006-NE-44-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 10, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF34-10E2A1, CF34-10E5, CF34-10E5A1, CF34-10E6, CF34-10E6A1, and CF34-10E7 turbofan engines. These engines are installed on, but not limited to, Embraer ERJ-190 and -195 airplanes.

Unsafe Condition

(d) This AD results from GE's evaluation of the effects to the combustor case due to installing version 5.10 software in the full-authority digital electronic control (FADEC), and revising the combustor case published life limit. We are issuing this AD to prevent uncontained combustor case failure resulting in an in-flight engine shutdown and possible damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within 30 days after the effective date of this AD, unless the actions have already been done.

(f) Revise the published life limit in the Airworthiness Limitations Section of the CF34-10E Engine Manual, for combustor cases, part number (P/N) 2070M47G02 and P/N 2070M47G03, from 39,600 cycles-since-new (CSN) to 24,600 CSN.

(g) The requirements of this AD have been met when the engine manual changes are made and operators have modified their continuous airworthiness maintenance plans to reflect the Engine Maintenance Program requirements specified in the GE CF34-10E Engine Manual.

Alternative Methods of Compliance

(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.

Related Information

(i) Contact Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: tara.chaidez@faa.gov; telephone (781) 238-7773, fax (781) 238-7199, for more information about this AD.

Issued in Burlington, Massachusetts, on May 30, 2007.

Robert Ganley,

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

[FR Doc. E7-10746 Filed 6-4-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2006-26488; Directorate Identifier 2006-NE-43-AD; Amendment 39-15077; AD 2007-11-20]

RIN 2120-AA64

Airworthiness Directives; General Electric Company (GE) CF6-80 Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for GE CF6-80 series turbofan engines with fuel shroud retaining rings, part number (P/N) J204P0084, installed. This AD requires replacing those retaining rings with a more robust design fuel shroud retaining snap ring. This AD results from two events of external engine fuel leakage and a subsequent under-cowl engine fire. We are issuing this AD to prevent an under-cowl engine fire and damage to the airplane during an engine high vibration event.

DATES: This AD becomes effective July 10, 2007. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of July 10, 2007.

ADDRESSES: You can get the service information identified in this AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672-8400, fax (513) 672-8422.

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:

James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: james.lawrence@faa.gov; telephone: (781) 238-7176, fax: (781) 238-7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GE CF6-80 series turbofan engines with fuel shroud retaining rings, part number (P/N) J204P0084, installed. We published the proposed AD in the **Federal Register** on February 15, 2007 (72 FR 7355). That action proposed to require replacing those retaining rings with a more robust design fuel shroud retaining snap ring.

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 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.

Comment That Table 1 Compliance Schedule Is Somewhat Difficult To Follow

One commenter, GE, states that the Table 1 compliance schedule in the proposed AD is somewhat difficult to follow. The commenter states that the table needs lines or spaces added, to separate some of the items in it, for clarity.

We agree that the Table 1 compliance schedule in the proposed AD is difficult to follow. We have deleted the Table 1 compliance schedule from this AD, based on comments received on the proposed AD, and which are discussed in the paragraphs that follow.

Request To Reduce the AD Applicability

GE requests that we reduce the AD applicability to only engines with the drainless manifold configuration, since the drained manifold configuration is

not subjected to high internal pressure. If a fuel supply tube leaks internally, the shroud contains the fuel, preventing an external leak. We agree and reduced the AD applicability in the AD to only engines with the drainless manifold configuration.

Request To Clarify Applicability

GE requests that we clarify the applicability to state that engines built at the factory during production assembly with the drainless manifold configuration, are also subject to the requirements of the AD. We agree and made that clarification in the AD.

SB Compliance Credit for CF6-80C2 Series Engines

GE suggests that we add a note or statement to the compliance section verifying that CF6-80C2 series engine operators that have complied with a previous revision of SB No. CF6-80C2 S/B 73-0337, are in compliance with the AD. We agree. We added the "SB Compliance Credit for CF6-80C2 Series Engines" paragraph to the AD.

Request To Revise the Compliance Section

KLM Royal Dutch Airlines requests that we revise the section of the compliance that states "Comply with this AD as soon as one or more fuel shroud retaining rings are removed from the engine" to, "Comply with this AD during next engine shop visit for any reason." The commenter states that the AD action should be only at engine-level and not on-wing.

We agree that the AD action should be only at engine-level and not on-wing. That part of the proposed compliance section was for engines that had not incorporated GE SB No. CF6-80C2 S/B 73-0253 (which eliminates the fuel drain system manifold and introduces a new drainless fuel manifold). The result is that this AD now applies to only the drainless manifold configuration. In addition, we deleted the Table 1 compliance schedule because it is no longer needed, clarified compliance paragraph (g), and clarified applicability paragraphs (c) and (d) in this AD.

Request To Change Nomenclature

All Nippon Airways requests that we change the proposed AD nomenclature for the rings being removed, from "retaining snap ring" to "retaining ring". We agree. We confirmed that GE's SBs refer to the removed rings as "retaining rings" and to the rings being installed as "snap rings." We changed the nomenclature in the AD to reflect that which the SBs use.

Reference Table of Fuel Manifold Part Numbers Added

For reference, we added a Table under paragraph (f) which lists fuel manifold production part numbers.

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 this AD will affect 853 CF6-80 series turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take about 12.5 work-hours per engine to perform the actions, and that the average labor rate is \$80 per work-hour. Required parts will cost about \$72 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be \$914,416.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007-11-20 General Electric Company:
Amendment 39-15077. Docket No. FAA-2006-26488; Directorate Identifier 2006-NE-43-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 10, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following General Electric Company (GE) CF6-80C2 series turbofan engines that have incorporated GE Service Bulletin (SB) No. CF6-80C2 S/B 73-0253, or were built with the drainless manifold configuration at the factory during production assembly, and, have one or more fuel shroud retaining rings, part number (P/N) J204P0084, installed:

CF6-80C2A1,
CF6-80C2A2,
CF6-80C2A3,
CF6-80C2A5,
CF6-80C2A8,
CF6-80C2A5F,
CF6-80C2B1,
CF6-80C2B2,
CF6-80C2B4,
CF6-80C2B6,
CF6-80C2B1F,
CF6-80C2B2F,
CF6-80C2B4F,
CF6-80C2B5F,

CF6-80C2B6F,
CF6-80C2B6FA,
CF6-80C2B7F,
CF6-80C2B8F,
CF6-80C2D1F,
CF6-80C2L1F.

(d) This AD also applies to GE CF6-80E1A1, CF6-80E1A2, CF6-80E1A3, CF6-80E1A4, and CF6-80E1A4B turbofan engines that have incorporated GE SB No. CF6-80E1 S/B 73-0026, or were built with the drainless manifold configuration at the factory during production assembly, and, have one or more fuel shroud retaining rings, P/N J204P0084, installed.

(e) These engines are installed on, but not limited to, Airbus A300, A310, A330, Boeing 747, 767, and McDonnell Douglas MD11 airplanes.

(f) For reference, the following Table 1 lists fuel manifold production P/Ns.

TABLE 1.—REFERENCE OF FUEL MANIFOLD PRODUCTION P/Ns

CF6-80C2 Series Engines	
Drained Fuel Manifold P/N (left side)	Drainless Fuel Manifold P/N (left side)
1303M31G04 1303M31G06 1303M31G07 1303M31G08 1303M31G10	1303M31G12.
Drained Fuel Manifold P/N (right side)	Drainless Fuel Manifold P/N (right side)
1303M32G04 1303M32G06 1303M32G07 1303M32G08 1303M32G10	1303M32G12.

TABLE 1.—REFERENCE OF FUEL MANIFOLD PRODUCTION P/Ns—Continued

CF6-80 E1 Series Engines	
Drained Fuel Manifold P/N (left side)	Drainless Fuel Manifold P/N (left side)
1700M34G01	1303M31G12.
Drained Fuel Manifold P/N (right side)	Drainless Fuel Manifold P/N (right side)
1700M35G02	1303M32G12.

Unsafe Condition

(g) This AD results from two events of external engine fuel leakage and a subsequent under-cowl engine fire. We are issuing this AD to prevent an under-cowl engine fire and damage to the airplane during an engine high vibration event.

Compliance

(h) You are responsible for having the actions required by this AD performed at the next engine shop visit for any reason after the effective date of this AD, unless the actions have already been done.

Replacement of Fuel Shroud Retaining Snap Rings

(i) Replace any fuel shroud retaining rings, P/N J204P0084, with a fuel shroud retaining snap ring, P/N 2186M12P01. Each engine has a total of 30 rings installed.

(j) For CF6-80C2 series engines, use paragraphs 3.A. through 3.C.(1)(b)2, of GE SB No. CF6-80C2 S/B 73-0337, Revision 3, dated February 5, 2007, to do the replacements.

(k) For CF6-80E1 series engines, use paragraphs 3.A. through 3.C.(1)(b)2, of GE SB No. CF6-80E1 S/B 73-0075, Revision 1, dated November 27, 2006, to do the replacements.

SB Compliance Credit for CF6-80C2 Series Engines

(l) This AD requires no further action if the fuel shroud retaining snap rings were installed in the CF6-80C2 series engines before the effective date of this AD using GE SB No. CF6-80C2 S/B 73-0337, Revision 2, dated January 11, 2007, Revision 1, dated April 19, 2005, or the Original, dated November 30, 2004.

Alternative Methods of Compliance

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

Related Information

(n) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: james.lawrence@faa.gov; telephone (781) 238-7176; fax (781) 238-7199, for more information about this AD.

Material Incorporated by Reference

(o) You must use the General Electric Company service information specified in Table 2 of this AD to perform the replacements required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 2 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672-8400, fax (513) 672-8422, for a copy of this service information. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; 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>.

TABLE 2.—INCORPORATION BY REFERENCE

Service Bulletin No.	Page	Revision	Date
CF6-80C2 S/B 73-0337	All	3	February 5, 2007.
Total Pages: 13			
CF6-80E1 S/B 73-0075	All	1	November 27, 2006.
Total Pages: 13			

Issued in Burlington, Massachusetts, on May 24, 2007.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7-10588 Filed 6-4-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-27713; Directorate Identifier 2006-NM-240-AD; Amendment 39-15079; AD 2007-12-01]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model DHC-8-100, DHC-8-200, and DHC-8-300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model DHC-8-100, DHC-8-200, and DHC-8-300 series airplanes. This AD requires, for certain airplanes, modification of the upper bearing of the main landing gear (MLG) shock strut. This AD also requires, for certain airplanes, revising the de Havilland DHC-8 Maintenance Program Manual to include the MLG shock strut servicing task. This AD results from reports of over-extension of the MLG shock strut piston, which allows the torque links to go over-center and rest on the piston. We are issuing this AD to prevent loss in shock absorption during touchdown and failure of the shock strut housing, which could result in a subsequent loss of directional control.

DATES: This AD becomes effective July 10, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of July 10, 2007.

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

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

FOR FURTHER INFORMATION CONTACT:

Mazdak Hobbi, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7330; fax (516) 794-5531.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier Model DHC-8-100, DHC-8-200, and DHC-8-300 series airplanes. That NPRM was published in the **Federal Register** on

March 29, 2007 (72 FR 14721). That NPRM proposed to require, for certain airplanes, modification of the upper bearing of the main landing gear (MLG) shock strut. That NPRM proposed to also require, for certain airplanes, revising the de Havilland DHC-8 Maintenance Program Manual to include the MLG shock strut servicing task.

Comments

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

Clarification of Part Number

We have revised paragraph (i)(2) of this final rule to correct a typographical error, which resulted in an incorrect part number. Paragraph (i)(2) should have read “* * * 10129-5 or 10129-553.”

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data 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

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification	4	\$80	\$274	\$594	Up to 135	Up to \$80,190.
Manual Revision	1	80	0	80	135	\$10,800.

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):

2007-12-01 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39-15079. Docket No. FAA-2007-27713; Directorate Identifier 2006-NM-240-AD.

Effective Date

(a) This AD becomes effective July 10, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC-8-101, -102, -103, -106, -201, -202, -301, -311, -314, and -315 airplanes, certificated in any category; serial numbers 003 through 618 inclusive.

Unsafe Condition

(d) This AD results from reports of over-extension of the main landing gear (MLG) shock strut piston, which allows the torque links to go over-center and rest on the piston. We are issuing this AD to prevent loss in shock absorption during touchdown and failure of the shock strut housing, which could result in a subsequent loss of directional control.

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.

Modification of the Upper Bearing

(f) For Model DHC-8-311, -314, and -315 airplanes, serial numbers 202 through 516 inclusive, with MLG shock struts having any

serial number DCL3501/90 through DCL3768/97 inclusive installed: Within 3,000 flight hours after the effective date of this AD, modify the upper bearing in each MLG (including doing inspections of the upper bearing and cylinder bore for wear and damage, and doing all applicable corrective actions) in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8-32-144, Revision ‘A,’ dated April 29, 2002, which includes Messier-Dowty Service Bulletin M-DT SBDHC8-32-82, Revision 1, dated July 5, 2001, except if wear exceeds the maximum diameter specified in the service bulletin for the cylinder bore or if damage is found on the cylinder bore, before further flight, repair using a method approved by either the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent). Do all applicable corrective actions before further flight.

Revision of the Maintenance Program Manual

(g) For Model DHC-8-101, -102, -103, -106, -201, -202, -301, -311, -314, and -315 airplanes, serial numbers 003 through 614 inclusive: Within 30 days after the effective date of this AD, revise Part 1 of the applicable de Havilland DHC-8 Maintenance Program Manual by incorporating the applicable MLG shock strut servicing Task 3210/15 specified in Table 1 of this AD.

Note 1: This may be done by inserting copies of the applicable task into the applicable maintenance program manual. When these tasks have been included in the general revisions of the applicable maintenance program manual, the general revisions may be inserted in the applicable maintenance program manual and the copy of the task may be removed from the maintenance program manual.

TABLE 1.—TASKS

Task—	Dated—	To the de Havilland Program Support Manual (PSM)—	For model—
de Havilland Dash 8 Series 100 Maintenance Task Card 3210/15.	June 22, 2005	1-8-7	DHC-8-100 series airplanes.
de Havilland Dash 8 Series 200 Maintenance Task Card 3210/15.	June 22, 2005	1-82-7	DHC-8-200 series airplanes.
de Havilland Dash 8 Series 300 Maintenance Task Card 3210/15.	November 29, 2005	1-83-7	DHC-8-300 series airplanes.

Parts Installation

(h) After the effective date of this AD, no person may install a part identified in paragraphs (h)(1) and (h)(2) of this AD, as a replacement during the repair or overhaul of any shock strut assembly, on any airplane.

- (1) Upper bearing, part number 10130-3 or 10130-551.
- (2) Damper ring, part number 10129-3 or 10129-551.

(i) After the effective date of this AD, only the parts identified in paragraphs (i)(1) and (i)(2) of this AD may be installed on any airplane as replacement upper bearings and damper rings during the repair or overhaul of any shock strut assembly, except as provided by paragraph (j) of this AD.

- (1) Upper bearing, part number 10130-5.
- (2) Damper ring, part number 10129-5 or 10129-553.

(j) After the effective date of this AD, only MLGs with a reworked, oversize cylinder bore (part number identified in the applicable component maintenance manual (CMM)) that have parts identified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD used in accordance with the applicable CMM may be installed on any airplane.

- (1) Upper bearing, part number CRS85-167-11.

(2) Damper ring, part number CRS85-167-31 or CRS85-167-33.

(3) Seal carrier, part number CRS85-167-21.

Credit for Actions Done Using Previous Service Information

(k) Modifications accomplished before the effective date of this AD in accordance with Bombardier Service Bulletin 8-32-144, dated August 10, 1998, which includes Messier-Dowty Service Bulletin M-DT SBDHC8-32-82, dated March 9, 1998, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in

accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(m) Canadian airworthiness directive CF-2006-14, dated June 14, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(n) You must use Bombardier Service Bulletin 8-32-144, Revision 'A,' dated April 29, 2002, which includes Messier-Dowty

Service Bulletin M-DT SBDHC8-32-82, Revision 1, dated July 5, 2001; and the task cards identified in Table 2 of this AD; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for a copy of this service information. You may review copies at the 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>.

TABLE 2.—TASK CARDS INCORPORATED BY REFERENCE

Task card—	Dated—	To the de Havilland program support manual—
de Havilland Dash 8 Series 100 Maintenance Task Card 3210/15	June 22, 2005	1-8-7.
de Havilland Dash 8 Series 200 Maintenance Task Card 3210/15	June 22, 2005	1-82-7.
de Havilland Dash 8 Series 300 Maintenance Task Card 3210/15	November 29, 2005	1-83-7.

Issued in Renton, Washington, on May 25, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-10670 Filed 6-4-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-26856; Directorate Identifier 2006-NM-125-AD; Amendment 39-15082; AD 2007-12-04]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300 B4-600, B4-600R, and F4-600R Series Airplanes, and Model C4-605R Variant F Airplanes (Collectively Called A300-600 Series Airplanes)

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to all Airbus Model A300-600 series airplanes. That AD currently requires inspections of the lower door surrounding structure to detect cracks and corrosion; inspections to detect cracking of the holes of the corner

doublers, the fail-safe ring, and the door frames of the door structures; and repair if necessary. That AD also provides for optional terminating action for certain inspections. This new AD retains all requirements of the existing AD, mandates the previously optional terminating action, reduces the applicability of the existing AD, and adds repetitive inspections behind scuff plates for certain affected airplanes. This AD results from a determination that further rulemaking is necessary to improve the fatigue behavior of the cabin door surroundings. We are issuing this AD to prevent corrosion between the scuff plates at exit and cargo doors and fatigue cracks originating from certain fastener holes located in adjacent structure, which could result in reduced structural integrity of the door surroundings.

DATES: This AD becomes effective July 10, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of July 10, 2007.

On September 4, 1998 (63 FR 40812, July 31, 1998), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in the AD.

ADDRESSES: You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department

of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC.

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 98-16-05, amendment 39-10680 (63 FR 40812, July 31, 1998). The existing AD applies to all Airbus Model A300-600 series airplanes. That

NPRM was published in the **Federal Register** on January 19, 2007 (72 FR 2469). That NPRM proposed to continue the requirements of AD 98-16-05. These requirements are inspections of the lower door surrounding structure to detect cracks and corrosion; inspections to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames of the door structures; and repair if necessary. That NPRM also proposed to mandate the previously optional terminating action, reduce the applicability of the existing AD, and add repetitive inspections behind scuff plates for certain affected airplanes.

Comments

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

Request To Give Credit for Previous Inspections

FedEx concurs with the NPRM, but requests that we give credit for previous inspections accomplished in accordance with AD 98-16-05. FedEx points out that this credit should be given for actions in paragraphs (f), (g), (j), (k), (n), and (r) of the NPRM.

We partially agree with the request. We agree that it is necessary for the AD to give credit for inspections accomplished previously in accordance

with AD 98-16-05. We disagree that it is necessary to change the AD in this regard. Paragraph (e) of the AD states “You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.” Therefore, the AD already gives credit for required actions that were accomplished according to AD 98-16-05.

Request To Allow Previously Granted Alternate Methods of Compliance (AMOCs)

FedEx also suggests that AMOCs issued per AD 98-16-05 be granted as applicable to the NPRM.

We agree that we should approve AMOCs for this AD that were approved previously in accordance with AD 98-16-05. We disagree with changing the AD in this regard. Paragraph (t)(2) of both the NPRM and the AD already approves previous AMOCs.

Request To Address Repairs Outside Limits

FedEx requests that we add wording to paragraphs (l)(2) and (t) of the NPRM to address repairs outside the applicable service bulletins or that exceed the service bulletin limits. (Airbus Service Bulletin A300-53-6018, Revision 1, dated April 29, 1992; or Revision 02, dated November 27, 2000; are the applicable service bulletins for

paragraph (l)(2); and paragraph (t) is the AMOC paragraph.) FedEx suggests the following wording: “If any crack or corrosion is detected during any inspection required by this AD and the applicable service bulletin specifies to contact the manufacturer for disposition of corrective actions: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM-116, or DGAC/EASA, or its delegated agent.”

We disagree with the request to add the suggested words. There are no limits specified in the service bulletins. We cannot approve repairs that exceed the limits of the service bulletin unless the excess limits are defined. However, affected operators may request approval of AMOCs, under the provisions of paragraph (t) of the AD.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD. The average labor rate per work hour is \$80.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Repetitive inspections behind scuff plates.	37	None	\$2,960	129	\$381,840.
Repetitive inspections of corner doublers, fail-safe ring, and door frames.	Between 1 and 51	None	Between \$80 and \$4,080.	129	Between \$10,320 and \$526,320.
Terminating modification for repetitive inspection of corner doublers, fail-safe ring, and door frames.	Between 8 and 67, depending on kit purchased.	Between \$580 and \$11,273, depending on kit purchased.	Between \$1,220 and \$16,633.	129	Between \$157,380 and \$2,145,657.

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 39-10680 (63 FR 40812, July 31, 1998) and by adding the following new airworthiness directive (AD):

2007-12-04 Airbus: Amendment 39-15082. Docket No. FAA-2007-26856; Directorate Identifier 2006-NM-125-AD.

Effective Date

(a) This AD becomes effective July 10, 2007.

Affected ADs

(b) This AD supersedes AD 98-16-05.

Applicability

(c) This AD applies to Airbus Model A300 B4-601, B4-603, B4-620, and B4-622 airplanes; Model A300 B4-605R and B4-622R airplanes; Model A300 F4-605R and F4-622R airplanes; and Model A300 C4-605R Variant F airplanes; certificated in any category; excluding those airplanes on which Airbus Modification 5068, 6514, 7201, and 7298 have been incorporated in production.

Unsafe Condition

(d) This AD results from a determination that further rulemaking is necessary to improve the fatigue behavior of the cabin door surroundings. We are issuing this AD to prevent corrosion between the scuff plates at exit and cargo doors and fatigue cracks originating from certain fastener holes located in adjacent structure, which could

result in reduced structural integrity of the door surroundings.

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.

Requirements of AD 98-16-05

Initial Inspection Behind Scuff Plates and Repair if Necessary

(f) Perform an initial inspection of the areas behind the scuff plates below the passenger/crew doors and bulk cargo door to detect cracks and corrosion, in accordance with Airbus Service Bulletin A300-53-6011, Revision 3, dated February 4, 1991, at the time specified in paragraph (f)(1), (f)(2), or (f)(3) of this AD. If any crack or corrosion is found during this inspection, prior to further flight, repair in accordance with the service bulletin. Accomplishment of this inspection is not required for the mid and aft passenger/crew doors if a steel doubler that covers the entire inspection area is installed.

(1) For airplanes on which Modification 5382S6526 (for forward doors) and Modification 5382D4741 (for all other doors) have been accomplished prior to delivery of the airplane: Perform the initial inspection within 9 years since date of manufacture, or within 1 year after September 4, 1998 (the effective date of AD 98-16-05), whichever occurs later.

(2) For airplanes on which Modification 5382S6526 (for forward doors) and Modification 5382D4741 (for all other doors) have not been accomplished; and on which the procedures described in Airbus Service Information Letter (SIL) A300-53-033, Revision 2 (for all doors), dated November 23, 1984, have been accomplished: Perform the initial inspection within 5 years after accomplishment of the procedures described in the SIL, or within 1 year after September 4, 1998, whichever occurs later.

(3) For airplanes on which Modification 5382S6526 (for forward doors), and Modification 5382D4741 (for all other doors), and the procedures described in Airbus SIL A300-53-033, Revision 2, dated November 23, 1984, have not been accomplished: Perform the initial inspection within 4 years since date of manufacture, or within 1 year after September 4, 1998, whichever occurs later.

Repetitive Inspections Behind Scuff Plates

(g) Perform repetitive inspections of the areas behind the scuff plates below the passenger/crew doors and bulk cargo door to detect cracks and corrosion, in accordance with Airbus Service Bulletin A300-53-6022, dated February 4, 1991, at the applicable times specified in paragraphs (g)(1) and (g)(2) of this AD. Accomplishment of these inspections is not required for the mid and aft passenger/crew doors if a steel doubler that covers the entire inspection area is installed.

(1) For the forward and mid passenger/crew doors, the bulk cargo door, and the aft passenger/crew doors, except the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler: Perform

the first inspection within 5 years after accomplishing the inspection required by paragraph (f) of this AD; and repeat the inspection thereafter at intervals not to exceed 5 years.

(2) For the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler of the aft passenger/crew doors: Perform the first inspection within 5 years or 6,000 landings after accomplishing the inspection required by paragraph (f) of this AD, whichever occurs first; and repeat the inspection thereafter at intervals not to exceed 5 years or 6,000 landings, whichever occurs first.

Repair of Scuff Plates if Necessary

(h) If any crack is found during any inspection required by paragraph (g) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A300-53-6022, dated February 4, 1991. Thereafter, perform the repetitive inspections required by paragraph (g) of this AD at the applicable times specified in paragraphs (g)(1) and (g)(2) of this AD.

(i) If corrosion is found during any inspection required by paragraph (g) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A300-53-6022, dated February 4, 1991. Thereafter, perform the repetitive inspections required by paragraph (g) of this AD at the applicable times specified in paragraph (i)(1) or (i)(2) of this AD.

(1) For the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler of the aft passenger/crew doors, and for the mid passenger/crew door: Inspect at intervals not to exceed 5 years or 5,000 landings, whichever occurs first.

(2) For the forward passenger/crew doors and bulk cargo doors: Inspect at intervals not to exceed 5 years.

Initial Inspection of Corner Doublers, Fail-Safe Ring, and Door Frames

(j) Perform an inspection to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames of the left- and right-hand forward, mid, and aft passenger/crew door structures, in accordance with Airbus Service Bulletin A300-53-6018, Revision 1, dated April 29, 1992, and at the applicable time specified in paragraph (j)(1), (j)(2), (j)(3), or (j)(4) of this AD.

(1) For the upper corners of the forward doors: Inspect prior to the accumulation of 20,000 total landings, or within 2,000 landings after September 4, 1998, whichever occurs later.

(2) For the lower corners of the forward doors: Inspect prior to the accumulation of 20,000 total landings, or within 4,000 landings after September 4, 1998, whichever occurs later.

(3) For the upper and lower corners of the mid doors: Inspect prior to the accumulation of 20,000 total landings, or within 2,000 landings after September 4, 1998, whichever occurs later.

(4) For the upper and lower corners of the aft doors, and for the parts underneath the corners of the upper door frames: Inspect prior to the accumulation of 20,000 total landings, or within 4,000 landings after September 4, 1998, whichever occurs later.

Repetitive Inspections of Corner Doublers, Fail-Safe Ring, and Door Frames

(k) Repeat the inspections required by paragraph (j) of this AD at the applicable times specified in paragraphs (k)(1), (k)(2), (k)(3), (k)(4), and (k)(5) of this AD.

(1) For the upper corners of the forward doors: Inspect at intervals not to exceed 6,000 landings.

(2) For the lower corners of the forward doors: Inspect at intervals not to exceed 10,000 landings.

(3) For the upper and lower corners of the mid and aft doors on which an inspection required by paragraph (j) of this AD was accomplished using a ROTO test technique: Inspect at intervals not to exceed 8,000 landings.

(4) For the upper and lower corners of the mid and aft doors on which an inspection required by paragraph (j) of this AD was accomplished using an X-ray technique: Inspect at intervals not to exceed 3,500 landings.

(5) For the areas around the fasteners in the vicinity of stringer 12 on the upper door frames of the aft doors on which an inspection required by paragraph (j) of this AD was accomplished using a visual technique: Inspect at intervals not to exceed 6,900 landings.

Repair of Corner Doublers, Fail-Safe Ring, and/or Door Frames if Necessary

(1) If any crack is found during any inspection required by paragraph (j) or (k) of this AD: Prior to further flight, accomplish the requirement of paragraph (l)(1) or (l)(2) of this AD, as applicable.

(1) If any crack is found, and the crack can be eliminated using the method specified in Airbus Service Bulletin A300-53-6018, Revision 1, dated April 29, 1992; or Revision 02, excluding Appendix 01, dated November 27, 2000: Prior to further flight, repair the crack in accordance with that service bulletin.

(2) If any crack is found, and the crack cannot be eliminated using the method

specified in Airbus Service Bulletin A300-53-6018, Revision 1, dated April 29, 1992; or Revision 02, excluding Appendix 01, dated November 27, 2000: Prior to further flight, repair the crack in accordance with a method approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate.

New Requirements of This AD

New Revisions of Service Bulletins

(m) As of the effective date of this AD, use only the applicable service bulletins specified in Table 1 of this AD; except where the service bulletins recommend contacting Airbus for appropriate action, before further flight, repair the cracked part using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

TABLE 1.—NEW REVISIONS OF SERVICE BULLETINS

Do the action(s) required by—	In accordance with the accomplishment instructions of Airbus Service Bulletin—
(1) Paragraph (f) of this AD	A300-53-6011, Revision 07, dated January 24, 2005.
(2) Paragraphs (g) through (i) of this AD	A300-53-6022, Revision 04, dated January 24, 2005.
(3) Paragraphs (j), (k), and (l)(1) of this AD	A300-53-6018, Revision 03, excluding Appendix 01, dated July 26, 2006.

Initial Inspection Behind Scuff Plates and Repair if Necessary for Additional Airplanes

(n) Perform an initial inspection of the areas behind the scuff plates below the passenger/crew doors and bulk cargo door to

detect cracks and corrosion, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300-53-6011, Revision 07, dated January 24, 2005; at the applicable time specified in Table 2 of this AD. If any crack or corrosion is found during

this inspection, before further flight, repair in accordance with the service bulletin. Accomplishment of this inspection is not required for the mid and aft passenger/crew doors if a steel doubler that covers the entire inspection area is installed.

TABLE 2.—COMPLIANCE TIME INITIAL INSPECTION BEHIND SCUFF PLATE FOR ADDITIONAL AIRPLANES

For airplanes on which—	And on which—	Compliance time (whichever occurs later)	
		Threshold	Grace period
(1) Modification 5382S6526 (for forward doors) and Modification 5382D4485 (for all other doors) have been done before the date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness.	None	Within 108 months after first flight	Within 12 months after the effective date of this AD.
(2) Modification 5382S6180 (for forward doors) and Modification 5382D4741 or 5382D4485 (for all other doors) have been done before the date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness.	None	Within 108 months after first flight	Within 12 months after the effective date of this AD.
(3) Modification 5382S6526 (for forward doors) and Modification 5382D4485 (for all other doors) have not been done before the effective date of this AD.	The actions specified in Airbus Service Information Letter (SIL) A300-53-033, Revision 2 (for all doors), dated November 23, 1984, have been done.	Within 60 months after accomplishing the actions specified in the SIL.	Within 12 months after the effective date of this AD.

TABLE 2.—COMPLIANCE TIME INITIAL INSPECTION BEHIND SCUFF PLATE FOR ADDITIONAL AIRPLANES—Continued

For airplanes on which—	And on which—	Compliance time (whichever occurs later)	
		Threshold	Grace period
(4) Modification 5382S6180 (for forward doors) and Modification 5382D4741 or 5382D4485 (for all other doors) have not been done before the effective date of this AD.	The actions specified in Airbus SIL A300–53–033, Revision 2 (for all doors), dated November 23, 1984, have been done.	Within 60 months after accomplishing the actions specified in the SIL.	Within 12 months after the effective date of this AD.
(5) Modification 5382S6526 (for forward doors) and Modification 5382D4485 (for all other doors) have not been done before the effective date of this AD.	The actions specified in Airbus SIL A300–53–033, Revision 2, dated November 23, 1984, have not been done.	Within 48 months since the date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness.	Within 12 months after the effective date of this AD.
(6) Modification 5382S6180 (for forward doors) and Modification 5382D4741 or 5382D4485 (for all other doors) have not been done before the effective date of this AD.	The actions specified in Airbus SIL A300–53–033, Revision 2, dated November 23, 1984, have not been done.	Within 48 months since the date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness.	Within 12 months after the effective date of this AD.

Repetitive Inspections Behind Scuff Plates for Additional Airplanes

(o) For airplanes identified in Table 2 of this AD: Perform repetitive inspections of the areas behind the scuff plates below the passenger/crew doors and bulk cargo door to detect cracks and corrosion, in accordance with Airbus Service Bulletin A300–53–6022, Revision 04, dated January 24, 2005, at the applicable times specified in paragraphs (o)(1) and (o)(2) of this AD. Accomplishment of these inspections is not required for the mid and aft passenger/crew doors if a steel doubler that covers the entire inspection area is installed.

(1) For the forward and mid passenger/crew doors, the bulk cargo door, and the aft passenger/crew doors, except the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler: Perform the first inspection within 60 months after accomplishing the inspection required by paragraph (n) of this AD; and repeat the inspection thereafter at intervals not to exceed 60 months.

(2) For the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler of the aft passenger/crew doors: Perform the first inspection within 60 months or 6,000 landings after accomplishing the inspection required by paragraph (n) of this AD, whichever occurs first; and repeat

the inspection thereafter at intervals not to exceed 60 months or 6,000 landings, whichever occurs first.

Repair of Scuff Plates if Necessary

(p) If any crack is found during any inspection required by paragraph (o) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A300–53–6022, Revision 04, dated January 24, 2005. Thereafter, perform the repetitive inspections required by paragraph (o) of this AD at the applicable times specified in paragraphs (o)(1) and (o)(2) of this AD.

(q) If corrosion is found during any inspection required by paragraph (o) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A300–53–6022, Revision 04, dated January 24, 2005. Thereafter, perform the repetitive inspections required by paragraph (g) of this AD at the applicable times specified in paragraph (q)(1) or (q)(2) of this AD.

(1) For the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler of the aft passenger/crew doors, and for the mid passenger/crew door: Inspect at intervals not to exceed 60 months or 5,000 landings, whichever occurs first.

(2) For the forward passenger/crew doors and bulk cargo doors: Inspect at intervals not to exceed 60 months.

Terminating Modification for Repetitive Inspection of Corner Doublers, Fail-Safe Ring, and Door Frames

(r) Before the accumulation of 30,000 total flight cycles since the date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness, or during the next inspection required by paragraph (k) of this AD, whichever occurs later: Modify the passenger/crew door structures in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6002, Revision 06, dated May 17, 2004. Accomplishment of this modification constitutes terminating action for the inspections required by paragraphs (j) and (k) of this AD. The inspections required by paragraphs (f) and (n) of this AD, as applicable, must be done before accomplishing this modification.

Earlier Revisions of Service Bulletins

(s) Actions done before the effective date of this AD in accordance with the service bulletins identified in Table 3 of this AD, are acceptable for compliance with the corresponding requirements of this AD.

TABLE 3.—EARLIER REVISIONS OF SERVICE BULLETINS

Airbus Service Bulletin	Revision level	Date
(1) A300–53–6002	3	February 22, 1992.
(2) A300–53–6002	4	July 13, 1992.
(3) A300–53–6002	05	September 7, 2000.
(4) A300–53–6011	04	July 2, 1996.
(5) A300–53–6011	05	September 7, 2000.
(6) A300–53–6011	06	November 12, 2002.
(7) A300–53–6018, excluding Appendix 01	02	November 27, 2000.
(8) A300–53–6022	01	July 2, 1996.
(9) A300–53–6022	02	September 7, 2000.

TABLE 3.—EARLIER REVISIONS OF SERVICE BULLETINS—Continued

Airbus Service Bulletin	Revision level	Date
(10) A300-53-6022	03	November 12, 2002.

Alternative Methods of Compliance (AMOCs)

(t)(1) The Manager, International Branch, ANM-116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) AMOCs approved previously in accordance with AD 98-16-05 are approved as AMOCs for the corresponding provisions of paragraphs (f) through (l) of this AD.

(3) 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

(u) French airworthiness directives 1991-132-124(B) R1, dated November 29, 2000,

and F-2004-103, dated July 7, 2004, also address the subject of this AD.

Material Incorporated by Reference

(v) You must use the service information listed in Table 4 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 4.—ALL MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A300-53-6002	06	May 17, 2004.
A300-53-6011	3	February 4, 1991.
A300-53-6011	07	January 24, 2005.
A300-53-6018	1	April 29, 1992.
A300-53-6018, excluding Appendix 01	02	November 27, 2000.
A300-53-6018, excluding Appendix 01	03	July 26, 2006.
A300-53-6022	Original	February 4, 1991.
A300-53-6022	04	January 24, 2005.

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in Table 5 of

this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 5.—NEW MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A300-53-6002	06	May 17, 2004.
A300-53-6011	07	January 24, 2005.
A300-53-6018, excluding Appendix 01	02	November 27, 2000.
A300-53-6018, excluding Appendix 01	03	July 26, 2006.
A300-53-6022	04	January 24, 2005.

(2) On September 4, 1998 (63 FR 40812, July 31, 1998), the Director of the Federal Register approved the incorporation by

reference of the service information listed in Table 6 of this AD.

TABLE 6.—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A300-53-6011	3	February 4, 1991.
A300-53-6018	1	April 29, 1992.
A300-53-6022	Original	February 4, 1991.

(3) 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 May 25, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-10671 Filed 6-4-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2007-27334; Directorate Identifier 2006-NM-279-AD; Amendment 39-15080; AD 2007-12-02]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-8-33, -42, and -43 Airplanes; Model DC-8-50 Series Airplanes; Model DC-8F-54 and -55 Airplanes; Model DC-8-60 Series Airplanes; Model DC-8-60F Series Airplanes; Model DC-8-72 Airplanes; and Model DC-8-70F Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas airplanes described previously. This AD requires installing bonding jumpers to the airplane wing structure from the fuel system in-line electrical solenoid valves along the left and right wing front spar. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent point-of-contact arcing or filament heating damage in the fuel lines that could create a potential ignition source, which, in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective July 10, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 10, 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 Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024), for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137;

telephone (562) 627-5262; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:**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 McDonnell Douglas Model DC-8-33, -42, and -43 airplanes; Model DC-8-50 series airplanes; Model DC-8F-54 and -55 airplanes; Model DC-8-60 series airplanes; Model DC-8-60F series airplanes; Model DC-8-72 airplanes; and Model DC-8-70F series airplanes. That NPRM was published in the **Federal Register** on February 26, 2007 (72 FR 8309). That NPRM proposed to require installing bonding jumpers to the airplane wing structure from the fuel system in-line electrical solenoid valves along the left and right wing front spar.

Comments

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

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. 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 216 airplanes of the affected design in the worldwide fleet. This AD affects about 145 airplanes of U.S. registry. The following table provides the estimated costs for U.S.

operators to comply with this AD, at an average labor rate of \$80 per work hour. The total fleet cost is estimated to be between \$456,460 and \$1,018,770.

ESTIMATED COSTS

Airplane group	Work hours	Parts	Cost per airplane
1	8	\$2,508	\$3,148
2	9	4,237	4,957
3	10	6,226	7,026
4	8	4,473	5,113
5	6	3,674	4,154

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):

2007-12-02 McDonnell Douglas:

Amendment 39-15080. Docket No. FAA-2007-27334; Directorate Identifier 2006-NM-279-AD.

Effective Date

(a) This AD becomes effective July 10, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC-8-33, -42, and -43 airplanes; Model DC-8-51, -52, -53, and -55 airplanes; Model DC-8F-54 and -55 airplanes; Model DC-8-61, -62, and -63 airplanes; Model DC-8-61F, -62F, and -63F airplanes; Model DC-8-72 airplanes; and Model DC-8-71F, -72F, and -73F airplanes; certificated in any category; as identified in Boeing Service Bulletin DC8-28-091, dated November 7, 2006.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent point-of-contact arcing or filament heating damage in the fuel lines that could create a potential ignition source, which, in combination with flammable fuel vapors, could cause a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Installation of Bonding Jumpers

(f) Within 60 months after the effective date of this AD, install bonding jumpers to the airplane wing structure from the fuel system in-line electrical solenoid valves along the left and right wing front spar, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC8-28-091, dated November 7, 2006.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(h) You must use Boeing Service Bulletin DC8-28-091, dated November 7, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise.

The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024), for a copy of this service information. You may review copies at the 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 May 25, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-10669 Filed 6-4-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2007-27755; Directorate Identifier 2006-NM-289-AD; Amendment 39-15081; AD 2007-12-03]

RIN 2120-AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model DHC-8-400 series airplanes. This AD requires revising the Limitations section of the airplane flight manual to include procedures for

pulling the “HYD PWR XFER” circuit breaker in the event of the loss of all hydraulic fluid in the No. 1 or No. 2 hydraulic system. This AD results from reports of fluid loss in the No. 2 hydraulic system, causing the power transfer unit to overspeed, increasing the fluid flow within the No. 1 hydraulic system. We are issuing this AD to prevent possible loss of both the No. 1 and No. 2 hydraulic systems, resulting in the potential loss of several functions essential for safe flight and landing of the airplane.

DATES: This AD becomes effective July 10, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of July 10, 2007.

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

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

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7320; fax (516) 794-5531.

SUPPLEMENTARY INFORMATION:**Examining the Docket**

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier Model DHC-8-400 series airplanes. That NPRM was published in the **Federal Register** on April 4, 2007 (72 FR 16289). That NPRM proposed to require revising the Limitations section of the airplane flight manual (AFM) to include procedures for pulling the “HYD PWR XFER” circuit breaker in the event of

the loss of all hydraulic fluid in the No. 1 or No. 2 hydraulic system.

Comments

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

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying

the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

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

Interim Action

We consider this AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM revision	1	\$80	\$0	\$80	21	\$1,680

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):

2007-12-03 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39-15081. Docket No. FAA-2007-27755; Directorate Identifier 2006-NM-289-AD.

Effective Date

(a) This AD becomes effective July 10, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC-8-400, DHC-8-401, and DHC-8-402 airplanes, certificated in any category; serial numbers 4001 and 4003 and subsequent.

Unsafe Condition

(d) This AD results from reports of fluid loss in the No. 2 hydraulic system, causing the power transfer unit to overspeed, increasing the fluid flow within the No. 1 hydraulic system. We are issuing this AD to prevent possible loss of both the No. 1 and No. 2 hydraulic systems, resulting in the potential loss of several functions essential for safe flight and landing 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.

Airplane Flight Manual (AFM) Revision

(f) Within 14 days after the effective date of this AD, revise the Limitations section of the applicable AFM to include the information in the applicable Bombardier temporary amendment specified in Table 1 of this AD, as specified in the temporary amendment. These temporary amendments introduce procedures for pulling the "HYD PWR XFER" circuit breaker in the event of the loss of all hydraulic fluid in the No. 1 or No. 2 hydraulic system. Operate the airplane according to the limitations and procedures in the applicable temporary amendment.

TABLE 1.—AFM TEMPORARY AMENDMENTS

For model—	Use Bombardier temporary amendment—	Issue—	Dated—	To Bombardier Dash 8 Q400 Airplane Flight Manual—
DHC-8-400 airplanes	13	1	July 14, 2005	PSM 1-84-1A.
DHC-8-401 airplanes	13	1	July 14, 2005	PSM 1-84-1A.
DHC-8-402 airplanes	13	1	July 14, 2005	PSM 1-84-1A.

Note 1: This may be done by inserting a copy of the applicable temporary amendment into the applicable AFM. When the applicable temporary amendment has been included in general revisions of the AFM, the general revisions may be inserted into the AFM, provided the relevant information in the general revisions is identical to that in the temporary amendment.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(h) Canadian airworthiness directive CF-2006-08, dated April 26, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use the temporary amendments specified in Table 2 of this AD, as applicable, to perform the actions that are

required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for a copy of this service information. You may review copies at the 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>.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Bombardier temporary amendment—	Issue—	Dated—	To Bombardier Dash 8 Q400 Airplane Flight Manual—
13	1	July 14, 2005	Model 400 PSM 1-84-1A.
13	1	July 14, 2005	Model 401 PSM 1-84-1A.
13	1	July 14, 2005	Model 402 PSM 1-84-1A.

Issued in Renton, Washington, on May 25, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-10678 Filed 6-4-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Watson Laboratories, Inc.

DATES: This rule is effective June 5, 2007.

FOR FURTHER INFORMATION CONTACT:

David R. Newkirk, Center for Veterinary Medicine (HFV-100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-6967, e-mail: david.newkirk@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Watson Laboratories, Inc., 620 North 51st Ave., Phoenix, AZ 85043-4705 has informed FDA of a change of address to 311 Bonnie Circle, Corona, CA 92880. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect the change.

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 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1) revise the entry for "Watson Laboratories, Inc.;" and in the table in paragraph (c)(2) revise the entry for "000402" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *
(c) * * *
(1) * * *

Firm name and address	Drug labeler code
* * * * *	* * * * *
Watson Laboratories, Inc., 311 Bonnie Circle, Corona, CA 92880.	000402

Firm name and address	Drug labeler code
* * *	* *
(2) * * *	
Drug labeler code	Firm name and address
* * *	* * *
000402	Watson Laboratories, Inc., 311 Bonnie Circle, Corona, CA 92880.
* * *	* * *

Dated: May 24, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7-10771 Filed 6-4-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF STATE

22 CFR Part 9

[Public Notice 5822]

RIN 1400-AB91

National Security Information Regulations

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This rule makes final the Department's proposed rule published on January 3, 2007. The rule revises the Department's regulations governing the classification and declassification of national security information that is under the control of the Department in order to reflect changes in the provisions of a new executive order on national security information and consequent changes in the Department's procedures since the last revision of the Department's regulations on this subject. The Department received one non-substantive comment and proposes no changes to the proposed rule. The proposed rule is therefore adopted as final.

DATES: *Effective Date:* This rule is effective June 5, 2007.

ADDRESSES: Persons having questions with respect to these regulations should address such questions to: Margaret P. Grafeld, Director, Office of Information Programs and Services, U.S. Department of State, SA-2, 515 22nd St., NW., Washington, DC 20522-6001. *Tel:* 202-261-8300; *FAX:* 202-261-8590. Persons with access to the Internet may also view this notice by going to the *regulations.gov* Web site at <http://www.regulations.gov/index.cfm>.

FOR FURTHER INFORMATION CONTACT: Margaret P. Grafeld, Director, Office of Information Programs and Services, U.S. Department of State, SA-2, 515 22nd St., NW., Washington, DC 20522-6001. *Tel:* 202-261-8300; *FAX:* 202-261-8590.

SUPPLEMENTARY INFORMATION: The Department's proposed rule was published as Public Notice 5658 at 72 FR 59-62 on January 3, 2007, with a 90-day public comment period. The Department received one non-substantive comment discussed under Analysis of Comments. Since the last comprehensive revision of the Department's national security information regulations, a new governing executive order, E.O. 12958, has been issued and modified several times, most substantially by E.O. 13292 of March 25, 2003. In addition, the Information Security Oversight Office has issued a new classified national security information directive containing interpretive guidance. Both the order and the directive effected significant changes in the procedures for classifying and declassifying national security information. The final regulations of the Department take account of these changes and reflect changes in the Department's procedures designed to implement them.

Analysis of Comments: The proposed rule was published for comments on January 3, 2007. The comment period closed April 3, 2007. The one public comment received by the Department related to the language in Sec. 9.2 pertaining to the objective of the classification program. The comment suggested the inclusion in Sec. 9.2 of additional language from the preamble of E.O. 12958. The Department concluded that such additional elaboration of program objective was duplicative of the order and unnecessary.

Regulatory Findings

Administrative Procedure Act. The Department is publishing this regulation as a final rule, after it was published as a proposed rule on January 3, 2007.

Regulatory Flexibility Act. The Department, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and, by approving it, certifies that this rule will not have significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995. This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year, and it will not significantly or uniquely

affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

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

Executive Order 12866. The Department does not consider this rule to be a "significant regulatory action" under Executive Order (E.O.) 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 12988—Civil Justice Reform. The Department has reviewed this regulation in light of sections 3(a) and 3(b) (2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132. This regulation 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

National Environmental Policy Act. The Department has analyzed this regulation for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that it will not have any effect on the quality of the environment.

Paperwork Reduction Act. This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 9

Original classification, Original classification authorities, Derivative classification, Classification challenges, Declassification and downgrading, Mandatory declassification review, Systematic declassification review, Safeguarding.

■ For the reasons set forth in the preamble, Title 22, Part 9 of the Code of Federal Regulations is revised to read as follows:

PART 9—SECURITY INFORMATION REGULATIONS

Sec.

- 9.1 Basis.
- 9.2 Objective.
- 9.3 Senior agency official.
- 9.4 Original classification.
- 9.5 Original classification authority.
- 9.6 Derivative classification.
- 9.7 Identification and marking.
- 9.8 Classification challenges.
- 9.9 Declassification and downgrading.
- 9.10 Mandatory declassification review.
- 9.11 Systematic declassification review.
- 9.12 Access to classified information by historical researchers and certain former government personnel.
- 9.13 Safeguarding.

Authority: E.O. 12958 (60 FR 19825, April 20, 1995) as amended; Information Security Oversight Office Directive No. 1, 32 CFR 2001 (68 FR 55168, Sept. 22, 2003).

§ 9.1 Basis.

These regulations, taken together with the Information Security Oversight Office Directive No. 1 dated September 22, 2003, and Volume 5 of the Department's Foreign Affairs Manual, provide the basis for the security classification program of the U.S. Department of State ("the Department") implementing Executive Order 12958, "Classified National Security Information", as amended ("the Executive Order").

§ 9.2 Objective.

The objective of the Department's classification program is to ensure that national security information is protected from unauthorized disclosure, but only to the extent and for such a period as is necessary.

§ 9.3 Senior agency official.

The Executive Order requires that each agency that originates or handles classified information designate a senior agency official to direct and administer its information security program. The

Department's senior agency official is the Under Secretary of State for Management. The senior agency official is assisted in carrying out the provisions of the Executive Order and the Department's information security program by the Assistant Secretary for Diplomatic Security, the Assistant Secretary for Administration, and the Deputy Assistant Secretary for Information Sharing Services.

§ 9.4 Original classification.

(a) *Definition.* Original classification is the initial determination that certain information requires protection against unauthorized disclosure in the interest of national security (*i.e.*, national defense or foreign relations of the United States), together with a designation of the level of classification.

(b) *Classification levels.* (1) *Top Secret* shall be applied to information the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.

(2) *Secret* shall be applied to information the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

(3) *Confidential* shall be applied to information the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.

(c) *Classification requirements and limitations.* (1) Information may not be considered for classification unless it concerns:

- (i) Military plans, weapons systems, or operations;
- (ii) Foreign government information;
- (iii) Intelligence activities (including special activities), intelligence sources or methods, or cryptology;
- (iv) Foreign relations or foreign activities of the United States, including confidential sources;
- (v) Scientific, technological, or economic matters relating to the national security; which includes defense against transnational terrorism;
- (vi) United States Government programs for safeguarding nuclear materials or facilities;
- (vii) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security, which includes defense against transnational terrorism; or
- (viii) Weapons of mass destruction.

(2) In classifying information, the public's interest in access to government

information must be balanced against the need to protect national security information.

(3) In no case shall information be classified in order to conceal violations of law, inefficiency, or administrative error, or to prevent embarrassment to a person, organization, or agency, to restrain competition, or to prevent or delay the release of information that does not require protection in the interest of the national security.

(4) A reference to classified documents that does not directly or indirectly disclose classified information may not be classified or used as a basis for classification.

(5) Only information owned by, produced by or for, or under the control of the U.S. Government may be classified.

(6) The unauthorized disclosure of foreign government information is presumed to cause damage to national security.

(d) *Duration of classification.* (1) Information shall be classified for as long as is required by national security considerations, subject to the limitations set forth in section 1.5 of the Executive Order. When it can be determined, a specific date or event for declassification in less than 10 years shall be set by the original classification authority at the time the information is originally classified. If a specific date or event for declassification cannot be determined, information shall be marked for declassification 10 years from the date of the original decision, unless the original classification authority determines that the sensitivity of the information requires that it shall be marked for declassification for up to 25 years.

(2) An original classification authority may extend the duration of classification, change the level of classification, or reclassify specific information only when the standards and procedures for classifying information under the Executive Order are met.

(3) Information marked for an indefinite duration of classification under predecessor orders, such as "Originating Agency's Determination Required" (OADR) or containing no declassification instructions shall be subject to the declassification provisions of Part 3 of the Order, including the provisions of section 3.3 regarding automatic declassification of records older than 25 years.

§ 9.5 Original classification authority.

(a) Authority for original classification of information as *Top Secret* may be exercised by the Secretary and those

officials delegated this authority in writing by the Secretary. Such authority has been delegated to the Deputy Secretary, the Under Secretaries, Assistant Secretaries and other Executive Level IV officials and their deputies; Chiefs of Mission, Charge d'Affaires, and Principal Officers at autonomous posts abroad; and to other officers within the Department as set forth in Department Notice dated May 26, 2000.

(b) Authority for original classification of information as *Secret* or *Confidential* may be exercised only by the Secretary, the Senior Agency Official, and those officials delegated this authority in writing by the Secretary or the Senior Agency Official. Such authority has been delegated to Office Directors and Division Chiefs in the Department, Section Heads in Embassies and Consulates abroad, and other officers within the Department as set forth in Department Notice dated May 26, 2000. In the absence of the Secret or Confidential classification authority, the person designated to act for that official may exercise that authority.

§ 9.6 Derivative classification.

(a) *Definition.* Derivative classification is the incorporating, paraphrasing, restating or generating in new form information that is already classified and the marking of the new material consistent with the classification of the source material. Duplication or reproduction of existing classified information is not derivative classification.

(b) *Responsibility.* Information classified derivatively from other classified information shall be classified and marked in accordance with instructions from an authorized classifier or in accordance with an authorized classification guide and shall comply with the standards set forth in sections 2.1–2.2 of the Executive Order and the ISOO implementing directives in 32 CFR 2001.22.

(c) *Department of State Classification Guide.* The Department of State Classification Guide (DSCG) is the primary authority for the classification of information in documents created by Department of State personnel. The Guide is classified "Confidential" and is found on the Department of State's classified Web site.

§ 9.7 Identification and marking.

(a) Classified information shall be marked pursuant to the standards set forth in section 1.6 of the Executive Order; ISOO implementing directives in 32 CFR 2001, Subpart B; and internal

Department guidance in 12 Foreign Affairs Manual (FAM).

(b) Foreign government information shall retain its original classification markings or be marked and classified at a U.S. classification level that provides a degree of protection at least equivalent to that required by the entity that furnished the information. Foreign government information retaining its original classification markings need not be assigned a U.S. classification marking provided the responsible agency determines that the foreign government markings are adequate to meet the purposes served by U.S. classification markings.

(c) Information assigned a level of classification under predecessor executive orders shall be considered as classified at that level of classification.

§ 9.8 Classification challenges.

(a) *Challenges.* Holders of information pertaining to the Department of State who believe that its classification status is improper are expected and encouraged to challenge the classification status of the information. Holders of information making challenges to the classification status of information shall not be subject to retribution for such action. Informal, usually oral, challenges are encouraged. Formal challenges to classification actions shall be in writing to an original classification authority (OCA) with jurisdiction over the information and a copy of the challenge shall be sent to the Office of Information Programs and Services (IPS) of the Department of State, SA-2, 515 22nd St. NW., Washington, DC 20522-6001. The Department (either the OCA or IPS) shall provide an initial response in writing within 60 days.

(b) *Appeal procedures and time limits.* A negative response may be appealed to the Department's Appeals Review Panel (ARP) and should be sent to: Chairman, Appeals Review Panel, c/o Information and Privacy Coordinator/ Appeals Officer, at the IPS address given above. The appeal shall include a copy of the original challenge, the response, and any additional information the appellant believes would assist the ARP in reaching its decision. The ARP shall respond within 90 days of receipt of the appeal. A negative decision by the ARP may be appealed to the Interagency Security Classification Appeals Panel (ISCAP) referenced in section 5.3 of Executive Order 12958. If the Department fails to respond to a formal challenge within 120 days or if the ARP fails to respond to an appeal within 90 days, the challenge may be sent to the ISCAP.

§ 9.9 Declassification and downgrading.

(a) *Declassification processes.* Declassification of classified information may occur:

(1) After review of material in response to a Freedom of Information Act (FOIA) request, mandatory declassification review request, discovery request, subpoena, classification challenge, or other information access or declassification request;

(2) After review as part of the Department's systematic declassification review program;

(3) As a result of the elapse of the time or the occurrence of the event specified at the time of classification;

(4) By operation of the automatic declassification provisions of section 3.3 of the Executive Order with respect to material more than 25 years old.

(b) *Downgrading.* When material classified at the Top Secret level is reviewed for declassification and it is determined that classification continues to be warranted, a determination shall be made whether downgrading to a lower level of classification is appropriate. If downgrading is determined to be warranted, the classification level of the material shall be changed to the appropriate lower level.

(c) *Authority to downgrade and declassify.* (1) Classified information may be downgraded or declassified by the official who originally classified the information if that official is still serving in the same position, by a successor in that capacity, by a supervisory official of either, or by any other official specifically designated by the Secretary or the senior agency official.

(2) The Department shall maintain a record of Department officials specifically designated as declassification and downgrading authorities.

(d) *Declassification in the public interest.* Although information that continues to meet the classification criteria of the Executive Order or a predecessor order normally requires continued protection, in some exceptional cases the need to protect information may be outweighed by the public interest in disclosure of the information. When such a question arises, it shall be referred to the Secretary or the Senior Agency Official for decision on whether, as an exercise of discretion, the information should be declassified and disclosed. This provision does not amplify or modify the substantive criteria or procedures for classification or create any substantive or procedural right subject to judicial review.

(e) *Public dissemination of declassified information.*

Declassification of information is not authorization for its public disclosure. Previously classified information that is declassified may be subject to withholding from public disclosure under the FOIA, the Privacy Act, and various statutory confidentiality provisions.

§ 9.10 Mandatory declassification review.

All requests to the Department by a member of the public, a government employee, or an agency to declassify and release information shall result in a prompt declassification review of the information in accordance with procedures set forth in 22 CFR 171.20–25. Mandatory declassification review requests should be directed to the Information and Privacy Coordinator, U.S. Department of State, SA–2, 515 22nd St., NW., Washington, DC 20522–6001.

§ 9.11 Systematic declassification review.

The Information and Privacy Coordinator shall be responsible for conducting a program for systematic declassification review of historically valuable records that were exempted from the automatic declassification provisions of section 3.3 of the Executive Order. The Information and Privacy Coordinator shall prioritize such review on the basis of researcher interest and the likelihood of declassification upon review.

§ 9.12 Access to classified information by historical researchers and certain former government personnel.

For Department procedures regarding the access to classified information by historical researchers and certain former government personnel, see Sec. 171.24 of this Title.

§ 9.13 Safeguarding.

Specific controls on the use, processing, storage, reproduction, and transmittal of classified information within the Department to provide protection for such information and to prevent access by unauthorized persons are contained in Volume 12 of the Department's Foreign Affairs Manual.

Dated: May 25, 2007.

Lee Lohman,

Deputy Assistant Secretary, Department of State.

[FR Doc. E7–10778 Filed 6–4–07; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9324]

RIN 1545–BF04

Designated Roth Accounts Under Section 402A; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations (TD 9324) that were published in the **Federal Register** on Monday, April 30, 2007 (72 FR 21103) providing guidance concerning the taxation of distributions from designated Roth accounts under qualified cash or deferred arrangements under section 401(k).

DATES: The correction is effective June 5, 2007.

FOR FURTHER INFORMATION CONTACT: R. Lisa Mojiri-Azad or William D. Gibbs at 202–622–6060, or Cathy A. Vohs, 202–622–6090 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under sections 401(k), 402(g), 402A, and 408A of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9324) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.402A–1 is amended by revising the first sentence of *Example.* of A–8.(b) to read as follows:

§ 1.402A–1 Designated Roth Accounts.

* * * * *

A–8. * * *
(b) * * *

Example. The facts are the same as in the *Example* in A–7 of this section, except that

instead of being disabled, Employee C is receiving a hardship distribution. * * *

■ **Par. 3.** Section 1.402A–2 is amended by revising paragraph (2) of A–2.(a) to read as follows:

§ 1.402A–2 Reporting and recordkeeping requirements with respect to designated Roth accounts.

* * * * *

A–2. * * *

(a) * * *

(2) If the distribution is not a direct rollover to a designated Roth account under another plan, the plan administrator or responsible party must provide to the employee, upon request, the same information described in paragraph (a)(1) of this A–2, except the statement need not indicate the first year of the 5-taxable-year period described in A–1 of this section.

* * * * *

LaNita Van Dyke,

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

[FR Doc. E7–10802 Filed 6–4–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9327]

RIN 1545–BC92

Disclosure of Returns and Return Information in Connection With Written Contracts or Agreements for the Acquisition of Property or Services for Tax Administration Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the disclosure of returns and return information pursuant to section 6103(n) of the Internal Revenue Code (Code). The final regulations describe the circumstances under which officers or employees of the Treasury Department, a State tax agency, the Social Security Administration, or the Department of Justice, may disclose returns and return information to obtain property or services for tax administration purposes, pursuant to a written contract or agreement. The final regulations also set forth safeguard requirements that are designed to protect the confidentiality of returns and return information in the

hands of contractors, agents, and subcontractors, and their officers and employees, and notification requirements that must be provided, in writing, to officers and employees of the contractors, agents, and subcontractors to inform them that any returns or return information they receive pursuant to these regulations may only be used for the purpose for which it is disclosed to them and that they are subject to the civil and criminal provisions of sections 7431, 7213, and 7213A for the unauthorized inspection or disclosure of the returns or return information.

The final regulations will affect officers and employees of the Treasury Department, a State tax agency, the Social Security Administration, or the Department of Justice, who disclose returns or return information in connection with a written contract or agreement for the acquisition of property or services for tax administration purposes. The final regulations also will affect any person, or officer, employee, agent, or subcontractor of the person, or officer or employee of the agent or subcontractor, who receives returns or return information in connection with a written contract or agreement for the acquisition of property or services.

DATES: *Effective Date:* These regulations are applicable June 5, 2007.

Applicability Date: For dates of applicability, see § 301.6103(n)-1(g).

FOR FURTHER INFORMATION CONTACT: Helene R. Newsome, 202-622-4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1821.

The collection of information in these final regulations is in §§ 301.6103(n)-1(d) and 301.6103(n)-1(e)(3). This information is required and will be used to ensure compliance with the internal revenue laws and regulations, and to protect the privacy of taxpayers.

Estimated total annual reporting burden: 250 hours. Estimated average annual burden per respondent: 6 minutes.

Estimated number of respondents: 2500.

Estimated annual frequency of responses: Annually.

Comments concerning the accuracy of this burden estimate and suggestions for

reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224 and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

Under section 6103(a), returns and return information are confidential unless the Code authorizes disclosure. Section 6103(n) authorizes, pursuant to regulations prescribed by the Secretary, returns and return information to be disclosed to any person, including any person described in section 7513(a), for purposes of tax administration, to the extent necessary in connection with: (1) The processing, storage, transmission, and reproduction of returns and return information; (2) the programming, maintenance, repair, testing, and procurement of equipment; and (3) the providing of other services.

On January 12, 2005, a notice of proposed rulemaking (REG-148867-03) was published in the **Federal Register** (70 FR 2076). The proposed regulations clarified that redisclosures of returns or return information by contractors to their agents or subcontractors are permissible provided that the IRS, in writing, authorizes the redisclosures. The proposed regulations also clarified that agents and subcontractors are persons described in section 6103(n) and, accordingly, are subject to the civil and criminal penalty provisions of sections 7431, 7213, and 7213A for the unauthorized inspection or disclosure of returns or return information. The proposed regulations further clarified that agents and subcontractors are required to comply with any written notification requirements and safeguard restrictions that may be imposed by the IRS.

Finally, the proposed regulations clarified that section 6103(n) applies to written contracts or agreements that are entered into to obtain property or services for tax administration purposes,

including contracts that are not awarded under the Federal Acquisition Regulations, 48 CFR parts 1 through 53.

One written comment responding to the notice of proposed rulemaking was received. No public hearing was requested or held. After consideration of the comment, the regulations are adopted as proposed.

Summary of Comment

The commentator recommended that the final regulations provide that any contractor and its agent or subcontractor, who has access to returns or return information under section 6103(n), be required to designate a natural person in the employ of each contractor, agent, or subcontractor who shall have: (1) Cognizance and control over all disclosures by such contractor, agent, or subcontractor; (2) the authority to flow down the sanctions set forth in § 301.6103(n)-1(e)(4) to lower-tiered agents or subcontractors in the event of their breach of or noncompliance with § 301.6103(n)-1; and (3) the authority to apprise promptly the IRS and/or higher-tiered contractors, agents, or subcontractors of such breaches or noncompliance. The commentator explained that imposition of the above requirement would be helpful in discouraging and preventing unauthorized disclosures of returns and return information in the context of contracting and subcontracting. Because the comment was more in the nature of a contractual (case-by-case) rather than a regulatory recommendation, the final regulations do not adopt this recommendation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that any burden on taxpayers is minimal in that the estimated average burden per respondent for complying with the collection of information imposed by these regulations is 6 minutes. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were

submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Helene R. Newsome, Office of the Associate Chief Counsel (Procedure & Administration), Disclosure & Privacy Law Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

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

■ **Par. 2.** Section 301.6103(n)–1 is revised to read as follows:

§ 301.6103(n)–1 Disclosure of returns and return information in connection with written contracts or agreements for the acquisition of property or services for tax administration purposes.

(a) *General rule.* (1) Pursuant to the provisions of section 6103(n) of the Internal Revenue Code and subject to the conditions of this section, officers and employees of the Treasury Department, a State tax agency, the Social Security Administration, or the Department of Justice, are authorized to disclose returns and return information (as defined in section 6103(b)) to any person (including, in the case of the Treasury Department, any person described in section 7513(a)), or to an officer or employee of the person, for purposes of tax administration (as defined in section 6103(b)(4)), to the extent necessary in connection with a written contract or agreement for the acquisition of—

(i) Equipment or other property; or
(ii) Services relating to the processing, storage, transmission, or reproduction of returns or return information, the programming, maintenance, repair, or testing of equipment or other property, or the providing of other services.

(2) Any person, or officer or employee of the person, who receives returns or return information under paragraph (a)(1) of this section, may—

(i) Further disclose the returns or return information to another officer or employee of the person whose duties or responsibilities require the returns or return information for a purpose described in this paragraph (a); or

(ii) Further disclose the returns or return information, when authorized in writing by the Internal Revenue Service (IRS), to the extent necessary to carry out the purposes described in this paragraph (a). Disclosures may include disclosures to an agent or subcontractor of the person, or officer or employee of the agent or subcontractor.

(3) An agent or subcontractor, or officer or employee of the agent or subcontractor, who receives returns or return information under paragraph (a)(2)(ii) of this section, may further disclose the returns or return information to another officer or employee of the agent or subcontractor whose duties or responsibilities require the returns or return information for a purpose described in this paragraph (a).

(4) Any person, or officer, employee, agent or subcontractor of the person, or officer or employee of the agent or subcontractor, who receives returns or return information under this paragraph (a), may, subject to the provisions of § 301.6103(p)(2)(B)–1 (concerning disclosures by a Federal, State, or local agency, or its agents or contractors), further disclose the returns or return information for a purpose authorized, and subject to all applicable conditions imposed, by section 6103.

(b) *Limitations.* (1) Disclosure of returns or return information in connection with a written contract or agreement for the acquisition of property or services described in paragraph (a) of this section will be treated as necessary only if the performance of the contract or agreement cannot otherwise be reasonably, properly, or economically carried out without the disclosure.

(2) Disclosure of returns or return information in connection with a written contract or agreement for the acquisition of property or services described in paragraph (a) of this section shall be made only to the extent necessary to reasonably, properly, or economically perform the contract. For example, disclosure of returns or return information to employees of a contractor for purposes of programming, maintaining, repairing, or testing computer equipment used by the IRS or a State tax agency shall be made only if the services cannot be reasonably, properly, or economically performed without the disclosure. If it is determined that disclosure of returns or return information is necessary, and if

the services can be reasonably, properly, or economically performed by disclosure of only parts or portions of a return or if deletion of taxpayer identity information (as defined in section 6103(b)(6)) reflected on a return would not seriously impair the ability of the employees to perform the services, then only the parts or portions of the return, or only the return with taxpayer identity information deleted, may be disclosed.

(c) *Penalties.* Any person, or officer, employee, agent or subcontractor of the person, or officer or employee of the agent or subcontractor, who receives returns or return information under paragraph (a) of this section, is subject to the civil and criminal penalty provisions of sections 7431, 7213, and 7213A for the unauthorized inspection or disclosure of the returns or return information.

(d) *Notification requirements.* Any person, or agent or subcontractor of the person, who receives returns or return information under paragraph (a) of this section shall provide written notice to his, her, or its officers and employees receiving the returns or return information that—

(1) Returns or return information disclosed to the officer or employee may be used only for a purpose and to the extent authorized by paragraph (a) of this section and that the officer or employee is subject to the civil and criminal penalty provisions of sections 7431, 7213, and 7213A for the unauthorized inspection or disclosure of the returns or return information;

(2) Further inspection of any returns or return information for a purpose or to an extent not authorized by paragraph (a) of this section constitutes a misdemeanor, punishable upon conviction by a fine of as much as \$1,000, or imprisonment for as long as 1 year, or both, together with costs of prosecution;

(3) Further disclosure of any returns or return information for a purpose or to an extent not authorized by paragraph (a) of this section constitutes a felony, punishable upon conviction by a fine of as much as \$5,000, or imprisonment for as long as 5 years, or both, together with the costs of prosecution;

(4) Further inspection or disclosure of returns or return information by any person who is not an officer or employee of the United States for a purpose or to an extent not authorized by paragraph (a) of this section may result also in an award of civil damages against that person in an amount not less than \$1,000 for each act of unauthorized inspection or disclosure; or the sum of actual damages sustained by the plaintiff as a result of the

unauthorized inspection or disclosure plus, in the case of a willful inspection or disclosure or an inspection or disclosure that is the result of gross negligence, punitive damages. In addition, costs and reasonable attorneys fees may be awarded; and

(5) A conviction for an offense referenced in paragraph (d)(2) or (3) of this section shall, in addition to any other punishment, result in dismissal from office or discharge from employment if the person convicted is an officer or employee of the United States.

(e) *Safeguards.* (1) Any person, or agent or subcontractor of the person, who may receive returns or return information under paragraph (a) of this section, shall agree, before disclosure of any returns or return information to the person, agent, or subcontractor, to permit an inspection by the IRS of his, her, or its site or facilities.

(2) Any person, or officer, employee, agent or subcontractor of the person, or officer or employee of the agent or subcontractor, who receives returns or return information under paragraph (a) of this section, shall comply with all applicable conditions and requirements as the IRS may prescribe from time to time (prescribed requirements) for the purposes of protecting the confidentiality of returns and return information and preventing any disclosure or inspection of returns or return information in a manner not authorized by this section.

(3) The terms of any written contract or agreement for the acquisition of property or services as described in paragraph (a) of this section shall provide, or shall be amended to provide, that any person, or officer, employee, agent or subcontractor of the person, or officer or employee of the agent or subcontractor, who receives returns or return information under paragraph (a) of this section, shall comply with the prescribed requirements. Any contract or agreement shall be made available to the IRS before execution of the contract or agreement. For purposes of this paragraph (e)(3), a written contract or agreement shall include any contract or agreement between a person and an agent or subcontractor of the person to provide the property or services described in paragraph (a) of this section.

(4) If the IRS determines that any person, or officer, employee, agent or subcontractor of the person, or officer or employee of the agent or subcontractor, who receives returns or return information under paragraph (a) of this section, has failed to, or does not, satisfy the prescribed requirements, the IRS,

consistent with the regulations under section 6103(p)(7), may take any actions it deems necessary to ensure that the prescribed requirements are or will be satisfied, including—

(i) Suspension of further disclosures of returns or return information by the IRS to the State tax agency, the Social Security Administration, or the Department of Justice, until the IRS determines that the conditions and requirements have been or will be satisfied;

(ii) Suspension of further disclosures by the Treasury Department otherwise authorized by paragraph (a) of this section; and

(iii) Suspension or termination of any duty or obligation arising under a contract or agreement with the Treasury Department.

(f) *Definitions.* For purposes of this section—

(1) The term *Treasury Department* includes the IRS, the Office of the Chief Counsel for the IRS, and the Office of the Treasury Inspector General for Tax Administration;

(2) The term *State tax agency* means an agency, body, or commission described in section 6103(d); and

(3) The term *Department of Justice* includes offices of the United States Attorneys.

(g) *Effective date.* This section is applicable on June 5, 2007.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: May 19, 2007.

Eric Solomon,

Assistant Secretary for Tax Policy.

[FR Doc. E7-10798 Filed 6-4-07; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 363

Regulations Governing Securities Held in TreasuryDirect

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: TreasuryDirect is an account-based, book-entry, online system for purchasing, holding, and conducting transactions in Treasury securities. An account owner currently accesses his or her account using a password to authenticate the account owner's identity. Treasury is now introducing additional customer-based

authentication mechanisms for accessing accounts. This final rule provides Treasury the flexibility to require additional methods of authentication for the protection of customer accounts. Treasury is also strengthening its ability to respond to attempted fraud and abuse of TreasuryDirect. Currently, Treasury has the authority to close any account. This rule explicitly permits Treasury to liquidate the securities held in the account to be closed and pay the proceeds to the person entitled.

DATES: Effective: June 5, 2007.

ADDRESSES: You can download this final rule at the following Internet addresses: <http://www.publicdebt.treas.gov> or <http://www.gpoaccess.gov/ecfr>.

FOR FURTHER INFORMATION CONTACT:

Elisha Whipkey, Director, Division of Program Administration, Office of Securities Operations, Bureau of the Public Debt, at (304) 480-6319 or elisha.whipkey@bpd.treas.gov.

Susan Sharp, Attorney-Adviser, Dean Adams, Assistant Chief Counsel, Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480-8692 or susan.sharp@bpd.treas.gov.

SUPPLEMENTARY INFORMATION: Treasury is committed to protecting its TreasuryDirect investors from potential losses through authentication of the investor at account access. Authentication is the process of ensuring that the person accessing his or her account is the same as the person whose identity was initially verified at account establishment. Authentication methods involve something that the user knows (such as a password), something that the user has (such as a gridcard), or something that the user is (such as a fingerprint). Multifactor authentication consists of requiring two or more methods of authentication to access an account. To date, Treasury has used single factor authentication, requiring passwords and other information that an account holder knows to conduct transactions in TreasuryDirect. Treasury now intends to introduce technology that uses multifactor authentication, which is more reliable and difficult to compromise than single factor authentication. Through this final rule, Treasury will have the flexibility to introduce additional methods of authentication for TreasuryDirect users to ensure that their accounts remain secure.

In addition, Treasury is strengthening its ability to respond to attempted fraud

and abuse of TreasuryDirect. Treasury has the authority to refuse to open an account, to close any existing account, to suspend transactions in an account or any security held in an account, and to take any other action with regard to an account that we deem necessary, if it is not inconsistent with existing law and rights. This rule clarifies Treasury's authority to close an account, by specifically including the authority to liquidate securities held in an account to be closed and pay the proceeds to the person entitled.

This final rule also clarifies certain terms that we have used in the past. We have used the term "authentication service" to refer to the verification of the identity of the account owner at account establishment through a verification service; we have used the term "authentication" to refer to the confirmation of the identity of an account owner when accessing his or her account. We will now use the term "verification" to refer to confirmation of the identity of the account owner at account establishment; we will use the term "authentication" to refer to confirmation of the identity of the account owner when accessing his or her account after account establishment.

Because it provides multifactor authentication for transactions in TreasuryDirect accounts, this authentication enhancement has significant benefits for both investors and the government. Increasing from single to multifactor authentication will help protect investors from losses in their TreasuryDirect accounts due to identity theft and fraud. This rule will benefit the government by increasing investor confidence in the security of online transactions in the TreasuryDirect system.

Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Because this final rule relates to matters of public contract and procedures for United States securities, notice and public procedure and delayed effective date requirements are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply.

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects in 31 CFR Part 363

Bonds, Electronic funds transfer, Federal Reserve system, Government securities, Securities.

Accordingly, for the reasons set out in the preamble, 31 CFR Chapter II, Subchapter B, is amended as follows:

PART 363—REGULATIONS GOVERNING SECURITIES HELD IN TREASURYDIRECT

1. The authority citation for part 363 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3102, *et seq.*; 31 U.S.C. 3121, *et seq.*

2. Amend § 363.6 by:

- a. Removing the definition of "Authentication service";
- b. adding the definitions of "Authentication," "Verification," and "Verification service" to read in alphabetical order as follows:

§ 363.6 What special terms do I need to know to understand this part?

Authentication means confirming that the person accessing a TreasuryDirect account is the same person whose identity was initially verified at account establishment.

* * * * *

Verification means confirming the identity of an online applicant for a TreasuryDirect account at account establishment using a verification service.

Verification service means a public or private service that confirms the identity of an online applicant for a TreasuryDirect account at account establishment using information provided by the applicant.

* * * * *

3. Amend § 363.13 by revising the final sentence and adding a sentence at the end of the section, to read as follows:

§ 363.13 How can I open a TreasuryDirect® account?

* * * We will verify your identity and send your account number to you by e-mail when your account application is approved. In addition to your password, we may require you to use any other form(s) of authentication that we consider necessary for the protection of your account.

4. Revise § 363.14 to read as follows:

§ 363.14 How will you verify my identity?

We may use a verification service to verify your identity using information you provide about yourself on the online application. At our option, we may require offline verification.

5. Amend § 363.15 by revising the heading and the first sentence to read as follows:

§ 363.15 What is the procedure for offline verification?

In the event we require offline verification, we will provide a printable verification form. * * *

6. Revise § 363.16 to read as follows:

§ 363.16 How do I access my account?

You may access your account online using your account number, password, and any other form(s) of authentication that we may require.

7. Revise § 363.17 to read as follows:

§ 363.17 Who is liable if someone else accesses my TreasuryDirect® account using my password?

You are solely responsible for the confidentiality and use of your account number, password, and any other form(s) of authentication we may require. We will treat any transactions conducted using your password as having been authorized by you. We are not liable for any loss, liability, cost, or expense that you may incur as a result of transactions made using your password.

8. Revise § 363.19 to read as follows:

§ 363.19 What should I do if I become aware that my password or other form of authentication has become compromised?

If you become aware that your password has become compromised, that any other form of authentication has been compromised, lost, stolen, or misused, or that there have been any unauthorized transactions in your account, you may place a hold on your account so that it cannot be accessed by anyone, and you should notify us immediately by e-mail or telephone. Contact information is available on the TreasuryDirect Web site.

9. Amend § 363.29 by revising paragraph (b) to read as follows:

§ 363.29 May Treasury close an account, suspend transactions in an account, or refuse to open an account?

* * * * *

(b) Close any existing account, redeem, sell, or liquidate the securities held in the account, and pay the proceeds to the person entitled;

* * * * *

Kenneth E. Carfine,
Fiscal Assistant Secretary.

[FR Doc. 07-2744 Filed 6-4-07; 8:45 am]

Proposed Rules

Federal Register

Vol. 72, No. 107

Tuesday, June 5, 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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. APHIS–2007–0061]

RIN 0579–AC40

Importation of Blueberries From South Africa, Uruguay, and Argentina With Cold Treatment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow the importation into the continental United States of fresh blueberries from South Africa and Uruguay under certain conditions. As a condition of entry, the blueberries would have to undergo cold treatment and would have to be accompanied by a phytosanitary certificate issued by the national plant protection organization of the exporting country. This action would allow for the importation of blueberries from South Africa and Uruguay into the continental United States while continuing to provide protection against the introduction of quarantine pests. In addition, we are proposing to allow the use of cold treatment for blueberries imported into the United States from Argentina. This action would provide an alternative to the methyl bromide treatment that is currently required for blueberries imported from Argentina.

DATES: We will consider all comments regarding this proposed rule that we receive on or before July 20, 2007 and all comments regarding the information collection requirements associated with this proposed rule that we receive on or before August 6, 2007.

ADDRESSES: You may submit comments by either of the following methods:

Federal eRulemaking Portal: Go to <http://www.regulations.gov>, select “Animal and Plant Health Inspection

Service” from the agency drop-down menu, then click “Submit.” In the Docket ID column, select APHIS–2007–0061 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link.

Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0061, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0061.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Román, Import Specialist, Commodity Import Analysis and Operation Staff, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of South Africa has requested that the Animal and Plant

Health Inspection Service (APHIS) amend the regulations to allow fresh blueberries (*Vaccinium* spp.) to be imported from South Africa into the continental United States. In addition, the NPPO of Uruguay has requested that APHIS amend the regulations to allow fresh blueberries (the highbush blueberries *Vaccinium corymbosum* L. and the rabbit-eye blueberries *Vaccinium virgatum* Aiton) to be imported from Uruguay into the continental United States. As part of our evaluation of South Africa’s and Uruguay’s requests, we prepared pest risk assessments (PRA) for each country, as well as a risk management document that covers both countries. For these risk assessments, we assumed that any blueberries imported into the United States would undergo minimal post-harvest fruit processing, which includes the commercial processes of culling, packing, and forced-air cooling, but no washing or other treatment. Copies of the PRAs and risk management document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instruction for accessing Regulations.gov).

The PRA prepared in response to South Africa’s request, titled “Qualitative Pathway-Initiated Risk Assessment of the Importation of Blueberry Fruits (*Vaccinium* species) from the Republic of South Africa into the United States” (April 2007), evaluates the risks associated with the importation of fresh blueberries into the continental United States from South Africa. The PRA and supporting documents identified one pest of quarantine significance, the Mediterranean fruit fly or Medfly (*Ceratitidis capitata*), present in South Africa that could be introduced into the United States via fresh blueberries. APHIS has determined that measures beyond standard port of entry inspection are required to mitigate the risks posed by this plant pest. Therefore, we propose to require that the blueberries be subjected to cold treatment in accordance with schedule T107–a, which is described in § 305.16 of the phytosanitary treatments regulations in 7 CFR part 305.

Treatment schedule	Temperature (°F)	Exposure period (days)
T107-a	34 or below	14
	35 or below	16
	36 or below	18

This cold treatment schedule has been proven effective in treating the Medfly on imported fruit from South Africa.

The PRA prepared in response to Uruguay's request, titled "Importation of fresh highbush and rabbit-eye blueberry (*Vaccinium corymbosum* L & *V. Virgatum* Aiton) fruit into the Continental United States from Uruguay" (April 2007), evaluates the risks associated with the importation of

fresh blueberries into the continental United States from Uruguay. The PRA and supporting documents identified two pests of quarantine significance, the Medfly and the South American fruit fly (*Anastrepha fraterculus*), that were selected for further analysis and determined to potentially present a risk of introduction into the United States via blueberries from Uruguay. APHIS has determined that measures beyond

standard port of entry inspection are required to mitigate the risks posed by these plant pests. Therefore, we propose to require that the blueberries be subjected to cold treatment in accordance with schedule T107-a-1, which is described in § 305.16 of the phytosanitary treatments regulations in 7 CFR part 305.

Treatment schedule	Temperature (°F)	Exposure period (days)
T107-a-1	34 or below	15
	35 or below	17

This cold treatment schedule has been proven effective in treating the Medfly, as well as several species of *Anastrepha*, including the South American fruit fly, on imported fruit from South America.

In addition to requiring cold treatment, we would limit the importation of fresh blueberries from South Africa and Uruguay to commercial shipments only and require that each shipment of fruit from South Africa and Uruguay be accompanied by a phytosanitary certificate issued by the NPPO of the importing country. Produce grown commercially is less likely to be infested with plant pests than noncommercial shipments. Noncommercial shipments are more prone to infestations because the commodity is often ripe to overripe and is often grown with little or no pest control. Commercial shipments, as defined in § 319.56-1, are shipments of fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Identification of a particular shipment as commercial is based on a variety of indicators, including, but not limited to, the quantity of produce, the type of packaging, identification of a grower or packinghouse on the packaging, and documents consigning the shipment to a wholesaler or retailer.

The proposed conditions described above for the importation of fresh blueberries from South Africa and Uruguay into the continental United States would be added to the fruits and vegetables regulations as a new

§ 319.56-2vv. In addition, we would also amend the table in § 305.2(h)(2)(i) of the phytosanitary treatments regulations to add entries for fresh blueberries from South Africa and Uruguay and to designate cold treatment schedule T107-a for South African blueberries and T107-a-1 for Uruguayan blueberries as approved treatments for the specific pests named in this document.

Argentina

The regulations currently allow blueberries from Argentina to be imported into the United States only after fumigation with methyl bromide using treatment schedule T101-i-1-1. This is an approved treatment schedule for mitigating the risks associated with the Medfly, which was found to be present in part of Argentina. In addition to the Medfly, the South American fruit fly is also present in Argentina. Previously, we did not have specific information that blueberry is a host of the South American fruit fly, but research has since demonstrated that blueberry is a host of both the Medfly and the South American fruit fly. Because treatment schedule T101-i-1-1 has been proven effective in treating the South American fruit fly as well as the Medfly, the risks associated with South American fruit fly have already been addressed through that treatment schedule. To reflect the identification of the South American fruit fly as a pest of blueberries from Argentina, we would amend the entry for blueberries from

Argentina in § 319.56-2x to include the South American fruit fly with the Medfly as a pest of blueberry fruit that requires mitigation unless the fruit is grown in a fruit fly-free area.

In May 2006, the NPPO of Argentina requested that APHIS allow the use of cold treatment as an alternative treatment to meet the United States entry requirements for blueberries from Argentina. After receiving this request, we reviewed the data supporting the request and determined that there is no statistical difference in the cold treatment susceptibility of the Medfly and the South American fruit fly when infesting various citrus cultivars. Based on that evaluation, we determined that cold treatment would also mitigate the pest risk associated with these fruit fly species in blueberries and would serve as an effective substitute for the methyl bromide treatment T101-i-1-1. Therefore, we are proposing to amend § 305.2(h) to provide for the use of cold treatment on blueberries from Argentina. This would be a more environmentally favorable option to the currently required methyl bromide fumigation treatment.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to allow the importation into the continental United States of fresh blueberries from South Africa and Uruguay under certain conditions. As a condition of entry, the blueberries would have to undergo cold treatment and would have to be accompanied by a phytosanitary certificate issued by the NPPO of the importing country. This action would allow for the importation of blueberries from South Africa and Uruguay into the continental United States while continuing to provide protection against the introduction of quarantine pests. In addition, we are proposing to allow the use of cold treatment for blueberries imported into the United States from Argentina. This action would provide

an alternative to the currently approved methyl bromide treatment.

The Regulatory Flexibility Act requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Section 603 of the Act requires an agency to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the expected impact of a proposed rule on small entities, unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. APHIS has prepared this IRFA in fulfillment of this requirement. We welcome public comment on expected small-entity effects of the proposed rule.

The United States is the largest producer of blueberries, supplying more than half the world's production (55 percent). Canada follows with 28 percent of world supplies and Poland comes third with 10 percent of the world's blueberry fruit production.

Michigan, Maine, and New Jersey are the leading States in U.S. blueberry production. Combined, these three States produce more than half of all U.S. blueberries (table 1). Nine States account for 98 percent of U.S. production. Fresh blueberries require harvesting by hand, whereas blueberries destined for processing can be machine-harvested. The cost of farm labor is considerably higher in the United States than in many other countries.

TABLE 1.—U.S. PRODUCTION AND VALUE OF BLUEBERRIES FOR THE FRESH MARKET IN 2005 AND FARM ACREAGE IN 2002 BY MAJOR STATES

State	2005		2002	
	(metric tons)	(million dollars)	number of acres	number of farms
Michigan	29,937.1	\$83.5	17,274	590
Maine	26,988.7	39.0	293	116
New Jersey	20,411.7	55.5	7,468	240
Oregon	15,648.9	33.3	3,887	659
North Carolina	11,793.4	36.7	5,009	267
Georgia	11,793.5	31.8	4,451	408
Washington	8,890.4	19.2	2,569	289
California	4,127.7	40.6	827	97
Florida	2,358.7	32.8	1,646	343
Sum	131,950 (98%)	372.3 (98%)	43,424 (84%)	3,009 (47%)
Rest of United States	3,070.9	9.1	8,578	3,419
United States total	135,021.0	381.4	52,002	6,428

Sources: USDA/NASS New England, Oregon, and Washington field offices; North American Blueberry Council; Table 33—Berries Harvested for Sale, 2002 U.S. Census of Agriculture by State, pp. 496–497, USDA/NASS; and Table D–2. Blueberries: Commercial Acreage, Production, and Value, Fruit and Tree Nuts Situation and Outlook Yearbook, October 2006, USDA/ERS.

In 2005, the United States produced 135,021 metric tons of highbush blueberries destined for the fresh market, valued at \$381 million. In the United States, highbush blueberries are harvested from April to early October with the majority of the blueberries picked from mid-June to mid-August.

Between 1995 and 2005, total U.S. blueberry consumption increased by 47 percent, from 13 ounces to 20 ounces per person. Most of the increase has been in the fresh market with a doubling in fresh consumption, from 4.3 ounces per person in 1995 to 8.7 ounces in 2005.

Table 2 shows U.S. imports and exports of fresh blueberries for the past 3 years. The United States is a net importer, and our major foreign supplier of fresh blueberries (by value) is Canada. Annual U.S. imports of fresh blueberries averaged 29,469 metric tons between 2004 and 2006.

TABLE 2.—U.S. IMPORTS AND EXPORTS OF FRESH BLUEBERRIES, 2004–2006

Year	U.S. imports	U.S. exports	Net imports
(million dollars)			
2004	\$91.03	\$29.40	\$61.63
2005	109.82	45.60	64.22
2006	155.14	55.70	99.44
(metric tons)			
2004	28,887.30	15,183.80	13,693.50
2005	26,335.70	22,588.90	3,746.80
2006	32,601.50	22,952.30	9,649.20

Source: U.S. Dept. of Commerce, Bureau of Census, as reported by Global Trade Information Services.

Note: Based on the Harmonized Schedules 0810400028 and 0810400024.

Argentina has supplied about 3 percent of the U.S. imports of fresh blueberries, or 880 metric tons, over the last 3 years. In 2006, Argentina reported 4,000 acres of land devoted to blueberry production, a 35 percent increase since 2003.

The Uruguayan Government Statistics office indicates that Uruguay started producing blueberries in 2003, with 65 metric tons harvested that year. In the following 3 years, Uruguay produced 80, 120, and 200 metric tons, respectively. For 2007 through 2009, crop volumes of around 500, 1,200, and 2,000 metric tons are forecast.

The Government of Uruguay has indicated its intention to export between 200 and 1,200 metric tons of fresh blueberries annually for the next 3 years starting in 2007, with 200 metric tons shipped annually to the continental United States (an amount that exceeds Uruguay's total exports of fresh blueberries in recent years).¹ Even if this export target were met, imports from Uruguay would represent less than 1 percent of U.S. imports of fresh blueberries in 2006.

Uruguay's main export season for fresh blueberries is between November and April. During this season, the supply of fresh blueberries by U.S. producers is limited. Fresh blueberries are generally harvested in the United States by early May through the beginning of September. U.S. domestic shipments of fresh blueberries reach their highest volume between late June and mid-August.

APHIS does not have data on South African production of blueberry fruits (*Vaccinium* spp.). Foreign Agricultural Service statistics indicate that South Africa exported an annual average of 75 metric tons of *Vaccinium* spp. between 2000 and 2004. Specifically, in 2000 the Republic of South Africa exported 3 metric tons, then in the following 4 years, 90, 83, 86, and 109 metric tons, respectively. In sum, the quantities of fresh blueberry expected to be imported into the United States from Uruguay and the Republic of South Africa are small, representing less than 1 percent of U.S. imports and less than one-tenth of 1 percent of the United States' domestic supply (production plus imports minus exports). Moreover, blueberry production in these two countries takes place during our winter months; their blueberry shipments to the United States would largely compete with

blueberry imports from other countries. We do not expect the changes we are proposing would have a significant economic impact on U.S. entities. U.S. entities that could be affected by the proposed changes are domestic producers of fresh blueberries and wholesalers that import fresh blueberries. Businesses producing fresh blueberries are classified in the North American Industry Classification System (NAICS) within the category of Other Vegetable (except Potato) and Melon Farming (NAICS code 111219). The Small Business Administration's (SBA) small-entity definition for these producers is annual receipts of not more than \$750,000. Firms that would import fresh blueberry fruits from Uruguay and the Republic of South Africa are defined as small entities if they have 100 or fewer employees (NAICS code 424480, Fresh Fruit and Vegetable Merchant Wholesalers).²

In general, firms engaged in production or importation of agricultural commodities are predominantly small. We believe that most if not all of the businesses affected by the proposed rule would be small.

We do not know the exact number of U.S. producers of fresh blueberries. According to the 2002 Census of Agriculture for the States where blueberries are produced, there were at least 6,428 farms growing blueberries in 52,000 acres of land (table 1). The majority of these farms (84 percent) are located in nine States. We do not know the percentage of blueberry farms that produce blueberries for the fresh market. Also, we do not know their size, but in general, such entities are predominantly small. The United States Census does not report sales receipts by farm or any other unit. The average farm size in these nine States is 15 acres, whereas the average farm size in the remainder of States that grow blueberries is 2.5 acres. We welcome information that the fresh blueberry industry or general public may provide on the number and size of entities that could be affected by the proposed rule.

Executive Order 12988

This proposed rule would allow blueberries to be imported into the continental United States from South Africa and Uruguay and would provide an alternative treatment for blueberries from Argentina. If this proposed rule is adopted, State and local laws and regulations regarding blueberries

imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2007-0061. Please send a copy of your comments to: (1) Docket No. APHIS-2006-0061, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to allow the importation into the continental United States of fresh blueberries from South Africa and Uruguay under certain conditions. As a condition of entry, the blueberries would have to undergo cold treatment and would have to be accompanied by a phytosanitary certificate issued by the national plant protection organization of the exporting country. This action would allow for the importation of blueberries from South Africa and Uruguay into the continental United States while continuing to provide protection against the introduction of quarantine pests.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

¹ Uruguay started exporting fresh blueberries in 2003, with an amount of 250 kilograms or 0.4 metric ton. The following 3 years, 2004-2006, Uruguay exported 3.8, 18.7 and 94.2 metric tons, respectively. Source: Uruguayan Government, Ines Ares (personal communication).

² The wholesale sector comprises two types of wholesalers: Those that sell goods on their own account and those that arrange sales and purchases for others for a commission or fee. Importers are included in both cases.

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: NPPOs, importers of blueberries.

Estimated annual number of respondents: 30.

Estimated annual number of responses per respondent: 276.

Estimated annual number of responses: 8,280.

Estimated total annual burden on respondents: 4,140 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual

number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

List of Subjects

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests,

Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR parts 305 and 319 as follows:

PART 305—PHYTOSANITARY TREATMENTS

1. The authority citation for part 305 would continue to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 305.2, the table in paragraph (h)(2)(i) would be amended as follows:

a. Under Argentina, by revising the entry for "Blueberry" to read as set forth below.

b. Under South Africa, by removing the entry for "Apple, grape, pear" and adding a new entry for "Apple, blueberry, grape, pear" in its place to read as set forth below.

c. In the entry for Uruguay, by adding an entry for "Blueberry" to read as set forth below.

§ 305.2 Approved treatments.

* * * * *
 (h) * * *
 (2) * * *
 (i) * * *

Location	Commodity	Pest	Treatment schedule
Argentina	Blueberry	<i>Anastrepha capitata</i> , <i>fraterculus</i> , <i>Ceratitis</i>	CT T107-a-1 or MB T101-i-1-1.
South Africa	Apple, blueberry, grape, pear	<i>Ceratitis capitata</i>	CT T107-a.
Uruguay	Blueberry	<i>Anastrepha capitata</i> , <i>fraterculus</i> , <i>Ceratitis</i>	CT T107-a-1.

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

4. In § 319.56-2x, the table in paragraph (a) would be amended by revising, under Argentina, the entry for "Blueberry" to read as follows:

§ 319.56-2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) * * *

Country locality	Common name	Botanical name	Plant part(s)
Argentina	Blueberry	Vaccinium spp	Fruit. (Treatment for South American fruit fly and Medfly not required if fruit is grown in a fruit fly-free area (see § 319.56–2(j)).

5. A new § 319.56–2vv would be added to read as follows:

§ 319.56–2vv Administrative instructions: conditions governing the importation of blueberries from South Africa and Uruguay.

Blueberries from South Africa (*Vaccinium* spp.) and Uruguay (*Vaccinium corymbosum* L. and *Vaccinium virgatum* Aiton) may be imported into the continental United States only under the following conditions:

(a) Blueberries from South Africa must be cold treated for *Ceratitis capitata* in accordance with part 305 of this chapter. Blueberries from Uruguay must be cold treated for *Ceratitis capitata* and *Anastrepha fraterculus* in accordance with part 305 of this chapter.

(b) Each shipment of blueberries must be accompanied by a phytosanitary certificate of inspection issued by the national plant protection organization of the importing country.

(c) The blueberries may be imported in commercial shipments only.

Done in Washington, DC, this 31st day of May 2007.

Kevin Shea,
Acting Administrator, Animal and Plant Health Inspection Service.
[FR Doc. E7–10818 Filed 6–4–07; 8:45 am]
BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Federal Credit Union Bylaws

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA is proposing to reincorporate the Federal Credit Union (FCU) Bylaws into NCUA regulations. This change clarifies NCUA’s ability to use a range of enforcement authorities, in appropriate cases, to enforce the FCU

Bylaws. In addition, NCUA is adding a bylaw provision on director succession, an issue it has previously addressed in legal opinions, and is revising the introduction to the Bylaws to conform it to these changes.

DATES: Comments must be received by August 6, 2007.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *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 FCU Bylaws” 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.

Public inspection: All public comments are available on the agency’s Web site at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA’s law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to OGC Mail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Credit Union Act (the Act) requires the NCUA Board to prepare bylaws that “shall be used” by FCUs and authorizes NCUA to enforce FCU Bylaws through charter suspension and liquidation. 12 U.S.C. 1758, 1766. Until 1982, the FCU Bylaws were incorporated by reference in NCUA’s regulations. NCUA’s authority to enforce bylaw violations through less severe administrative remedies then was clear because such violations could be viewed as a violation of NCUA’s regulations, thus enabling NCUA to bring a variety of administrative enforcement actions to effect compliance in appropriate cases.

In 1982, the Bylaws were removed from the regulations as part of a general deregulatory effort. At that time, three separate sections of NCUA regulations incorporated the FCU Bylaws by reference. 12 CFR 701.2, 701.3, 701.14 (1982). Another section required NCUA approval of any bylaw amendments. 12 CFR 701.4 (1982). NCUA deleted two of the sections incorporating the Bylaws by reference, as well as the regulation requiring NCUA approval of amendments, in two final rules issued in 1982. 47 FR 23685 (June 1, 1982); 47 FR 46249 (Oct. 18, 1982).

These rules were one result of a comprehensive review of agency regulations NCUA undertook in the early 1980s in an effort to eliminate redundant or outdated requirements. The goal of this process was to reduce the number and complexity of NCUA regulations and delete guidance found in other publications. 47 FR 46249 (Oct. 18, 1982). The Bylaws were only one of several items deleted from incorporation by reference in the 1982 rules cited above. One of the rules also deleted the NCUA Accounting Manual and Data Processing Guidelines from incorporation by reference. 47 FR 23685 (June 1, 1982). The other also deleted references to chartering procedures contained elsewhere in NCUA guidance.

47 FR 46249 (Oct. 18, 1982). The discussions in the proposed and final rules and at the NCUA Board meetings focus on the other provisions in the rules, with very little information about the Bylaws. *Id.*; 47 FR 23750 (June 1, 1982); 47 FR 23686 (June 1, 1982); 46 FR 48940 (Oct. 5, 1981); Recordings of NCUA Board Meetings Sept. 24, 1981; May 20, 1982 and Sept. 23, 1982. The sole comment about the Bylaws available in the administrative record is in the preamble to one of the final rules, and it states: "The commenters also were in agreement with NCUA's deregulation of charter and bylaw provisions and condensation of chartering procedures." 47 FR at 46249.

The Board's 1982 actions resulted in the retention of one section incorporating the Bylaws by reference, § 701.2, which was not deleted until 1999. 12 CFR 701.2 (1982-1999). Although one of the 1982 rules deleted other publications incorporated by reference in § 701.2, while leaving the reference to the Bylaws intact, the proposed and final rules do not explain this action. 47 FR 23685 (June 1, 1982); 46 FR 48490 (Sept. 24, 1981). NCUA deleted § 701.2 as a technical amendment in 1999. 64 FR 57363 (Oct. 25, 1999). After reviewing the entire record, retention of the incorporation of the bylaws in § 701.2 appears to have been an oversight.

When the Bylaws were deregulated in 1982, the rule changes did not address the issue of whether the agency would enforce the Bylaws or intervene in disputes concerning the Bylaws. NCUA's policy not to become involved in bylaw disputes unless the bylaw violation threatens the safety and soundness of the credit union or violates a provision of the FCU Act or NCUA regulations evolved in various issuances and procedures after 1982. Numerous legal opinion letters state this policy, as well as NCUA's position that the Bylaws represented a contract between a credit union and its members. NCUA's view was that state corporate law, if consistent with the Act and NCUA regulations, determined disputes regarding the enforcement of bylaw provisions. As a result of the deregulation of the bylaws, NCUA's ability to enforce the Bylaws, absent a safety and soundness reason, has become problematic.

NCUA's post-deregulatory policy has sometimes had the effect of requiring FCU members to resort to state court action in order to force their credit union to abide by its bylaws. While this approach worked fairly well for the most part over the years, recently, NCUA has learned of cases where

members have been unable to use the judicial system to enforce rights granted by the Bylaws. While NCUA continues to maintain members can enforce the bylaws as a contract, the Board recognizes that, in certain circumstances, this remedy may not be practical or provide adequate relief due to circumstances such as timing and cost.

As the administrative record demonstrates, the Board did not foresee the current challenges members can face in seeking to enforce the bylaws when it deregulated the Bylaws in 1982 in an effort to eliminate redundancy and maximize flexibility for FCUs. At this time, the Board finds reincorporating the bylaws into NCUA's regulations is an appropriate step. Reincorporation is the least burdensome way to ensure FCUs and their members are aware of NCUA's authority to issue and enforce the Bylaws under the Act.

Congress has provided the Board explicit authority in the Act to suspend or revoke the charter of any FCU, or place the FCU into involuntary liquidation, for a violation of any provision of its bylaws. 12 U.S.C. 1766(b)(1). A charter suspension or liquidation, however, is a very extreme remedy and is unlikely to be an appropriate remedy for any bylaw violation. The resultant loss of credit union service would likely result in far more harm to members than the FCU's failure to follow its bylaws.

NCUA believes the better approach is to reincorporate the Bylaws into NCUA's regulations. The Board believes credit unions and their members should be able to resolve bylaw disputes without NCUA taking administrative action. In those rare cases where disputes cannot be resolved, NCUA will have clear authority to use a range of administrative actions. This will result in administrative remedies far less harsh than a charter suspension or liquidation to effect a credit union's compliance with its bylaws.

Reincorporating the Bylaws into NCUA's regulations imposes no new regulatory burden, as all FCUs are already required to have NCUA-approved bylaws. NCUA publishes form bylaw language and all FCUs have adopted some version of the form language. The latest version of the Bylaws allows FCUs flexibility wherever possible by providing check-off or fill-in-the-blank options that can be adopted without further NCUA action. NCUA's regional directors must approve all other bylaw amendments. NCUA will approve all proposed bylaw amendments that do not conflict with the Act or NCUA regulation and

guidance, present a potential safety and soundness threat, or restrict members' rights. NCUA does not maintain copies of each FCU's bylaws and bylaw amendments.

In considering reincorporation, the Board again thought about whether it should continue to prescribe model bylaw language or whether it should, as suggested by several commenters during the 2006 Bylaw revision process, prescribe only general categories and allow FCUs to draft their own bylaws. The Board's concerns with this approach remain the potential for confusion and the adoption of illegal bylaw provisions. While some previous commenters suggested a categories-style rule, others, including credit union employees and credit union legal representatives, have indicated that having form Bylaws is an aid and is not overly burdensome. Credit union staff members and boards of directors know that the Bylaws are a condensation of some requirements in the Act, NCUA regulations, and NCUA guidance. For most, the option to draft bylaws completely on their own is unattractive because of the amount of research required to ensure inclusion of all necessary provisions. Also, presumably, NCUA would have to adopt some oversight mechanism to prevent adoption of bylaw provisions that are inconsistent with statutory and regulatory requirements or present safety and soundness concerns. Because NCUA does not now maintain copies of individual FCU bylaws or review bylaws in examinations as a matter of course, having a category-type regulation would likely result in more regulation, not less.

The Board also considered modeling its bylaw regulation on the approach used by the Office of Thrift Supervision (OTS). The OTS has detailed regulations listing required bylaw provisions and also provides model bylaw language separately. 12 CFR 544.5, 552.5; OTS Applications Handbook, Forms 1577, 1508. The model language is mostly a restatement of the regulation. *Id.* Thrifts are not required to adopt the model language exactly, and, like FCUs, may also adopt certain optional provisions. All amendments, including the model option provisions, must be filed with OTS. 12 CFR 544.5(d), 552.6(c). The result of the OTS approach is similar to NCUA's. Both federal thrifts and FCUs have form bylaw language. Although the regulation permits thrifts to adopt their own language rather than the model, drafting bylaws that comply with the requirements of the regulation results in bylaws nearly indistinguishable from the form bylaws. Both federal thrifts and

FCUs are allowed to select certain options without further agency action, but thrifts must file all amendments with OTS. After considering the OTS approach, the Board continues to believe that incorporating the Bylaws by reference into NCUA's regulations is the most expeditious and least burdensome approach.

The proposed rule will give NCUA authority to enforce bylaw violations in certain, limited cases through administrative tools in the Act. Incorporating the FCU Bylaws into NCUA's regulations will not mean NCUA will become involved as a matter of course in bylaw disputes. The Board believes credit union officials and members should be able to work together to resolve the vast majority of bylaw and internal governance disputes. This was true before 1982 when the Bylaws were incorporated by reference in NCUA's regulations and, as was the case then, NCUA has no intention of using agency resources to enforce every bylaw violation. Furthermore, under the risk-based examination system in use for FCUs, examiners do not currently, nor will they under this proposed rule, inquire into an FCU's bylaws unless the FCU's management raises the issue.

A credit union's management, however, should not be able to ignore the Bylaws unilaterally. Members have a reasonable expectation that their credit union will be operated in accordance with its approved bylaws. NCUA already has the authority to exercise its administrative enforcement authority when a credit union violates the Act or NCUA regulations or a threat to the safety and soundness of the institution exists. NCUA also believes it should have the ability to institute an enforcement action when a bylaw violation poses a threat to fundamental, material credit union member rights. These rights are those that go to the very heart of the cooperative principles that serve as the cornerstone of the credit union system. Specifically, they include the right to:

- Maintain a share account;
- Maintain credit union membership;
- Have access to credit union facilities;
- Participate in the director election process;
- Attend annual and special meetings; and
- Petition for removal of directors and committee members.

It continues to be NCUA's intent that credit unions and their members will make every effort to resolve bylaw disputes without NCUA intervention. If a bylaw dispute cannot be resolved, however, credit union officials or

members should contact the regional office with jurisdiction for the FCU. Regional offices have substantial experience in reviewing and working with credit unions on bylaw disputes, as well as proposed bylaw amendments. The regional offices have historically assisted credit union officials and members in resolving bylaw and internal governance disputes. However, if a matter involves fundamental, material credit union member rights, NCUA will have clear discretion to take administrative action as warranted. The Board believes this is preferable to requiring credit unions and their members to resort to the state courts, with the attendant expense, time delays and uncertainty regarding bylaw enforceability.

B. Specific Changes to the FCU Bylaws

NCUA issued an updated and revised version of the FCU Bylaws in 2006. 71 FR 24551 (April 26, 2006). Because the revised Bylaws were issued so recently, NCUA believes another major review is unnecessary at this time. The Board believes, however, this rulemaking presents an appropriate opportunity to address one particular circumstance previously only addressed in legal opinions, namely, the responsibility of the Supervisory Committee to assume the responsibilities of the board of directors temporarily if, for any reason, an entire board of directors is simultaneously removed or unable to serve. *See* OGC Opinion 06-0446 (April 27, 2006). This proposed rule adds new provisions to the Bylaws clarifying responsibilities and procedures if, for any reason, including removal or other inability to serve, an FCU has no remaining directors. This proposed rule also revises the introduction to the Bylaws to reflect the reincorporation of the Bylaws in the regulations.

The proposal adds a new Section to Article IX to clarify the Supervisory Committee's responsibilities if an FCU has no remaining directors. If an entire board of directors resigns, is removed simultaneously, or for whatever circumstance is unable to serve, the Supervisory Committee has the responsibility to act as a temporary board of directors. As has been previously stated in NCUA legal opinions, the FCU Bylaws will now provide that, as the temporary board of directors, the Supervisory Committee must either schedule a special meeting to elect an interim board, or, if the credit union's next annual meeting of members will occur within 45 days after the FCU loses its directors, must serve as the temporary board until the next annual meeting.

NCUA believes this provision belongs in Article IX, entitled "Supervisory Committee," because it addresses responsibilities of the Supervisory Committee when an FCU has no remaining directors. Several other bylaws refer to procedures by which remaining directors can replace directors who have been removed or have resigned, but because this bylaw addresses the situation where no directors remain and the responsibility falls upon the Supervisory Committee, it is placed in Article IX.

The proposal also cross references this new language in Article XVI, Section 3, addressing removal of directors by members, and Article VI, Section 4, addressing board of director vacancies. These new provisions do not automatically become part of any FCU's existing bylaws and FCUs are not required to adopt them. In the event a credit union does not adopt the new bylaw provisions, NCUA will continue to follow the guidance expressed in its prior legal opinion, cited above.

The NCUA Board has also considered whether to allow more flexibility in the Bylaws regarding the number of members necessary to request a special meeting as well as the timing for when the meeting is held. NCUA's position is that any necessary changes in this area for a particular credit union should be handled through the bylaw amendment process explained in the introduction to the Bylaws.

NCUA is also adopting a minor procedural change in an effort to streamline the bylaw amendment process even further. NCUA will continue to post all bylaw amendment opinion letters on its Web site. Bylaw opinion letters issued since the last major revision of the bylaws in April 2006 will now include the language for any amendment approved, or a link to that language. Credit unions seeking to adopt a bylaw amendment using identical language to a previously approved amendment must still file the proposed amendment with their Regional Office, but will receive notice of the Region's action on their request within 15 business days. Review of all bylaw amendment requests ensures that an amendment approved for one FCU is appropriate for another FCU, but NCUA believes this review can be accomplished more quickly when the requested amendment is identical to one approved for another FCU.

Finally, the proposal includes a revised introduction to reflect incorporation of the Bylaws in NCUA regulations. The introduction retains language explaining how to adopt and amend the bylaws as well as additional

guidance. For bylaw amendments, the introduction now states that FCUs seeking a bylaw amendment identical to a previously approved bylaw amendment can expect an answer from their Regional Office within 15 business days of the receipt of the request.

C. Request for Comments

NCUA seeks comment on the proposal to incorporate the Bylaws in NCUA regulations. NCUA specifically requests comments on the standards, discussed above, for when it will intervene in bylaw disputes, including any other criteria NCUA should consider in determining when it will institute an enforcement action regarding the bylaws. Also, NCUA specifically requests comment on the "fundamental, material member rights" discussed above and whether any rights should be added to or deleted from this list. Finally, NCUA seeks comments on the addition of the director succession bylaw and the revised introduction.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This proposed rule incorporates the Bylaws into NCUA's regulations without imposing any regulatory burden, since the FCU Act requires FCUs to adopt NCUA-approved bylaws. The proposed rule will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. 44 U.S.C. 3501 *et seq.*; 5 CFR part 1320.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and

responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that the proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 701

Federal credit union bylaws.

By the National Credit Union Administration Board on May 24, 2007.

Mary F. Rupp,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 701 by adding § 701.2 to read as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 is amended to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601-3610. Section 701.35 is also authorized by 42 U.S.C. 4311-4312.

2. Part 701 is amended by adding § 701.2 to read as follows:

§ 701.2 Federal Credit Union Bylaws.

(a) Federal credit unions must operate in accordance with their approved bylaws. The Federal Credit Union Bylaws and any amendments approved for specific Federal Credit Unions are hereby incorporated by reference pursuant to 5 U.S.C. 552(a)(1) and accompanying regulations. Federal credit unions may adopt amendments to their bylaws as provided in the bylaws, with the approval of the Board.

(b) Copies of the Federal Credit Union Bylaws may be obtained at <http://www.ncua.gov> or by request addressed to National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

(c) The National Credit Union Administration may issue revisions or amendments of the Federal Credit Union Bylaws from time to time. An historic file of amendments or revisions

is maintained and made available for inspection at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

(d) Copies of the Federal Credit Union Bylaws are on file with the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408. NCUA will file the text of any changes in the Federal Credit Union Bylaws with the Director, Office of the Federal Register, and publish notice of changes in the **Federal Register**.

Note: The text of the Federal Credit Union Bylaws does not appear in the Code of Federal Regulations.

3. The Federal Credit Union Bylaws are revised as follows:

(a) Add the following paragraph at the end of Section 3 of Article IX:

If all director positions become vacant simultaneously, the supervisory committee immediately becomes the temporary board of directors. The temporary board must call and hold a special meeting to elect an interim board at least 7 but no more than 14 days after all director positions become vacant. Candidates for the interim board at the special meeting may be nominated by petition or from the floor. The interim elected board serves until the next annual meeting of members. If the next annual meeting has been scheduled and will occur within 45 days after all director positions become vacant, the temporary board may not call a special meeting to elect an interim board and must serve until the annual meeting.

If the next annual meeting has not been scheduled, the temporary board may not call a special meeting to elect interim directors if the month and day of the previous year's meeting plus 7 days falls within 45 days after all director positions become vacant. In this case, the temporary board will call and hold the next annual meeting within 7 days before or after the month and day of the previous annual meeting and the temporary board must serve until the annual meeting. If an interim board is elected and the annual meeting has not been scheduled, the interim board must schedule the annual meeting within 7 days before or after the month and day of the previous annual meeting.

The supervisory committee acting as the temporary board may not act on policy matters. An interim board elected under this section has the same powers as a board elected under the credit union's regular election procedures and may act on policy matters.

(b) Add the following sentence at the end of Section 3 of Article XVI:

If member votes at a special meeting result in the removal of all directors, the supervisory committee immediately becomes the temporary board of directors and must follow the procedures in Article IX, Section 3.

(c) Insert the following sentence after the first sentence of Section 4 of Article VI:

If all director positions become vacant simultaneously, the supervisory committee immediately becomes the temporary board of directors and must follow the procedures in Article IX, Section 3.

(d) Replace the sixth paragraph of the introduction with the following:

Federal credit unions considering an amendment may find it useful to review the bylaws section of the agency Web site, which includes Office of General Counsel opinions about proposed bylaw amendments. Opinions issued after April 2006 will include the language of approved amendments. Even if an amendment has been previously approved, the credit union must submit a proposed amendment to NCUA for review under the procedure listed above to ensure the amendment is identical. Credit unions requesting previously approved amendments will receive notice of the regional office's decision within 15 business days of the receipt of the request.

(e) Replace the last paragraph of the introduction with the following:

NCUA has discretion to take administrative actions when a credit union is not in compliance with its bylaws. If a potential violation is identified, NCUA will carefully consider all of the facts and circumstances in deciding whether to take enforcement action. NCUA will not take action against every minor or technical violation, but emphasizes that it retains discretion to enforce the bylaws in appropriate cases, which may include, but are not limited to, safety and soundness concerns or threats to fundamental, material credit union member rights.

(f) Replace the first paragraph of the introduction with the following:

Effective date: After consideration of public comment, the National Credit Union Administration (NCUA) Board adopted these Bylaws and incorporated them by reference in section 701.2 of NCUA's regulations on [date of final]. Unless a federal credit union has adopted bylaws before [date of final] it must adopt these revised Bylaws.

[FR Doc. E7-10389 Filed 6-4-07; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Chartering and Field of Membership for Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board is proposing amendments to its chartering and field of membership manual to update community chartering policies in response to NCUA's experience with reviewing applications of credit unions seeking community charters. These changes include clarifying the documentation requirements for a local community and adding a public comment procedure for certain types of multiple political jurisdiction community charter applications.

DATES: Comments must be postmarked or received by August 6, 2007.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *NCUA Web Site:* <http://www.ncua.gov/RegulationsOpinionsLaws/proposedregs/proposedregs.html>. Follow the instructions for submitting comments.

- *E-mail:* Address to regcomments@ncua.gov. Include "[Your name] Comments on Proposed Rule IRPS 07-1," in the e-mail subject line.

- *Fax:* (703) 518-6319. Use the subject line described above for e-mail.

- *Mail:* Address to Mary F. 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: Michael J. McKenna, Deputy General Counsel; John K. Ianno, Senior Trial Attorney; Frank Kressman, Staff Attorney, Office of General Counsel, or Robert Leonard, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518-6540 or (703) 518-6396.

SUPPLEMENTARY INFORMATION:

A. History

NCUA's chartering and field of membership policy is set out in NCUA's Chartering and Field of Membership Manual (Chartering Manual),

Interpretive Ruling and Policy Statement (IRPS) 03-1. 68 FR 18333 (Apr. 15, 2003). The policy is set forth in IRPS 03-1 and implements credit union field of membership law under the Federal Credit Union Act. In 2006, NCUA issued amendments to the Chartering Manual chapter on underserved areas. NCUA IRPS 06-1, 71 FR 36667 (Jun. 28, 2006).

The Board issued its last comprehensive rulemaking regarding its chartering policy in the spring of 2003. 68 FR 18333 (Apr. 15, 2003). Over the past four years, NCUA's Field of Membership Taskforce has monitored and reviewed the implementation of IRPS 03-1 and its amendments in an effort to improve consistency and provide a basis for further clarifications and modifications, if necessary. In response to this continued oversight, and requests from the NCUA Board, staff has identified issues that need clarification and are the basis for this proposal.

B. Proposed Chartering Manual Changes

Chapter 2 Field of Membership Requirements for Community Credit Unions: Section V—Community Charter Requirements.

Background

In 1998 Congress passed the Credit Union Membership Access Act ("CUMAA") and reiterated its longstanding support for credit unions, noting that they "have the specific] mission of meeting the credit and savings needs of consumers, especially persons of modest means." Public Law 105-219, section 2, 112 Stat. 913 (August 7, 1998). The Federal Credit Union Act ("FCUA") grants the NCUA Board broad general rulemaking authority over federal credit unions. 12 U.S.C. 1766(a). In passing CUMAA Congress amended the FCUA and specifically delegated to the Board the authority to define by regulation the meaning of a "well-defined local community" for federal credit union community charters. 12 U.S.C. 1759(g).

In developing a working regulatory definition of a local community the Board has been mindful of the statutory language as well as its important responsibility to ensure that it charters safe and sound credit unions that can provide a broad range of financial services to as many people in the community as possible.

Since 2000 there has been significant growth in the number of credit unions with community charters. The majority of these have come from conversions of credit unions with single and multiple

common bond fields of membership. In 2000 approximately 8.6% of federal credit union charters were community charters. By the end of 2006 approximately 22.5% of federal charters were community charters. The proportion of federal credit union members that belong to federal community charters increased significantly by the end of 2006 to 32.6%, surpassed only by the proportion of members in multiple common bond credit unions which at the end of 2006 was 52.3%. The increasing number of federal community charters has resulted in an increasing amount of assets concentrated in federal community charters. At the end of 2006 approximately 29.5% of all federal credit union assets were in community charters. As time passes and the membership profiles of these credit unions change from associational or occupational based to community based fields of membership, community charters are likely to enhance the delivery of financial services to individuals at all income levels throughout the communities they serve.

Community charters are playing an increasingly important role in helping credit unions fulfill the longstanding mission envisioned by Congress in passing the FCUA and restated in 1998 with the passage of CUMAA. Given their increasing significance it is critical that NCUA apply its expertise to approve community charter applications for local communities that are conducive to that mission, that are sized and structured in a way that assures the credit union's financial stability and long term viability, and where the applicant's proposal demonstrates the ability to offer credit union service to as many people as possible. Today community charters are collectively in sound financial condition. As of March 2007, over eighty percent of federal community charters have CAMEL composite ratings of one or two. Federal community charters also generally report strong levels of net worth. As of December 31, 2006, federal community charters had an aggregate net worth ratio of 11.48%.

The Board continues to recognize two important characteristics in a local community charter. First, there must be some geographic certainty to the community boundaries, e.g., they must be well-defined; and next, there should be sufficient social and economic activity among enough community members to assure that a viable community exists.

Historically, we have expressed this latter requirement as "interaction and/or

shared common interests." Chartering Manual, Chapter 2, V.A.1. This approach is consistent with the longstanding mission of credit unions reiterated by Congress in the findings section of CUMAA, when it noted that, "to promote thrift and credit extension, a meaningful affinity and bond among members manifested by a commonality of routine interaction, shared and related work experiences, interests, or activities * * * is essential to the fulfillment of the public mission of credit unions." Public Law 105-219, section 2, 112 Stat. 913 (August 7, 1998).

The Board has gained broad experience in reviewing what constitutes a well-defined local community through the analysis and approval of numerous community charter conversions and expansions. In this process the Board has exercised its regulatory judgment in determining whether, in a particular case, a well-defined local community exists. This involves the application of its expertise to the question of whether a proposed area has a sufficient level of interaction and/or shared common interests to be considered a well-defined local community in which a credit union can flourish and successfully provide thrift, credit, and other financial services to members of the community.

The Board's experience also indicates that there is ample uncertainty among applicants regarding two important issues, particularly in connection with applications involving large multi-jurisdictional areas. First, how does an applicant best demonstrate interaction and/or shared common interests? Second, what amount of evidence is required in a particular case?

In an attempt to address these concerns the Board is proposing to modify the definition of what constitutes a well-defined local community to utilize objective measurable standards when appropriate, as well as to revise some of the documentation requirements for other types of local community charters. These proposed changes should make it easier for an applicant to determine and demonstrate whether a proposed area is a well-defined local community while at the same time maintaining the use of many of the most significant indicia of interaction and/or shared interests. The Board believes that this proposal will result in more objective application of the standards, less difficulty for applicants, and more efficient use of agency resources. The Board looks forward to public comments on all aspects of these proposed changes.

1. Presumptive Local Communities

a. Single Political Jurisdiction

The Federal Credit Union Act provides that a "community credit union" consists of "persons or organizations within a well-defined local community, neighborhood, or rural district." 12 U.S.C. 1759(b)(3). The Act expressly requires the Board to apply its regulatory expertise and define what constitutes a well-defined local community. 12 U.S.C. 1759(g). It has done so in the Chartering Manual, Chapter 2, Section V, Community Charter Requirements. In 2003, the Board, after issuing notice and seeking comments, issued IRPS 03-1 that stated any county, city, or smaller political jurisdiction, regardless of population size, is by definition a local community. 68 FR 18334, 18337 (Apr. 15, 2003). Under this definition, no documentation demonstrating that the political jurisdiction is a well-defined local community is required.

After four years of experience, the Board has reviewed this definition of well-defined local community and still finds it compelling. The Board finds that a single governmental unit below the state level is well-defined and local, consistent with the governmental system in the United States consisting of a local, state, and federal government structure. A single political jurisdiction also has strong indicia of a community, including common interests and interaction among residents. Local governments by their nature generally must provide residents with common services and facilities, such as educational, police, fire, emergency, water, waste, and medical services. Further, a single political jurisdiction frequently has other indicia of a well-defined local community identified in the Chartering Manual as acceptable examples of documentation, such as a major trade area, employment patterns, local organizations and/or a local newspaper. Such examples of commonalities are indicia that single political jurisdictions are well-defined local communities where residents have common interests and/or interact.

b. Statistical Areas

The Board's experience has been that well-defined local communities can come in various population and geographic sizes. While the statutory language 'local community' does imply some limit, Congress has directed NCUA to establish a regulatory definition consistent with the mission of credit unions. While single political jurisdictions below the state level meet the definition of a well-defined local

community, nothing precludes a larger area comprised of multiple political jurisdictions from also meeting the regulatory definition. There is no statutory requirement or economic rationale that compels the Board to charter only the smallest well-defined local community in a particular area.

The Board's experience has been that applicants have the most difficulty in preparing applications involving larger areas with multiple political jurisdictions. This is because, as the population and area increase and multiple jurisdictions are involved, there is often conflicting evidence both for and against interaction and/or shared common interests. This often causes some confusion to the applicant about what evidence is required and what criteria are considered to be most significant under such circumstances.

The current chartering manual provides examples of the types of information an applicant can provide that would normally evidence interaction and/or shared common interests. These include but are not limited to: (1) Defined political jurisdictions; (2) major trade areas; (3) shared common facilities; (4) organizations within the community area; and (5) newspapers or other periodicals about the area.

These examples are helpful but the Board's experience is that very often in situations involving multiple jurisdictions, where it has determined that a well-defined local community exists, interaction or common interests are evidenced by a major trade area that is an economic hub, usually a dominant city, county or equivalent, containing a significant portion of the area's employment and population. This central core often acts as a nucleus drawing a sufficiently large critical mass of area residents into the core area for employment and other social activities such as entertainment, shopping, and educational pursuits. By providing jobs to residents from outside the dominant core area it also provides income that then generates further interaction both in the hub and in outlying areas as those individuals spend their earnings for a wide variety of purposes in outlying counties where they live. This commonality through interaction and/or shared common interests in connection with an economic hub is conducive to a credit union's success and supports a finding that such an area is a local community.

The Board views evidence that an area is anchored by a dominant trade area or economic hub as a strong indication that there is sufficient interaction and/or common interests to

support a finding of a local community capable of sustaining a credit union. This type of geographic model greatly increases the likelihood that the residents of the community manifest a "commonality of routine interaction, shared and related work experiences, interests, or activities * * *" that are essential to support a strong healthy credit union capable of providing financial services to members throughout the area. Public Law 105-219, section 2(3), 112 Stat. 913 (August 7, 1998).

The Office of Management and Budget ("OMB") publishes statistics that identify geographic areas that exhibit these important criteria. The Board is familiar with and has utilized these statistics. In the past four years the agency has approved in excess of 50 community charters involving Metropolitan Statistical Areas, usually involving a community based around a dominant core trade area.

The Board believes that when statistics can demonstrate the existence of such relevant characteristics it is appropriate to presume that sufficient interaction and/or common interests exist to support a viable community based credit union. In such situations the area should be entitled to a presumption that it meets the regulatory definition of a local community.

Certain areas do not have one dominant economic hub. Other areas may contain two or more dominant hubs. These situations diminish the persuasiveness of the evidence and make it inappropriate to engage in the presumption. In those instances the Board proposes to seek public comment and require additional evidence in order to assure that its critical analysis considers all relevant evidence.

On December 27, 2000, OMB published Standards for Defining Metropolitan and Micropolitan Statistical Areas. 65 FR 82228. The following definitions established by OMB are relevant here:

Core Based Statistical Area ("CBSA")—"A statistical geographic entity consisting of the county or counties associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties containing the core. Metropolitan and Micropolitan Statistical Areas are the two categories of Core Based Statistical Areas." 65 FR 82238 (Dec. 27, 2000).

Metropolitan Division—"A county or group of counties within a Core Based Statistical Area that contains a core with

a population of at least 2.5 million." 65 FR 82238 (Dec. 27, 2000). OMB recognizes that Metropolitan Divisions often function as distinct, social, economic, and cultural areas within a larger Metropolitan Statistical Area. See OMB Bulletin No. 07-01, December 18, 2006.

Metropolitan Statistical Area ("MSA")—"A Core Based Statistical Area associated with at least one urbanized area that has a population of at least 50,000. The Metropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting." 65 FR 82238 (Dec. 27, 2000).

Micropolitan Statistical Area ("MicroSA")—"A Core Based Statistical Area associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000. The Micropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting." 65 FR 82238 (Dec. 27, 2000).

Demonstrated commuting patterns supporting a high degree of social and economic integration are a very significant factor in community chartering, particularly in situations involving large areas with multiple political jurisdictions. In a community based model significant interaction through commuting patterns into one central area or urban core strengthens the membership of a credit union and allows a community based credit union to efficiently serve the needs of the membership throughout the area. Such data demonstrates a high degree of interaction through the major life activity of working and activities associated with employment. Large numbers of residents share common interests in the various economic and social activities contained within the core economic area.

Historically, commuting has been an uncomplicated method of demonstrating functional integration. NCUA agrees with OMB's conclusion that "Commuting to work is an easily understood measure that reflects the social and economic integration of geographic areas." 65 FR 82233 (Dec. 27, 2000). The Board also finds compelling OMB's conclusion that commuting patterns within statistical areas demonstrate a high degree of social and economic integration with the central county. OMB's threshold for

qualifying a county as an outlying county eligible for inclusion in either a MSA or MicroSA is a threshold of 25% inter-county commuting. OMB also considers a multiplier effect (a standard method used in economic analysis to determine the impact of new jobs on a local economy) that each commuter would have on the economy of the county in which he or she lives and notes that a multiple of two or three generally is accepted by economic development analysts for most areas. 65 FR 82233 (Dec. 27, 2000). "Applying such a measure in the case of a county with the minimum 25 percent commuting requirement means that the incomes of at least half of the workers residing in the outlying county are connected either directly (through commuting to jobs located in the central county) or indirectly (by providing services to local residents whose jobs are in the central county) to the economy of the central county or counties of the CBSA within which the county at issue qualifies for inclusion." 65 FR 82233 (Dec. 27, 2000).

The Board is proposing the establishment of a standard statistical definition of a well-defined local community. The Board believes that the application of strictly statistical rules for determining whether a CBSA should be presumed a well-defined local community has the advantage of minimizing ambiguity and making the application process less time consuming. While it finds evidence established in this manner to be compelling, the Board believes that the reasonableness of the presumption is further strengthened when additional factors establishing the dominance of the core area are present. These additional factors are also objective and easily measurable. First, as OMB has noted, Metropolitan Divisions often function as distinct social, economic, and cultural areas. In the Board's view this evidence detracts from the cohesiveness of the CBSA. Accordingly, the proposal will not permit a CBSA to meet the automatic definition of a well-defined local community when it contains a Metropolitan Division. Next, the Board acknowledges that not all areas of the country are the same and there may be a CBSA that does not contain a sufficiently dominant core area or contains several significant core areas. Such situations also dilute the cohesiveness of the CBSA. For these reasons the Board proposes to require that the CBSA contain a dominant core city, county, or equivalent that contains the majority of all jobs and $\frac{1}{3}$ of the total population contained in the CBSA

before the definition would be met. These additional requirements will assure that the core area dominates any other area within the CBSA with respect to jobs and population. Applicants can find information about an area's population and number of local jobs, based upon an analysis of where people who work in an area reside, at the Bureau of the Census' Internet site (<http://www.census.gov>). Information about the current definitions of CBSAs is available at the Office of Management and Budget's Internet site (<http://www.whitehouse.gov/omb>). Applications for part of a CBSA are acceptable provided they include the dominant core city, county, or equivalent.

Accordingly, the Board proposes establishing a new statistical definition for a well-defined local community in cases involving multiple political jurisdictions when the following three requirements are met:

- The area must be a recognized CBSA or part thereof without a Metropolitan Division; and
- The area must contain a dominant city, county or equivalent with a majority of all jobs in the CBSA; and
- The dominant city, county or equivalent must contain at least $\frac{1}{3}$ of the CBSA's total population.

2. Federal Register Notice and Request for Public Comment

Although there is no legal requirement to do so, the Board believes that in situations where the CBSA does not exhibit the standards required to meet the new statistical definition for a well-defined local community, or the area does not qualify under the single political jurisdiction definition, public notice and comment will assist it with its analysis of whether the area in question is a well-defined local community capable of supporting a community credit union while also informing the public about the process. The public notice and comments will assist the Board in its critical analysis of the evidence and provide the public with an opportunity to provide timely comments and relevant information to the NCUA on the proposed local community area the credit union is seeking to serve.

Accordingly, for those community charter applications that do not meet the established definitions of a well-defined local community, the Board proposes to publish a notice in the **Federal Register**. The proposed rule contains a new section entitled "V.A.3 Public Notice and Comment Procedures." The notice will solicit comments relevant to the proposed community charter, including

whether it meets the well-defined local community requirements. The comments will be considered by the agency before a decision on the application is made. The Board is proposing a 30 calendar day comment period.

3. Documentation Requirements for Certain Community Charter Applicants

Currently under the Chartering Manual, multiple political jurisdictions with populations of up to 500,000 and Metropolitan Statistical Areas (MSAs) with populations of up to one million may qualify as a local community based on a narrative description of the area. The narrative must describe how the area meets the standards for community interaction and/or common interests. The Board is proposing that applications for areas containing multiple political jurisdictions that do not meet the proposed statistical definition be subject to public notice and comment. In those cases applicants will also be required to supplement the narrative with supporting documentation demonstrating how the regulatory requirements of a well-defined local community have been met.

This amendment would assure greater consistency in NCUA's application of chartering requirements for all community charter applicants seeking to serve multiple political jurisdictions. The proposed change would clarify NCUA's expectation and inform applicants that statements in a narrative must be substantiated through documentation.

The Board seeks to expand the well-defined local community documentation section to provide more guidance to credit unions on the type of evidence that demonstrates whether the area is a well-defined local community. To accomplish this the Board is proposing to add language providing more descriptive information and examples relevant to establishing the existence of well-defined local communities in order to clarify the degree of documentation required. For example, the Board finds that population density and geographic size can be useful to consider in determining whether the area is a well-defined local community.

The Board also seeks to emphasize that community charter applicants can provide NCUA with statistical data, such as on employment patterns, in addition to third-party surveys and authoritative letters from government or corporate officials. This type of documentation can be used to support

interaction and/or common interests among residents.

4. Five-Year Limitation

Since 2001, the Chartering Manual has exempted a community charter applicant from submitting a narrative summary or documentation supporting a request of a proposed community charter, amendment, or conversion, with the same exact geographic area as one NCUA had previously approved. The Board is proposing a five-year limitation on a community charter applicant's use of this exemption. NCUA believes that five years is an appropriate time period in which to allow applicants to rely upon the narrative and documentation in past submissions. The Board requests comment regarding whether this or another time period is appropriate.

In some parts of the United States, economic growth and population change can be dramatic over time. This means that documentation supporting a proposed community for some areas may become outdated more quickly than documentation supporting other areas where indicia of community interaction and/or common interests may still be valid. With this change NCUA seeks to strike a balance between requiring an applicant to repeat the exercise of demonstrating a proposed area is a well-defined local community, when NCUA already has made that exact determination, and retaining an exemption based on a previous narrative and documentation that may no longer be accurate. The Board is also proposing adding a new heading "V.A.5—Previously Approved Communities" to

describe this exemption to make this provision more reader-friendly. This limitation would not apply to applications that meet the single political jurisdiction or statistical area definition of local community.

5. Rural District

Since the passage of CUMAA, despite the separate statutory language authorizing local community credit unions comprised of a rural district, NCUA has not defined that term. NCUA's experience is that rural areas often lack the normal indicia that NCUA considers in making a determination that a proposed area is a well-defined local community. Unlike the proposed statistical area definition, the Board is proposing a definition that reflects an area that may lack the traditional characteristics of interaction or shared common interests. Therefore, the proposal does not require an applicant to demonstrate interaction or shared common interests. The Board expects a rural district to be less densely populated and frequently lacking any centralized urban core or cluster. Although the proposed rural district may include contiguous counties the Board also believes such a district should have a relatively small, widely disbursed, population. Therefore, NCUA is proposing to define a rural district as an area that is not in an MSA or MicroSA and has a population density that does not exceed 100 people per square mile where the total population of the rural district does not exceed 100,000. This would exclude the majority of the United States population that lives in and around large urban

areas yet, based on census data, still include the vast majority of counties in the United States having fewer than 100,000 persons. Population density also varies widely but many counties also have a density of less than 100 persons per square mile. Together these requirements would assure that an area under consideration as a rural district has both a small total population and a relatively light population density. If the Board adopts a definition it will modify the language throughout the Chartering Manual to assure conformity.

Because the NCUA Board has less experience with rural districts, it seeks public comment on whether it should adopt its proposed definition, a definition used by one of the agencies discussed below, or some other definition. Comment is also requested regarding whether a rural district that consists of a non-metropolitan or rural area should be subject to different analyses or documentation requirements than metropolitan or suburban areas. The Board welcomes comments on what specific indicia may be appropriate to demonstrate the existence of a rural district consistent with the FCU Act.

When developing the proposed definition for rural district, the Board considered the criteria other executive branch agencies use as a framework for defining what is rural in the United States. These agencies are the U.S. Census Bureau, the OMB, and the Economic Research Service (ERS) of the U.S. Department of Agriculture (USDA). The table that follows summarizes each agency's definition of what constitutes a rural area.

Agency	Definition of rural area
U.S. Census Bureau	<p>The Census Bureau defines rural area by exclusion by considering areas <i>outside</i> urbanized areas or urban clusters rural.</p> <ul style="list-style-type: none"> • The Census defines an <i>urbanized area</i> as an area consisting of adjacent, densely settled, census block groups and census blocks that meet minimum population density requirements. The urbanized area definition also includes adjacent densely settled census blocks that collectively have a population of at least 50,000 people. • The Census defines <i>urban clusters</i> as contiguous, densely settled, census block groups and census blocks that meet minimum population density requirements. This definition also includes adjacent densely settled census blocks that collectively have populations ranging from 2,500 to less than 50,000 people. • The Census Bureau relies upon the standards implemented by the OMB, as discussed below, for classifying areas as metropolitan areas. <p>The Census Bureau considers all other areas rural. [Reference: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_register&docid=02-6186-filed.pdf]</p>
OMB	<p>The OMB defines MSAs, or metropolitan areas, as central (core) counties with one or more urbanized areas, and outlying counties that are economically tied to the core counties as measured by work commuting. OMB uses the MicroSA classification to identify a non-metro county with an urban cluster of at least 10,000 persons or more. Non-core counties are neither micro nor metro.</p> <p>Agencies outside of OMB often designate non-metro counties as rural. [Reference: http://www.whitehouse.gov/omb/bulletins/fy2007/b07-01.pdf]</p>
ERS of the USDA	<p>ERS of the USDA considers areas rural if the OMB has not designated any part of the area as an MSA or core county.</p> <p>ERS also consider some areas designated by OMB as MSAs rural based on their assessments of Census data and other agency research. ERS has developed several classifications to measure rurality within individual MSAs.</p>

Agency	Definition of rural area
	<p>ERS researchers who discuss conditions in rural America refer to non-MSA areas that include both micropolitan and non-core counties as rural areas. When the OMB classifies an area as a MicroSA, the ERS still considers these areas rural according to their definition. Rurality is a term used by the USDA ERS to explain the rural nature of an area.</p> <p>[Reference: http://www.ers.usda.gov/Briefing/Rurality/WhatsRural/]</p>

The Census Bureau, the OMB (by virtue of no MSA designation in the area), and the ERS all provide definitions of rurality based on their analysis of 2000 Census data.

6. More Descriptive Information Related to Business Plans

The Board is proposing to provide community charter applicants with more consistent guidance regarding NCUA's practices for reviewing the adequacy of business and marketing plans. Under the current Chartering Manual, a credit union converting to or expanding its community charter must provide, "a marketing plan that addresses how the community will be served." The Board is proposing a clarification to the marketing plan requirement to provide credit unions with additional guidance. The proposal explains that the plan should include the financial products, programs, and services to be provided to the entire community.

7. Community Charter Mergers

In general, where both credit unions are community charters, the continuing credit union must meet the criteria for expanding the community boundaries. A community credit union cannot merge into a single occupational/ associational, or multiple common bond credit union, except in an emergency merger. However, a single occupational or associational, or multiple common bond credit union can merge into a community charter as long as the merging credit union has a service facility within the community boundaries or a majority of the merging credit union's field of membership would qualify for membership in the community charter. While a community charter may take in an occupational, associational, or multiple common bond credit union in a merger, it will remain a community charter. Groups within the merging credit union's field of membership located outside of the community boundaries may not continue to be served. The merging credit union must notify groups that will be removed from the field of membership as a result of the merger. However, the credit union may continue to serve members of record.

NCUA is unaware of any particular problems in this merger context. We are soliciting comments, however, to determine if there are any concerns in this regard and, if so, what adjustments to NCUA's Chartering Manual may be required.

Chapter 3 Service To Underserved Communities: Section III.A—General.

The FCUA defines an underserved area as a local community, neighborhood, or rural district that is an "investment area" as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994. Currently Chapter 3 of the Chartering Manual provides that for an underserved area, the well-defined local community, neighborhood, or rural district requirement is met when the area meets the definition of local community set forth in Section III.A.

The Board proposes to amend the language in this Section to conform it with the proposed changes to the definition of local community by removing the definitions from Chapter 3 and instead referring the reader to Chapter 2 for the actual text of the definition. This change will avoid confusion and eliminate any need for future changes to this Section should the definitions contained in Chapter 2 change.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions, primarily those under ten million dollars in assets. The proposed amendments will not have a significant economic impact on a substantial number of small credit unions and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number assigned to § 701.1 is

3133-0015, and to the forms included in Appendix D is 3133-0116. NCUA has determined that the proposed amendments will not increase paperwork requirements and a paperwork reduction analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order because it only applies to federal credit unions.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that the proposed rules would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on May 24, 2007.

Mary Rupp,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNION

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782,

1784, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601, et seq., 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions are set forth in the Chartering and Field of Membership Policy, Interpretive Ruling and Policy Statement (IRPS) 03–1, as amended by IRPS 06–1 and IRPS 07–1. Copies may be obtained by contacting NCUA at the address found in Section 792.2(g)(1) of this chapter.

(Approved by the Office of Management and Budget under control numbers 3133–0015 and 3133–0116)

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 07–1) does not appear in the Code of Federal Regulations.

3. Section V of Chapter 2 of IRPS 03–1, as amended by IRPS 06–1 and IRPS 07–1, is revised to read as follows:

Chapter 2

V.A.1—General

Community charters must be based on a single, geographically well-defined local community, neighborhood, or rural district. In a well-defined local community or neighborhood, individuals must have common interests and/or interact. More than one credit union may serve the same community.

NCUA recognizes four types of affinity on which a community charter can be based—persons who live in, worship in, attend school in, or work in the community. Businesses and other legal entities within the community boundaries may also qualify for membership.

NCUA has established the following requirements for community charters:

- The geographic area's boundaries must be clearly defined;
- The area is a “well-defined local, community, neighborhood, or rural district;” and
- Individuals must have common interests and/or interact.

V.A.2—Definition of Well-Defined Local Community

In addition to the documentation requirements in Chapter 1 to charter a credit union, a community credit union applicant must provide additional

documentation addressing the proposed area to be served and community service policies.

An applicant has the burden of demonstrating to NCUA that the proposed community area meets the statutory requirements of being: (1) Well-defined, and (2) a local community, neighborhood, or rural district.

- “Well-defined” means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, single, multiple, or portions of counties (or their political equivalent), school districts, or a clearly identifiable neighborhood. Although congressional districts and state boundaries are well-defined areas, they do not meet the requirement that the proposed area be a local community.

The well-defined local community, neighborhood, or rural district requirement is met if:

- **Single Political Jurisdiction**—The area to be served is in a recognized single political jurisdiction, i.e., a city, county, or their political equivalent, or any contiguous portion thereof.
 - **Statistical Area**—
 - The area is a recognized Core Based Statistical Area (CBSA) or part thereof without a Metropolitan Division; and
 - The area contains a city, county or equivalent with a majority of all jobs in the CBSA; and
 - The city, county or equivalent must contain at least 1/3 of the CBSA's total population.
 - **Rural District**—
 - The district has well-defined geographic boundaries;
 - The district or any part thereof is not contained in an MSA or MicroSA;
 - The district does not have a population density in excess of 100 people per square mile; and
 - The total population of the district does not exceed 100,000 people.

The OMB definitions of CBSA and Metropolitan Division may be found at 65 FR 82238 (Dec. 27, 2000). They are incorporated herein by reference. Access to these definitions is available through the main page of the **Federal Register** Web site at <http://www.gpoaccess.gov/fr/index.html>.

If the proposed area does not meet the single political jurisdiction, statistical area or rural district definitions, the application will be subject to the public notice and comment procedures contained in V.A.3 and the applicant must submit a narrative description and supporting documentation proving how the area meets the standards for community interaction and/or common interests. See Section V.A.4—

Community Documentation Requirements.

V.A.3—Public Notice Procedures

If the proposed area does not meet the single political jurisdiction, statistical area, or rural district definitions cited in Section V.A.2 above, NCUA will publish a notice in the **Federal Register** regarding the community application. The notice will include the name of the credit union and identify the geographic area of the proposed community. The notice will solicit comments in favor of or in opposition to the proposed community charter including whether the proposed area meets the well-defined local community requirements of this manual. The comment period will normally be 30 calendar days but may be extended at NCUA's discretion. Responses to the notice must be sent to the NCUA Board Secretary.

V.A.4—Community Documentation Requirements

For areas not defined as a well-defined local community or rural district, an applicant has the burden of demonstrating the relevance of the documentation provided in support of an application. This must be provided in a narrative format that explains how the documentation demonstrates that the community is a well-defined area and the residents interact and/or share common interests. For example, simply listing newspapers and organizations in the area is not sufficient to demonstrate that the area is a local community.

(a) Well-Defined Area Documentation

To establish that the area is well-defined, an application must include:

- The geographic boundaries and size (square miles) of the community; and
- a local map designating the area to be served and a regional or state map with the proposed community outlined.

(b) Local Community Documentation

To establish the area is a local community, the applicant needs to provide sufficient, persuasive documentation. Examples of criteria that NCUA considers relevant to documenting an application include but are not limited to the criteria set forth below. NCUA suggests that an applicant address these criteria but not every criteria must be met for NCUA to determine the area is a well-defined local community. NCUA will base its determination on the totality of the evidence provided by the applicant. NCUA will consider the following:

Employment

- Identify the major employers, as well as their locations, within the community. Provide data showing the extent that these employers draw employees from throughout the community.
- Provide data on the percentage of individuals who work within the community. Include information on the percentage of individuals who work within their county of residence, as well as those who commute to other counties both within and outside the community.

Major Trade Areas

- Identify the major shopping centers. Provide data showing the extent that residents of the community use these facilities.
- Identify the major sports and entertainment venues (e.g., stadiums, arenas). Provide data showing the extent that residents of the community attend these events.
- Identify the traffic flows and commuting patterns within the community. Provide data showing the extent of interaction and/or common interests in the community.

Population Concentrations

- Identify varying population concentrations (i.e., urban vs. rural) within the community. Provide data showing how the population distribution facilitates interaction and/or common interests in the community.

Shared/Common Facilities

- Healthcare—identify major hospitals, including any special healthcare facilities, such as regional trauma centers. Provide data showing the extent that residents of the community use these facilities.
- Public services and facilities—identify community-wide shared government services, such as police, fire protection, public utilities, park districts, and public transportation. Provide data showing the extent that residents of the community use these services and facilities.
- Education—Identify major colleges and universities, as well as large local school districts within the community. Include enrollment statistics showing the extent the community residents are enrolled at these institutions.

Governmental and Quasi-Governmental Organizations

- Identify organizations such as economic development commissions, regional planning boards, and labor or transportation districts that serve the community.

- Identify the service areas of these organizations, and how the purpose of these organizations promotes interaction and/or common interests in the community, and the extent to which the residents use the services they provide.

Organizations and Clubs Within the Community

- Identify groups such as charitable organizations, chambers of commerce, Girl or Boy Scout Councils, and religious dioceses that serve the community.
- Include statistics that identify the service areas of these organizations, and the extent to which the residents use the services they provide.

Festivals and Community Events

- Identify any major festivals or community events.
- Provide attendance figures that show the degree and extent of participation by residents of the community.

Newspapers, Periodicals, or Other Media

- Identify the major newspapers, television, and radio stations, along with their marketing/service areas. Include subscription and viewer/listening statistics.

Other Documentation

- Include any other documentation that demonstrates that the area is a community where individuals have common interests and/or interact. Documentation can include statistical data, surveys, and/or letters from government or corporate officials such as:
 - Written statements by officials of a shopping mall, hospital, educational establishment, airport, etc. that the individuals using their facilities are from the community requested;
 - Surveys completed by an outside firm or the credit union as long as they sufficiently document how the survey was performed and why it is statistically valid.

The applicant has the burden of analyzing the documentation provided and explaining how it satisfies the requirements of interaction and/or common interests required by this manual. The level of documentation must be commensurate with the geographic size and population of the proposed local community.

V.A.5—Previously Approved Communities

An applicant need not submit a narrative summary or documentation to support a proposed community charter,

amendment or conversion as a well-defined local community, neighborhood or rural district if the NCUA has previously determined that the same, exact geographic area meets that requirement in connection with consideration of a prior application; provided that the initial application for the area was approved no more than five years before the date of the current application. Applicants may contact the appropriate regional office to find out if the area they are interested in has already been determined to meet the community requirements.

If the area is the same as a previously approved area, an applicant need only include a statement to that effect in the application. Applicants may be required to submit their own summary and documentation regarding the community requirements if NCUA, in its discretion, believes it is appropriate to do so, for example, if there has been a significant change in the population of the area since it was previously approved. This requirement does not apply to applications that meet the single political jurisdiction or statistical area definition of local community.

V.A.6—Business Plan Requirements for a Community Credit Union

A community credit union is frequently more susceptible to competition from other local financial institutions and generally does not have substantial support from any single sponsoring company or association. As a result, a community credit union will often encounter financial and operational factors that differ from an occupational or associational charter. Its diverse membership may require special marketing programs targeted to different segments of the community. For example, the lack of payroll deduction creates special challenges in the development and promotion of savings programs and in the collection of loans.

If the local community requested does not meet the requirements of V.A.2 then the documentation requirements in Section V.A.4 of this Chapter must be met before a community charter can be approved.

In all cases, in order to support a case for a conversion to community charter, an applicant federal credit union must develop a business plan incorporating the following data:

- Pro forma financial statements for a minimum of 24 months after the proposed conversion, including the underlying assumptions and rationale for projected member, share, loan, and asset growth;
- Anticipated financial impact on the credit union, including the need for

additional employees and fixed assets, and the associated costs;

- A description of the current and proposed office/branch structure, including a general description of the location(s); parking availability, public transportation availability, drive-through service, lobby capacity, or any other service feature illustrating community access;
- Marketing plan addressing how the community will be served for the 24-month period after the proposed conversion to a community charter, including the projected marketing budget, promotions, and time line;
- Details, terms and conditions of the credit union's financial products, programs, and services to be provided to the entire community; and
- Maps showing the current and proposed service facilities, ATMs, political boundaries, major roads, and other pertinent information.

An existing federal credit union may apply to convert to a community charter. Groups currently in the credit union's field of membership, but outside the new community credit union's boundaries, may not be included in the new community charter. Therefore, the credit union must notify groups that will be removed from the field of membership as a result of the conversion. Members of record can continue to be served.

Before approval of an application to convert to a community credit union, NCUA must be satisfied that the credit union will be viable and capable of providing services to its members.

Community credit unions will be expected to regularly review and to follow, to the fullest extent economically possible, the marketing and business plans submitted with their applications.

V.A.7—Community Boundaries

The geographic boundaries of a community federal credit union are the areas defined in its charter. The boundaries can usually be defined using political borders, streets, rivers, railroad tracks, etc.

A community that is a recognized legal entity may be stated in the field of membership—for example, "Gus Township, Texas," "Isabella City, Georgia," or "Fairfax County, Virginia."

A community that is a recognized MSA must state in the field of membership the political jurisdiction(s) that comprise the MSA.

V.A.8—Special Community

Charters

A community field of membership may include persons who work or

attend school in a particular industrial park, shopping mall, office complex, or similar development. The proposed field of membership must have clearly defined geographic boundaries.

V.A.9—Sample Community

Fields of Membership

A community charter does not have to include all four affinities (i.e., live, work, worship, or attend school in a community). Some examples of community fields of membership are:

- nPersons who live, work, worship, or attend school in, and businesses located in the area of Johnson City, Tennessee, bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west;
- Persons who live or work in Green County, Maine;
- Persons who live, worship, or work in and businesses and other legal entities located in Independent School District No. 1, DuPage County, Illinois;
- Persons who live, worship, work (or regularly conduct business in), or attend school on the University of Dayton campus, in Dayton, Ohio;
- Persons who work for businesses located in Clifton Country Mall, in Clifton Park, New York; or
- Persons who live, work, or worship in the Binghamton, New York, MSA, consisting of Broome and Tioga Counties, New York.

Some Examples of insufficiently defined local communities, neighborhoods, or rural districts are:

- Persons who live or work within and businesses located within a ten-mile radius of Washington, DC (using a radius does not establish a well-defined area);
- Persons who live or work in the industrial section of New York, New York. (not a well-defined neighborhood, community, or rural district); or
- Persons who live or work in the greater Boston area. (not a well-defined neighborhood, community, or rural district).

Some examples of unacceptable local communities, neighborhoods, or rural districts are:

- Persons who live or work in the State of California. (does not meet the definition of local community, neighborhood, or rural district).
- Persons who live in the first congressional district of Florida. (does not meet the definition of local community, neighborhood, or rural district).

4. Section III.A of Chapter 3 of IRPS 03–1, as amended by IRPS 06–1 and IRPS 07–1, is revised by removing the

second and third full paragraphs and the bulleted paragraphs in between them and adding in their place two paragraphs to read as follows:

For an underserved area, the well-defined local community, neighborhood, or rural district requirement is met if the area to be served meets the definition of a local community contained in Chapter 2 V.A.2.

If the area to be served does not meet the single political jurisdiction or statistical definition contained in Chapter 2 V.A.2, the application must include documentation to support that it is a well-defined local community, neighborhood, or rural district.

[FR Doc. E7–10398 Filed 6–4–07; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28348; Directorate Identifier 2007–NM–060–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800 and –900 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes. This proposed AD would require sealing the fasteners on the front and rear spar inside the main fuel tank and on the lower panel of the center fuel tank, inspecting the wire bundle support installation in the equipment cooling system bays to identify the type of clamp installed and determine whether the Teflon sleeve is installed, and doing related corrective actions if necessary. This proposed AD results from a design review of the fuel tank systems. We are proposing this AD to prevent arcing at certain fuel tank fasteners, in the event of a lightning strike or fault current event, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by July 20, 2007.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL-401, Washington, DC 20590.

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT:

Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6505; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2007-28348; Directorate Identifier 2007-NM-060-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR

19477-78), or you may visit <http://dms.dot.gov>.

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (67 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 another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

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

Boeing determined during the SFAR 88 review that certain non-conductive fasteners, which penetrate the main and center fuel tanks, could be subject to lightning strikes or fault currents induced by short circuits. During a lightning strike or fault current event, electrical current may be conducted to those non-conductive fasteners, which if unsealed could create arcing inside the fuel tanks. This condition, if not corrected, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737-57A1279, dated January 24, 2007. The service bulletin describes procedures for the following actions (depending on airplane configuration):

- Sealing the fasteners on the front and rear spar inside the main fuel tank and on the lower panel of the center fuel tank;
- Inspecting the wire bundle support installation in the equipment cooling system bays to identify the type of clamp installed and determine whether the Teflon sleeve is installed;
- Replacing any incorrect clamp with a new correct clamp; and
- Installing any missing Teflon sleeving.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 1,754 airplanes of the affected design in the worldwide fleet;

of these, 645 airplanes are U.S. registered. The following table provides the estimated costs for U.S. operators to

comply with this proposed AD, at an average hourly labor rate of \$80.

ESTIMATED COSTS

Action	Group	Work hours	Average hourly labor rate	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Sealant application	1	62	\$80	\$4,960	586	\$2,906,560
	2	28	80	2,240	44	98,560
	3	28	80	2,240	15	33,600
Inspection	1	3	80	240	586	140,640
	2	3	80	240	44	10,560
	3	2	80	160	15	2,400

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 rulemaking action.

Regulatory Findings

We have 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 that the 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. 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, 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA-2007-28348; Directorate Identifier 2007-NM-060-AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 20, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 737-600, -700, -700C, -800 and -900 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737-57A1279, dated January 24, 2007.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent arcing at certain fuel tank fasteners, in the event of a lightning strike or fault current event, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Fastener Sealant

(f) Within 60 months after the effective date of this AD: Seal the fasteners on the front and rear spar inside the main fuel tank and on the lower panel of the center fuel tank, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737-57A1279, dated January 24, 2007.

Inspection

(g) Within 60 months after the effective date of this AD: Perform a general visual inspection of the wire bundle support installation in the equipment cooling system bays to identify the type of clamp installed, and determine whether the Teflon sleeve is installed. Do these actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737-57A1279, dated January 24, 2007. Do all applicable corrective actions within 60 months after the effective date of this AD in accordance with the service bulletin.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on May 25, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-10755 Filed 6-4-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2007-28349; Directorate Identifier 2007-NM-025-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, and 747SP Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, and 747SP series airplanes. This proposed AD would require reconfiguring the clamps of certain wire bundles and applying insulating sealant to certain fasteners inside the fuel tanks. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent arcing inside the fuel tanks in the event of a lightning strike or high-powered short circuit, which could result in a fuel tank explosion or fire.

DATES: We must receive comments on this proposed AD by July 20, 2007.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer,

Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6501; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:**Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2007-28349; Directorate Identifier 2007-NM-025-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport

Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21-78, and subsequent Amendments 21-82 and 21-83).

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

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

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

We have received a report indicating that a certain type of fastener used in the fuel tank walls of Model 747 airplanes is insufficiently bonded to the airplane structure. Further, these fasteners do not have sufficient electrical insulation applied inside the fuel tanks to prevent arcing in the event of a lightning strike or high-powered short circuit. This condition, if not corrected, could result in a fuel tank explosion or fire.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 747-57-2326, dated January 4, 2007, which describes procedures for applying insulating sealant to certain fasteners inside the main fuel tanks.

We have reviewed Boeing Special Attention Service Bulletin 747-57-2327, Revision 1, dated July 10, 2006, which describes procedures for reconfiguring the clamps of certain wire bundles by wrapping additional Teflon sleeving around the wire bundles, installing new, larger clamps, and sealing the ends of certain fasteners inside the auxiliary fuel tank, main fuel tanks, and surge tanks.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 707 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 107 airplanes of U.S. registry. Depending on airplane configuration, the proposed actions would take between 106 and 448 work hours per airplane, at an average labor rate of \$80 per work hour. Required parts would cost between \$430 and \$2,074 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between \$8,910 and \$37,914 per airplane, or up to \$4,056,798 for all airplanes.

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 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 that the 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. 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, 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA-2007-28349; Directorate Identifier 2007-NM-025-AD.

Comments Due Date

- (a) The FAA must receive comments on this AD action by July 20, 2007.

Affected ADs

- (b) None.

Applicability

(c) This AD applies to Boeing Model 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, and 747SP series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 747-57-2327, Revision 1, dated July 10, 2006; and Boeing Special Attention Service Bulletin 747-57-2326, dated January 4, 2007.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent arcing inside the fuel tanks in the event of a lightning strike or high-powered short circuit, which could result in a fuel tank explosion or 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.

Change and Seal

(f) Within 60 months after the effective date of this AD, do the actions required by paragraphs (f)(1) and (f)(2) of this AD.

(1) Reconfigure the wire bundle clamps and seal the ends of certain fasteners inside the auxiliary fuel tank, main fuel tanks, and surge fuel tanks; in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747-57-2327, Revision 1, dated July 10, 2006.

(2) Seal the ends of certain fasteners inside the main fuel tanks, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747-57-2326, dated January 4, 2007.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on May 25, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-10760 Filed 6-4-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2007-28352; Directorate Identifier 2007-NM-037-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-200B, 747-300, 747-400, 747-400D, and 747-400F Series Airplanes Equipped With General Electric CF6-80C2 Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747-200B, 747-300, 747-400, 747-400D, and 747-400F series airplanes. This proposed AD would require repetitive inspections of the left- and right-hand flipper door assemblies of the engine core cowls for migrated pins and damaged flipper doors, and corrective actions if necessary. Modification of the hinge assemblies terminates the repetitive inspections. This proposed AD results from two reports of missing flipper doors for the engine core cowls. We are proposing this AD to detect and correct migrated hinge pins and damaged flipper doors, which could allow the flipper door to fall off, resulting in the potential for an engine fire to propagate into the flammable leakage zone of the strut and for the amount of fire extinguishing agent reaching the fire to be diluted, and subsequent uncontained fire in the engine strut.

DATES: We must receive comments on this proposed AD by July 20, 2007.

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.

- Fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT:

Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6501; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:**Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2007-28352; Directorate Identifier 2007-NM-037-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

Examining the Docket

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

Discussion

We have received two reports of missing flipper doors for the engine core cowls on Boeing Model 747 series airplanes equipped with General Electric CF6-80C2 engines. Investigation into the cause of the missing flipper doors revealed that hinge pins for the flipper doors were not secured correctly, and the vibration from the engine core cowls caused the hinge pins to migrate, allowing the flipper doors to fall off.

When the engine core cowl is opened during normal operation, the flipper door opens to provide clearance for the hinge fittings. When the engine core cowl is closed, the flipper door is clamped underneath the strut seal, forming a continuous strut firewall. If a flipper door is missing, it creates a 1-inch by 5-inch hole in the strut firewall. According to requirements of the master minimum equipment list, an airplane cannot depart with a missing flipper door.

This condition, if not corrected, could result in the potential for an engine fire to propagate into the flammable leakage zone of the strut and for the amount of fire extinguishing agent reaching the fire to be diluted, and subsequent uncontained fire in the engine strut.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 747-71-2310, dated October 13, 2005. The service bulletin describes procedures for repetitively inspecting the left- and right-hand flipper door assemblies for migrated hinge pins and damaged flipper doors, and corrective actions if necessary. The corrective actions include replacing any damaged flipper door with a new or serviceable flipper door, and modifying the hinge assemblies if necessary. The modification includes shortening the hinge pin and peening (deforming) both ends of the hinge assembly to capture the pin. Modifying the hinge assemblies eliminates the need for the repetitive inspections. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The Boeing service bulletin refers to Rohr Service Bulletin TBC/80C2-NAC-71-035, dated October 10, 2005, as an additional source of service information for inspecting hinge pins of the flipper doors, inspecting and replacing damaged flipper doors, and modifying the hinge assemblies of the flipper doors.

FAA’s Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same

type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 297 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection of flipper door assemblies, per inspection cycle.	1	\$80	\$0	\$80, per inspection cycle	42	\$3,360, per inspection cycle.
Modification of hinge assemblies, if accomplished	1	\$80	\$0	\$80	Up to 42	Up to \$3,360.

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 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 that the 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. 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, 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA-2007-28352; Directorate Identifier 2007-NM-037-AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 20, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747-200B, 747-300, 747-400, 747-400D, and 747-400F series airplanes, certificated in any category, equipped with General Electric CF6-80C2 engines.

Unsafe Condition

(d) This AD results from two reports of missing flipper doors for the engine core cowl. We are issuing this AD to detect and correct migrated hinge pins and damaged flipper doors, which could allow the flipper

door to fall off, resulting in the potential for an engine fire to propagate into the flammable leakage zone of the strut and for the amount of fire extinguishing agent reaching the fire to be diluted, and subsequent uncontained fire in the engine strut.

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 of the Flipper Door Assemblies

(f) Within 24 months after the effective date of this AD: Do a general visual inspection for migrated hinge pins and damaged flipper doors of the left- and right-hand flipper door assemblies of the engine core cowls, and do all applicable corrective actions, by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747-71-2310, dated October 13, 2005. Do all applicable corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed 18 months for that flipper door assembly, until doing the modification specified in paragraph (g) of this AD.

Note 1: Boeing Special Attention Service Bulletin 747-71-2310, dated October 13, 2005, refers to Rohr Service Bulletin TBC/80C2-NAC-71-035, dated October 10, 2005, as an additional source of service information for accomplishing the actions specified in paragraph (f) of this AD.

Terminating Action for Repetitive Inspections

(g) Modifying a hinge assembly of a flipper door assembly of the engine core cowls in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747-71-2310, dated October 13, 2005, terminates the repetitive inspection requirements of this AD for that hinge assembly.

Parts Installation

(h) As of the effective date of this AD, no person may install, on any airplane, a hinge assembly, part number 224-2335-69, for the flipper door of the engine core cowl unless

it has been modified in accordance with the requirements of paragraph (g) of 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 in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on May 25, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. E7-10757 Filed 6-4-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-28351; Directorate Identifier 2007-NM-074-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11, MD-11F, DC-10-30 and DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, and MD-10-30F Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Model MD-11, MD-11F, DC-10-30 and DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, and MD-10-30F airplanes. This proposed AD would require measuring the electrical resistance of the bond between the No. 2 fuel transfer pump adapter surface of the fuel tank and the fuel transfer pump housing flange, and performing corrective and other specified actions as applicable. This proposed AD results from a design review of the fuel tank systems. We are proposing this AD to prevent inadequate bonding between the No. 2 fuel transfer pump adapter surface of the fuel tank and the fuel transfer pump housing flange. Inadequate bonding could result in a potential ignition source inside the

fuel tank if the fuel transfer pump and structure interface are not submerged in fuel, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by July 20, 2007.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL-401, Washington, DC 20590.

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5254; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2007-28351; Directorate Identifier 2007-NM-074-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 with FAA

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

Examining the Docket

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

Discussion

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

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

changes found necessary to address unsafe conditions identified as a result of these reviews.

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

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

Model DC-10 airplanes have a fuel boost pump and a fuel transfer pump mounted to the fuel tank No. 2 lower skin. The instructions for early DC-10s called out electrical bonding to structure on both fuel transfer pump housings; however, a later drawing change did not call out bonding for the fuel transfer pump housing. The same condition exists on Model MD-11 airplanes. It is unknown whether there is an adequate bond on these airplanes, and operators need to make that determination. Inadequate bonding could result in a potential ignition source inside the fuel tank if the fuel transfer pump and structure interface are not submerged in fuel, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Service Bulletins DC10-28-250 and MD11-28-129, both dated July 26, 2006. The service bulletins describe procedures for measuring the electrical resistance between the No. 2 fuel transfer pump adapter surface of the fuel tank and the fuel transfer pump housing flange, and performing corrective and other specified actions as applicable. The corrective actions include electrically bonding the fuel tank No. 2 fuel transfer pump access door surfaces and fuel pump housing if the resistance measurement is more than 2.5 milliohms. The other specified actions include an electrical resistance bonding test to verify the electrical resistance between the fuel transfer pump housing

and the structure is 2.5 milliohms maximum. For airplanes on which the electrical resistance is not achieved, the procedures include reworking the electrical bond until that electrical resistance is achieved. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 573 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 399 airplanes of U.S. registry. The proposed measurement would take about 1 work hour per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is \$31,920, or \$80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 that the 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. 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, 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA-2007-28351; Directorate Identifier 2007-NM-074-AD.

Comments Due Date

- (a) The FAA must receive comments on this AD action by July 20, 2007.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to McDonnell Douglas Model MD-11, MD-11F, DC-10-30 and DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, and MD-10-30F airplanes, certificated in any category; as identified in Boeing Service Bulletins DC10-28-250 and MD11-28-129, both dated July 26, 2006.

Unsafe Condition

- (d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent inadequate bonding between the No. 2 fuel transfer pump adapter surface of the fuel tank and the fuel transfer pump housing flange. Inadequate bonding could result in a potential ignition source inside the fuel tank if the fuel transfer pump and

structure interface are not submerged in fuel, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Measure Electrical Resistance/Corrective & Other Specified Actions

(f) Within 60 months after the effective date of this AD: Measure the electrical resistance of the bond between the No. 2 fuel transfer pump adapter surface of the fuel tank and the fuel transfer pump housing flange in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC10-28-250 or MD11-28-129, both dated July 26, 2006, as applicable.

(1) If the resistance measurement is 2.5 milliohms or less: No further action is required by this paragraph.

(2) If the resistance measurement is more than 2.5 milliohms: Before further flight, electrically bond the fuel tank No. 2 fuel transfer pump housing surfaces in accordance with the service bulletin.

(3) Before further flight thereafter, do an electrical resistance bonding test to verify the electrical resistance between the fuel transfer pump housing and the structure is 2.5 milliohms maximum. If that electrical resistance is not achieved, rework the electrical bond until the electrical resistance is achieved. Do the actions in accordance with the service bulletin.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on May 25, 2007.

Ali Bahrami,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. E7-10756 Filed 6-4-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 744 and 772

[Docket No. 0612243150-63150-01]

RIN 0694-AD82

Authorization To Impose License Requirements for Exports or Reexports to Entities Acting Contrary to the National Security or Foreign Policy Interests of the United States

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: The Entity List (Supplement No. 4 to part 744 of the Export Administration Regulations) provides notice to the public that certain exports and reexports to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of License Exceptions in such transactions is limited. This proposed rule would expand the scope of reasons for which BIS may add parties to the Entity List. This proposed rule would also amend the Export Administration Regulations (EAR) to state explicitly that a party listed on the Entity List has a right to request that its listing be removed or modified and would set procedures for addressing such requests.

DATES: Comments concerning this rule must be received by BIS no later than August 6, 2007.

ADDRESSES: Comments on this rule may be submitted to the Federal eRulemaking Portal at <http://www.regulations.gov> (follow the instructions for submitting comments) by e-mail directly to BIS at publiccomments@bis.doc.gov (refer to regulatory identification number 0694-AD82 in the subject line), by fax at (202) 482-3355, or on paper to Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Refer to Regulatory Identification Number (RIN) 0694-AD82 in all comments.

FOR FURTHER INFORMATION CONTACT: Mike Rithmire, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, e-mail mrithmir@bis.doc.gov, tel. (202) 482-6105.

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to part 744 of the EAR) provides notice to the public of the identity of certain parties whose presence as a recipient of items subject to the Export Administration Regulations (EAR) can impose a license requirement in an export or reexport transaction. The reasons for which BIS may place an entity on the Entity List are stated in §§ 744.2, 744.3, 744.4, 744.6, 744.10 and 744.20 of the EAR.

In addition to those reasons, this proposed rule would create a new § 744.11 to authorize BIS to add to the Entity List entities that BIS has reasonable cause to believe, based on specific and articulable facts, have been, are or pose a risk of being involved in activities that are contrary to the national security or foreign policy interests of the United States or those acting on behalf of such entities. This new section would not be used to add to the Entity List entities that are U.S. persons (as defined in § 772.1 of the EAR). This new section also would not be used to add to the Entity List entities for which the EAR already impose a license requirement because those entities are already listed on the List of Specially Designated Nationals and Blocked Persons published by the Treasury Department, Office of Foreign Assets Control.

Reason for the Changes Proposed by This Rule

BIS is proposing to take this action to focus its export control efforts more closely on problematic potential recipients of items that are subject to the EAR, but who do not meet the criteria currently set forth in §§ 744.2, 744.3, 744.4, 744.6, 744.10 or 744.20. With this rule, the United States government would be able to conduct prior review and make appropriate licensing decisions regarding proposed exports and reexports to such recipients to the degree necessary to protect its interests. BIS would be able to tailor license requirements and availability of license exceptions for exports and reexports to parties who have taken, are taking, or will take actions that are contrary to United States national security or foreign policy interests without imposing additional license requirements that apply broadly to entire destinations or items. BIS believes that such targeted application of license requirements would provide the flexibility to deter use of items that are subject to the EAR in ways that are inimical to the interests of the United States with minimal costs to and

disruption of legitimate trade. As export controls continue to focus not just on countries, but also on individual customers or entities, BIS believes it is important to provide more information to the public about entities of concern. Implementation of this rule will provide additional information to the public to enhance the ability to screen potential recipients of items subject to the EAR.

In addition, this proposed rule would simplify the EAR by reducing the need to issue general orders to impose license requirements on specific parties.

License requirements currently imposed on specific entities through general orders would, under this rule, be imposed by adding such entities to the Entity List. Such an action would reduce the number of EAR provisions that the public would have to review to determine license requirements under the EAR.

Summary of the Changes Proposed by This Rule

This proposed rule would authorize BIS to impose foreign policy export and reexport license requirements, limit the availability of License Exceptions, and set license application review policy for exports and reexports of items subject to the EAR to entities that BIS has reasonable cause to believe, based on specific and articulable facts, have been, are or pose a risk of being involved in activities that are contrary to the national security or foreign policy interests of the United States or those acting on behalf of such entities. This proposed rule would not require that such activities involve items or activities that are subject to the EAR.

This proposed rule lists five types of conduct, in addition to the grounds set forth in §§744.2, 744.3, 744.4, 744.6 or 744.20, that BIS could determine are contrary to U.S. national security or foreign policy interests. They are: (i) Supporting persons engaged in acts of terror; (ii) Actions that could enhance the military capability of, or the ability to support terrorism of governments that have been designated by the Secretary of State as having repeatedly provided support for acts of international terrorism; (iii) Transferring, developing, servicing, repairing, or producing conventional weapons in a manner that is contrary to United States national security or foreign policy interests or enabling such transfer, development, service, repair or production by supplying parts, components, technology, or financing for such activity; (iv) Deliberately failing or refusing to comply with an end use check conducted by or on behalf of BIS or the Department of State, Directorate

of Defense Trade Controls by denying access, by refusing to provide information about parties to a transaction, or by providing information about such parties that is false or that cannot be verified or authenticated; and (v) Engaging in conduct that poses a risk of violating the EAR and raises sufficient concern that prior review of exports or reexports involving the party and the possible imposition of license conditions or license denial enhances BIS's ability to prevent violations of the EAR.

These criteria are illustrative of conduct that could be contrary to the national security or foreign policy interests of the United States. A party could be added to the Entity List if specific and articulable facts provided reasonable cause to believe that it is involved in, has been involved in, or poses a significant risk of being or becoming involved in one of the five listed illustrative activities or other activities that are contrary to U.S. national security or foreign policy interests.

This proposed rule also would authorize BIS to modify the license requirements, license exception availability or license application review policy that applies to any entity placed on the Entity List pursuant to this rule.

This proposed rule would not be used to add to the Entity List a party to which exports or reexports require a license pursuant to §§ 744.12, 744.13, 744.14 or 744.18 of the EAR. Those sections impose license requirements because of the presence of certain parties on the List of Specially Designated Nationals and Blocked Persons published by the U.S. Department of the Treasury, Office of Foreign Assets Control. This proposed rule would not authorize placing U.S. persons, as defined in § 772.1 of the EAR, on the Entity List.

All impositions of license requirements or statements of license application review policy or any modification thereof made pursuant to this rule would be required to be made by publishing an amendment to the Entity List found at Supplement No. 4 to part 744 of the Export Administration Regulations. Under this proposed rule, license exceptions are not available for any entity added to the Entity List pursuant to this rule unless specifically authorized in the entry for the entity.

This proposed rule would explicitly set forth the ability of a party who is listed on the Entity List to request that its listing be removed or modified. Such requests, including reasons therefor, would have to be made in writing, and BIS would be required to provide a

written response that would be the final agency decision on the request. Such requests would be reviewed by the Departments of Commerce, State, Defense, and Energy and, if appropriate in a particular case, the Treasury. The interagency decision, as communicated to the requesting entity by BIS, would be the final agency action on such a request.

This proposed rule would make a conforming change to the definition of U.S. person in § 772.1 by adding § 744.11 to the list of sections to which that definition applies.

The license requirements proposed by this rule would be an expansion of foreign policy export controls that would require a report to Congress in accordance with section 6 of the Export Administration Act. BIS will submit the appropriate report to Congress before implementing any such expanded controls.

Request for Comments

BIS is seeking public comments on this proposed rule and will consider all comments received on or before August 6, 2007 in developing any final rule. Comments received after that date will be considered if possible, but their consideration cannot be assured. All public comments on this proposed rule must be in writing (including fax or e-mail) and will be a matter of public record, available for public inspection and copying. The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482-0953 for assistance.

Rulemaking Requirements

1. This rule has been determined to be a significant rule pursuant to Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves a collection of information that has been approved by the OMB under control number 0694-0088, "Multi-

Purpose Application," which carries a burden hour estimate of 58 minutes to prepare and submit form BIS-748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Additionally, this rule contains a new collection of information subject to review and approval by OMB under the Paperwork Reduction Act. This collection will be submitted to OMB for approval. This rule proposes a procedure for a listed party to request removal or modification of its listing, as set forth in proposed § 744.16. BIS estimates that this new collection will involve an annual burden of 15 hours.

Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, OMB Desk Officer, by e-mail at david_rostker@omb.eop.gov or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as this term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. However, to obtain the benefit of a variety of viewpoints before issuing any final rule, BIS is issuing this rule in proposed form with a request for comments.

List of Subjects

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 772

Exports.

Accordingly, parts 744 and 772 of the Export Administration Regulations (15 CFR parts 730-774) are amended as follows:

PART 744—[AMENDED]

1. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006).

2. In § 744.1(a)(1), a new sentence immediately following the current sixth sentence and a new sentence immediately following the current tenth sentence are added, to read as follows:

§ 744.1 General provisions.

(a)(1) * * * Section 744.11 imposes license requirements, to the extent specified in Supplement No. 4 of this part on entities listed in Supplement No. 4 of this part for activities contrary to the national security or foreign policy interests of the United States. * * * Section 744.16 sets forth the right of a party listed in Supplement No. 4 of this part to request that its listing be removed or modified.

3. Section § 744.11 is added to read as follows:

§ 744.11 License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States.

BIS may impose foreign policy export and reexport license requirements and limitations on availability of license exceptions and may set license application review policy based on the criteria in this section. Such requirements, limitations and policy are in addition to those set forth elsewhere in the EAR. License requirements, limitations on use of license exceptions and license application review policy will be imposed under this section by adding an entity to the Entity List with a reference to this section and by stating on the Entity List the license requirements and license application review policy that apply to that entity. BIS may remove an entity from the Entity List if it is no longer engaged in the activities described in paragraph (b) of this section and is unlikely to engage in such activities in the future. BIS may modify the license exception limitations and license application review policy

that applies to a particular entity to implement the policies of this section. Any modification to the Entity List proposed to be made pursuant to this section will be reviewed by the Departments of Commerce, State, and Defense, and Energy and the Treasury as appropriate.

(a) *License Requirement, Availability of License Exceptions, and License Application Review Policy.* A license is required, to the extent specified on the Entity List, to export or reexport any item subject to the EAR to an entity that is listed on the Entity List in an entry that contains a reference to this section. License Exceptions may not be used unless authorized in that entry. Applications for licenses required by this section will be evaluated as stated in that entry in addition to any other applicable review policy stated elsewhere in the EAR.

(b) *Criteria for revising the Entity List.* Entities that BIS has reasonable cause to believe, based on specific and articulable facts, have been, are, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such entities may be added to the Entity List pursuant to this section. This section may not be used to place on the Entity List any party to which exports or reexports require a license pursuant to §§ 744.12, 744.13, 744.14 or 744.18 of this part. This section may not be used to place on the Entity List any party if exports or reexports to that party of items that are subject to the EAR are prohibited by or require a license from another U.S. government agency. This section may not be used to place any U.S. person, as defined in § 772.1, on the Entity List. Examples of activities that could be contrary to the national security or foreign policy interests of the United States include:

- (1) Supporting persons engaged in acts of terror;
- (2) Actions that could enhance the military capability of, or the ability to support terrorism of governments that have been designated by the Secretary of State as having repeatedly provided support for acts of international terrorism;
- (3) Transferring, developing, servicing, repairing or producing conventional weapons in a manner that is contrary to United States national security or foreign policy interests or enabling such transfer, service, repair, development, or production by supplying parts, components, technology, or financing for such activity;

(4) Deliberately failing or refusing to comply with an end use check conducted by or on behalf of BIS or the Directorate of Defense Trade Controls of the Department of State, by denying access, by refusing to provide information about parties to a transaction, or by providing information about such parties that is false or that cannot be verified or authenticated; or

(5) Engaging in conduct that poses a risk of violating the EAR and raises sufficient concern that BIS believes that prior review of exports or reexports involving the party and the possible imposition of license conditions or license denial enhances BIS's ability to prevent violations of the EAR.

4. Section 744.16 is added to read as follows:

§ 744.16 Procedure for requesting removal or modification of an Entity List Entity.

Any entity listed on the Entity List may request that its listing be removed or modified.

(a) All such requests, including reasons therefor, must be in writing and sent to: (Address to be added in final rule).

(b) BIS will review such requests in conjunction with the Departments of Defense, State and Energy, and if appropriate in a particular case, the Treasury.

(c) The Chair of the End User Review Committee will convey the decision on the request to the requester in writing. That decision will be the final agency action on the request.

PART 772—[AMENDED]

5. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

6. In § 772.1 the definition of U.S. person is amended by revising paragraph (a) introductory text to read as follows:

§ 772.1 Definition of terms as used in the Export Administration Regulations (EAR).

* * *

U.S. Person. (a) For purposes of §§ 744.6, 744.10, 744.11, 744.12, 744.13, and 744.14 of the EAR, the term U.S. person includes:

* * * * *

Dated: May 29, 2007.

Christopher A. Padilla,
Assistant Secretary for Export
Administration.

[FR Doc. E7-10788 Filed 6-4-07; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF STATE

22 CFR Part 62

RIN 1400-AC35

[Public Notice 5797]

Exchange Visitor Program—College and University Students, Student Interns

AGENCY: Department of State.

ACTION: Proposed rule with request for comments.

SUMMARY: The Department is hereby proposing to revise its regulations concerning College and University Students. The proposed Rule, if adopted, will create a new subcategory of the College and University Student category—"Student Interns". Participation in this new sub-category is open to foreign students enrolled and pursuing full-time studies at a post-secondary educational institution outside the United States. Student interns may participate in a student internship program for up to 12 months at each degree level.

DATES: The Department will accept comments on the proposed regulation from the public up to August 6, 2007.

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

- *Persons with access to the Internet may also view this notice and provide comments by going to the regulations.gov Web site at: <http://www.regulations.gov/index.cfm>.*

- *Mail (paper, disk, or CD-ROM submissions):* U.S. Department of State, Office of Exchange Coordination and Designation, SA-44, 301 4th Street, SW., Room 734, Washington, DC 20547

- *E-mail: jexchanges@state.gov.* You must include the RIN (1400-xxxx) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Director, Office of Exchange Coordination and Designation, U.S. Department of State, SA-44, 301 4th Street, SW., Room 734, Washington, DC 20547; or e-mail at jexchanges@state.gov.

SUPPLEMENTARY INFORMATION: The Department of State (Department) designates U.S. government, academic and private sector entities to conduct educational and cultural exchange programs pursuant to a broad grant of authority provided by the Mutual Educational and Cultural Exchange Act of 1961, as amended (Fulbright-Hays Act). Under this authority, designated program sponsors facilitate the entry into the United States of more than

300,000 exchange participants each year.

The former United States Information Agency (USIA) and, as of October 1, 1999, its successor, the Department, have promulgated regulations governing the Exchange Visitor Program that are set forth at 22 CFR 62. Regulations governing exchange visitor college and university students appear at 22 CFR 62.23.

The Department plans to publish an Interim Final Rule relating to exchange visitor trainees and interns (see 22 CFR 62.22). This Interim Final Rule creates a new exchange visitor category—the Intern—for private sector organizations sponsoring individuals who are currently enrolled in and pursuing studies at a degree- or certificate-granting post-secondary academic institution outside the United States or have graduated from such an institution no more than 12 months prior to his/her exchange visitor program begin date, and who enters the United States to participate in a structured and guided work-based internship program in his/her specific academic field.

This Proposed Rule is promulgated to make the use of a similar intern category available to American college and university Exchange Visitor Program designated sponsors. Generally speaking, the proposed regulations governing the new student intern category track the internship regulations applicable to training program sponsors.

The new student intern sub-category is available to foreign students enrolled in accredited post-secondary educational institutions outside the United States. Student interns may participate in a student internship program for up to 12 months at each degree level. For example, if a student comes to the United States to participate in a student internship program at the equivalent of a baccalaureate program, he/she could remain in the United States for up to 12 months. The same individual would be permitted another student internship program up to 12 months at the next higher degree level, such as a masters degree program, or students changing majors and obtaining a new degree.

Selection criteria for the new student intern sub-category must include the following requirements: The student must be accepted to participate in an internship by the post-secondary educational institution listed as the sponsor on his or her Form DS-2019 and is primarily in the United States to engage in a student internship program rather than to engage in employment or provide services to an employer; the student intern must be in good

academic standing with the post-secondary educational institution in which he or she is enrolled and currently participating outside the United States; and the student intern will return to the academic program in the home educational institution abroad after completion of the student internship program which is required to fulfill a degree requirement.

The new regulations outline provisions for dealing with the sponsor's obligations and any third parties—either domestic or overseas—with whom sponsors contract to assist them in recruiting, selecting, screening, orienting, placing, training, or evaluating foreign nationals who participate in student internship programs. The regulations require sponsors to enter into a written agreement with third parties outlining the full relationship between the parties on all matters involving the Exchange Visitor Program. Third parties must provide a Dun & Bradstreet identification number. At the recommendation of exchange community comments, the Department is also changing its Regulations to require sponsors to screen and vet all third parties.

A wide range of U.S. businesses and governmental or non-governmental entities host foreign students in student internship programs on behalf of designated sponsors. These regulations set baseline standards to which sponsors are required to adhere to ensure that such host organizations are legitimate entities, are appropriately registered or licensed to conduct their activities in their jurisdiction, and possess and maintain the ability and resources to provide structured and guided work-based experience according to individualized Training and Internship Placement Plans (T/IPP—Form DS-7002). In some instances, sponsors will also be required to conduct a site visit of the host organization's location. The goal of the sponsor in vetting host organizations is to collect sufficient evidence to support a finding that participants are properly placed with host organizations that meet these standards.

In order to participate in the student intern sub-category, designated sponsors must complete and obtain requisite signatures for a T/IPP. The information may be obtained from the intern's dean or academic advisor at the intern's home institution, which sets forth: The goals and objectives of the internship; a description of the student internship program (location; contact information; number of hours per week of work and compensation therefore, if any; a

description of the supervision the intern will receive; and the dates of the student internship program); a description of how the student internship program will enhance the student intern's educational program in the home institution; a determination as to whether and to what extent the student intern has previously taken part in a student internship program in the United States; and, finally, a determination whether all the criteria and program requirements of the new regulation are met.

In order to ensure the quality of the internship program, program sponsors must evaluate the effectiveness and appropriateness of the internship program in achieving its stated goals and objectives.

The Proposed Rule, if adopted, will permit student interns to engage in full-time employment during the student internship program as outlined on their T/IPP, with or without wages or other compensation. Employment is not required for participation in the program. In those cases where the student intern is employed, all employment activities must be approved by the home institution's dean or academic advisor, and the responsible officer.

Finally, the regulations prohibit sponsors from placing student interns in unskilled or casual labor positions, in positions that require or involve child care or elder care, positions in the field of aviation, or in any kind of position that involves patient care or contact. Further, sponsors must not place student interns in positions that involve more than 20 per cent clerical work during their programs.

Regulatory Analysis

Administrative Procedure Act

The Department has determined that this Proposed Rule involves a foreign affairs function of the United States and is consequently exempt from the procedures required by 5 U.S.C. 553 pursuant to 5 U.S.C. 553(a)(1). Nonetheless, because of its importance to the public, the Department has elected to solicit comments during a 60-day comment period.

Small Business Regulatory Enforcement Fairness Act of 1996

It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. It will not have a substantial effect on the States, the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, it has been determined that the Proposed Rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13132.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Since this rulemaking is exempt from 5 U.S.C 553, and no other law requires the Department to give notice of proposed rulemaking, this rulemaking also is not subject to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and Executive Order 13272, section 3(b).

Executive Order 12866, as Amended

The Department of State does not consider this Proposed Final Rule to be a "significant regulatory action" under Executive Order 12866, as amended, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the Proposed Rule to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 12988

The Department has reviewed this Proposed Rule in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Pub. L. 104-4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Executive Orders 12372 and 13132

This regulation 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism

implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Paperwork Reduction Act

The information collection requirements contained in this rulemaking (Form DS-7002) have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35, under OMB Control Number 1405-0170, expiration date: 07/31/2009.

List of Subjects in 22 CFR Part 62

Cultural exchange programs, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the Department of State proposes to amend 22 CFR part 62 as follows:

PART 62—EXCHANGE VISITOR PROGRAM

1. The authority citation for part 62 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258, 1372, 170101775; 22 U.S.C. 1431-1442, 2451-2460, 6501; 5 U.S.C. app. 1-11 Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168.

2. Section 62.2 is amended by adding definitions for “Student Intern” and “Student Internship Program” to read as follows:

§ 62.2 Definitions.

* * * * *

Student Intern means a foreign national who is currently enrolled in and pursuing studies at a degree-or certificate-granting post-secondary academic institution outside the United States and who enters the United States to participate in a structured and guided work-based student internship program in his/her specific academic field for academic credit.

Student Internship Program means a structured and guided work-based learning program as set forth in an individualized Training/Internship Placement Plan (T/IPP) that fulfills a student’s academic degree, recognizes the need for work-based experience, provides on-the-job exposure to American techniques, methodologies, and technology, and enhances the student intern’s knowledge of American culture and society.

* * * * *

3. Section 62.4 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 62.4 Categories of participant eligibility.

Sponsors may select foreign nationals to participate in their exchange visitor programs. Participation by foreign nationals in an exchange visitor program is limited to individuals who are engaged in the following activities in the United States:

- (a) *Student.* An individual who is:
 - (1) Studying in the United States:
 - (i) Pursuing a full course of study at a secondary accredited educational institution;
 - (ii) Pursuing a full course of study leading to or culminating in the award of a U.S. degree from a post-secondary accredited educational institution; or
 - (iii) Engaged full-time in a non-degree prescribed course of study of up to 24 months duration conducted by:
 - (A) A post-secondary accredited educational institution; or
 - (B) An institute approved by or acceptable to the post-secondary accredited educational institution where the student is to be enrolled upon completion of the non-degree program;
 - (2) Engaged in academic training as permitted in § 62.23(f); or
 - (3) Engaged in English language training at:
 - (i) A post-secondary accredited educational institution, or
 - (ii) An institute approved by or acceptable to the post-secondary accredited educational institution where the college or university student is to be enrolled upon completion of the language training; or
 - (4) Engaged full-time in a student internship program conducted by a post-secondary accredited educational institution.

* * * * *

4. Section 62.23 is revised to read as follows:

§ 62.23 College and university students.

(a) *Purpose.* Programs under this section provide foreign students the opportunity to participate in a designated exchange visitor program while studying at a degree-granting post-secondary accredited educational institution or participating in a student internship program which fulfills the student’s academic study. Exchange visitors sponsored in this category may participate in degree, non-degree, or student internship programs. Such exchanges are intended to promote mutual understanding by fostering the exchange of ideas between foreign students and their American counterparts.

(b) *Designation.* The Department of State may, in its sole discretion, designate bona fide programs which offer foreign nationals the opportunity to study in the United States at post-secondary accredited educational institutions or participate in student internship programs.

(c) *Selection criteria.* Sponsors select the college and university students who participate in their exchange visitor programs. Sponsors must secure sufficient background information on the students to ensure that they have the academic credentials required for their program. Students are eligible for participation in the Exchange Visitor Program if at any time during their educational program in the United States:

- (1) They or their program are financed directly or indirectly by:
 - (i) The United States Government;
 - (ii) The government of the student’s home country; or
 - (iii) An international organization of which the United States is a member by treaty or statute;
- (2) The programs are carried out pursuant to an agreement between the United States Government and a foreign government;
- (3) The program is carried out pursuant to written agreement between:
 - (i) American and foreign educational institutions;
 - (ii) An American educational institution and a foreign government; or
 - (iii) A state or local government in the United States and a foreign government;
- (4) The exchange visitors are supported substantially by funding from any source other than personal or family funds, or
- (5) The exchange visitor is participating in a student internship program as described in paragraph (i) of this section.

(d) *Admissions requirement.* In addition to satisfying the requirements of § 62.10(a), sponsors must ensure that the exchange visitor student has been admitted to, or accepted for a student internship program offered by, the post-secondary accredited educational institution(s) listed on the Form DS-2019 before issuing the Form.

(e) *Full course of study requirement.* Exchange visitor students, other than student interns described in paragraph (i), must pursue a full course of study at a post-secondary accredited educational institution in the United States as defined in § 62.2, except under the following circumstances:

- (1) *Vacation.* During official school breaks and summer vacations if the student is eligible and intends to register for the next term. A student

attending a school on a quarter or trimester calendar may be permitted to take the annual vacation during any one of the quarters or trimesters instead of during the summer.

(2) *Medical illness.* If the student is compelled to reduce or interrupt a full course of study due to an illness or medical condition and the student presents to the responsible officer a written statement from a physician requiring or recommending an interruption or reduction in studies.

(3) *Bona fide academic reason.* If the student is compelled to pursue less than a full course of study for a term and the student presents to the responsible officer a written statement from the academic dean or advisor recommending the student to reduce his or her academic load to less than a full course of study due to an academic reason.

(4) *Non-degree program.* If the student is engaged full time in a prescribed course of study in a non-degree program of up to 24 months duration conducted by a post-secondary accredited educational institution.

(5) *Academic training.* If the student is participating in authorized academic training in accordance with paragraph (f) of this section.

(6) *Final term.* If the student needs less than a full course of study to complete the academic requirements in his or her final term.

(f) *Academic training—(1) Purpose.* A student, other than a student intern described in paragraph (i) of this section, may participate in academic training programs during his or her studies, without wages or other remuneration, with the approval of the academic dean or advisor and the responsible officer.

(2) *Conditions.* A student, other than a student intern described in paragraph (i) of this section, may be authorized to participate in academic training programs for wages or other remuneration:

(i) During his or her studies; or
(ii) Commencing not later than thirty (30) days after completion of his or her studies, if the criteria, time limitations, procedures, and evaluations listed below in paragraphs (f)(3) to (6) are satisfied:

(3) *Criteria:* (i) The student is primarily in the United States to study rather than engage in academic training;

(ii) The student is participating in academic training that is directly related to his or her major field of study at the post-secondary accredited educational institution listed on his or her Form DS-2019;

(iii) The student is in good academic standing with the post-secondary accredited educational institution; and

(iv) The student receives written approval in advance from the responsible officer for the duration and type of academic training.

(4) *Time limitations.* The exchange visitor is authorized to participate in academic training for the length of time necessary to complete the goals and objectives of the training, provided that the amount of time for academic training:

(i) Is approved by the academic dean or advisor and approved by the responsible officer;

(ii) For undergraduate and pre-doctoral training, does not exceed eighteen (18) months, inclusive of any prior academic training in the United States, or the period of full course of study in the United States, whichever is less; except, additional time for academic training is allowed to the extent necessary for the exchange visitor to satisfy the mandatory requirements of his or her degree program in the United States;

(iii) For post-doctoral training, does not exceed a total of thirty-six (36) months, inclusive of any prior academic training in the United States as an exchange visitor, or the period of the full course of study in the United States, whichever is less.

(5) *Procedures.* To obtain authorization to engage in academic training:

(i) The exchange visitor must present to the responsible officer a letter of recommendation from the student's academic dean or advisor setting forth:

(A) The goals and objectives of the specific academic training program;
(B) A description of the academic training program, including its location, the name and address of the training supervisor, number of hours per week, and dates of the training;

(C) How the academic training relates to the student's major field of study; and

(D) Why it is an integral or critical part of the academic program of the exchange visitor student.

(ii) The responsible officer must:
(A) Determine if and to what extent the student has previously participated in academic training as an exchange visitor student, in order to ensure the student does not exceed the period permitted in paragraph (f) of this section;

(B) Review the letter of recommendation required in paragraph (f)(5)(i) of this section; and

(C) Make a written determination of whether the academic training currently being requested is warranted and the

criteria and time limitations set forth in paragraph (f)(3) and (4) of this section are satisfied.

(6) *Evaluation requirements.* The sponsor must evaluate the effectiveness and appropriateness of the academic training in achieving the stated goals and objectives in order to ensure the quality of the academic training program.

(g) *Student employment.* Exchange visitor students, other than student interns described in paragraph (i) of this section, may engage in part-time employment when the following criteria and conditions are satisfied.

(1) *The student employment:*

(i) Is pursuant to the terms of a scholarship, fellowship, or assistantship;

(ii) Occurs on the premises of the post-secondary accredited educational institution the visitor is authorized to attend; or

(iii) Occurs off-campus when necessary because of serious, urgent, and unforeseen economic circumstances which have arisen since acquiring exchange visitor status.

(2) Exchange visitor students may engage in employment as provided in paragraph (g)(1) of this section if the:

(i) Student is in good academic standing at the post-secondary accredited educational institution;

(ii) Student continues to engage in a full course of study, except for official school breaks and the student's annual vacation;

(iii) Employment totals no more than 20 hours per week, except during official school breaks and the student's annual vacation; and

(iv) The responsible officer has approved the specific employment in advance and in writing. Such approval may be valid up to twelve months, but is automatically withdrawn if the student's program is transferred or terminated.

(h) *Duration of participation—(1)*

Degree students. Exchange visitor students who are in degree programs may be authorized to participate in the Exchange Visitor Program as long as they are either:

(i) Studying at the post-secondary accredited educational institution listed on their Form DS-2019 and are:

(A) Pursuing a full course of study as set forth in paragraph (e) of this section, and

(B) Maintaining satisfactory advancement towards the completion of their academic program; or

(ii) Participating in an authorized academic training program as permitted in paragraph (f) of this section.

(2) *Non-degree students.* Exchange visitor students who are in non-degree

programs may be authorized to participate in the Exchange Visitor Program for up to 24 months. Such students must be:

(i) Studying at the post-secondary accredited educational institution listed on their Form DS-2019 and are:

(A) Participating full-time in a prescribed course of study; and

(B) Maintaining satisfactory advancement towards the completion of their academic program; or

(ii) Participating in an authorized academic training program as permitted in paragraph (f) of this section;

(3) *Student Interns.* Exchange visitor student interns participating in a student internship program may be authorized to participate in the Exchange Visitor Program for up to 12 months for each degree/major as permitted in paragraph (i) of this section as long as they are:

(i) Engaged full-time in a student internship program sponsored by the post-secondary accredited educational institution which issued Form DS-2019; and

(ii) Maintains satisfactory advancement towards the completion of their student internship program.

(i) *Student Interns.* The student intern is a foreign national enrolled in an accredited post-secondary educational institution outside the United States and is participating in a student internship program that will fulfill the educational objectives for their current degree program at their home institution, and meets the following requirements:

(1) *Criteria.* (i) In addition to satisfying the general requirements set forth in § 62.10(a), sponsors must ensure that student interns have verifiable English language skills sufficient to function on a day-to-day basis in their training environment. English language proficiency must be verified by a recognized English language test, by signed documentation from an academic institution or English language school, or through an interview conducted by the sponsor or a third party in-person, by videoconference, or by web camera.

(ii) The student intern is primarily in the United States to engage in a student internship program rather than to engage in employment or provide services to an employer;

(iii) The student intern has been accepted into a student internship program at the post-secondary accredited educational institution listed on his or her Form DS-2019;

(iv) The student intern is in good academic standing with the post-secondary educational institution in which he or she is enrolled outside the United States; and

(v) The student intern will return to the academic program in the educational institution abroad after completion of the student internship program to fulfill a degree requirement.

(2) *Program requirements.* In addition to the requirements set forth in Subpart A, sponsors must ensure that:

(i) They do not issue Forms DS-2019 to potential participants in student internship programs until they secure placements for student interns and complete and secure requisite signatures on Form DS-7002 (T/IPP);

(ii) Student interns have sufficient finances to support themselves and their dependents for their entire stay in the United States, including housing and living expenses; and

(iii) The student internship program exposes participants to American techniques, methodologies, and technology and expands upon the participants' existing knowledge and skills. Programs must not duplicate the student intern's prior experience received previously.

(3) *Obligations of Student Internship Program Sponsors.* (i) Sponsors designated by the Department to administer student internship programs must:

(A) Ensure that the student internship programs are full-time (minimum of 32 hours a week); and

(B) Ensure that any host organizations and third parties involved in the recruitment, selection, screening, placement, orientation, evaluation for, or the provision of student internship programs are sufficiently educated on the goals, objectives, and regulations of the Exchange Visitor Program and adhere to all regulations set forth in this Part as well as all additional terms and conditions governing Exchange Visitor Program administration that the Department may from time to time impose.

(ii) Sponsors must ensure that they or any host organization acting on the sponsor's behalf:

(A) Have sufficient resources, plant, equipment, and trained personnel available to provide the specified student internship program;

(B) Do not displace full- or part-time or temporary or permanent American workers or serve to fill a labor need and ensure that the positions that student interns fill exist solely to assist student interns in achieving the objectives of their participation in student internship programs; and

(C) Certify that student internship programs in the field of agriculture meet all the requirements of the Fair Labor Standards Act, as amended (29 U.S.C. 201 *et seq.*) and the Migrant and

Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801 *et seq.*).

(iii) Screening and Vetting Host Organizations. Sponsors must adequately screen all potential host organizations at which a student intern will be placed by obtaining the following information:

(A) The Dun & Bradstreet identification number (unless the host organization is an academic institution, government entity, or family farm);

(B) Employer Identification Number (EIN) used for tax purposes;

(C) Verification of telephone number, address, and professional activities via advertising, brochures, Web site, and/or feedback from prior participants; and

(D) Verification of Workman's Compensation Insurance Policy; and

(iv) *Site Visits.* Sponsors must conduct site visits of host organizations that have not previously participated successfully in the sponsor's student internship programs and that have fewer than 25 employees or less than three million dollars in annual revenue.

Placements at academic institutions or at Federal, State, or local government offices are specifically excluded from this requirement. The purpose of the site visits is for the sponsors to ensure that host organizations possess and maintain the ability and resources to provide structured and guided work-based learning experiences according to the individualized T/IPP and that host organizations understand and meet their obligations set forth in this part.

(4) *Use of third parties.* Sponsors may engage third parties (including, but not limited to host organizations, partners, local businesses, governmental entities, academic institutions, and other foreign or domestic agents) to assist them in the conduct of their designated student internship programs. Such third parties must have an executed written agreement with the sponsor to act on behalf of the sponsor in the conduct of the sponsor's program. This agreement must outline the full relationship between the sponsor and third party on all matters involving the administration of their exchange visitor program. A sponsor's use of a third party does not relieve the sponsor of its obligations to comply with and to ensure third party compliance with Exchange Visitor Program regulations. Any failure by any third party to comply with the regulations set forth in this Part or with any additional terms and conditions governing Exchange Visitor Program administration that the Department may from time to time impose will be imputed to the sponsor.

(5) *Evaluation requirements.* In order to ensure the quality of student internship programs, sponsors must develop procedures for evaluating all student interns. All required evaluations must be completed prior to the conclusion of a student internship program, and the student interns and their immediate supervisors must sign the evaluation forms. For programs exceeding six months' duration, at a minimum, midpoint and concluding evaluations are required. For programs of six months or less, at a minimum, concluding evaluations are required. Sponsors must retain student intern evaluations (electronic or hard copy) for a period of at least three years following the completion of each student internship program.

(6) *Employment, wages, or remuneration.* A student intern is permitted to engage in full-time employment during the student internship program as outlined on their T/IPP, with or without wages or other compensation. Employment is not required for participation in the program. In those cases where the student intern is employed, all employment activities must be approved by the home institution's dean or academic advisor, and the responsible officer.

(7) *Training/Internship Placement Plan (Form DS-7002).* (i) Sponsors must fully complete and obtain requisite signatures for a Form DS-7002 for each student intern before issuing a Form DS-2019. Sponsors must provide each signatory an executed copy of the Form DS-7002. Upon request, student interns must present their fully executed Form DS-7002 to a Consular Official during their visa interview.

(ii) To further distinguish between work-based learning for student interns, which is permitted, and ordinary employment or unskilled labor which are not, all T/IPPs must:

(A) State the specific goals and objectives of the student internship program (for each phase or component, if applicable);

(B) Detail the knowledge, skills, or techniques to be imparted to the student intern (for each phase or component, if applicable); and

(C) Describe the methods of performance evaluation and the frequency of supervision (for each phase or component, if applicable).

(8) *Program Exclusions.* Sponsors designated by the Department to administer student internship programs must not:

(i) Place student interns in unskilled or casual labor positions, in positions that require or involve child care or

elder care, positions in the field of aviation, or in clinical or any other kind of work that involves patient care or contact, including any work that would require student interns to provide therapy, medication, or other clinical or medical care (e.g., sports or physical therapy, psychological counseling, nursing, dentistry, veterinary medicine, social work, speech therapy, or early childhood education);

(ii) Place student interns in positions, occupations, or businesses that could bring the Exchange Visitor Program or the Department into notoriety or disrepute; or

(iii) Engage or otherwise cooperate or contract with a staffing/employment agency to recruit, screen, orient, place, evaluate, or train student interns, or in any other way involve such agencies in an Exchange Visitor Program student internship program.

(iv) Designated sponsors must ensure that the duties of student interns as outlined in the T/IPPs will not involve more than 20 percent clerical work, and that all tasks assigned to student interns are necessary for the completion of student internship program assignments.

(v) Sponsors must also ensure that all "Hospitality and Tourism" student internship programs of six months or longer contain at least three departmental or functional rotations.

Dated: May 18, 2007.

Stanley S. Colvin,

Director, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E7-10606 Filed 6-4-07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 661

[FHWA Docket No. FHWA-2007-27536]

RIN 2125-AF20

Indian Reservation Road Bridge Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: Section 1119 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144) makes changes to the Indian Reservation Road Bridge Program (IRRBP). It amends the existing IRRBP

by establishing new policies and provisions. In addition, it authorizes \$14 million of IRRBP funds per year for the replacement or rehabilitation of structurally deficient or functionally obsolete Indian Reservation Road (IRR) bridges. In accordance with these changes, the FHWA, with input and recommendations from the Bureau of Indian Affairs (BIA) and the Indian Reservation Roads Coordinating Committee (IRRCC), is proposing funding distribution procedures for BIA owned and non-BIA owned IRR bridge projects. The proposed changes allow funding for preliminary engineering (PE), construction engineering (CE), and construction for the replacement or rehabilitation of structurally deficient or functionally obsolete IRR bridges.

DATES: Comments must be received on or before August 6, 2007. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dms.dot.gov/submit> or fax comments to (202) 493-2251.

Alternatively, comments may be submitted to the Federal eRulemaking portal at <http://www.regulations.gov>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78) or you may visit <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sparrow, Federal Lands Highway, (202) 366-9483; or Ms. Vivian Philbin, Federal Lands Highway Counsel, (720) 963-3445; Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to

4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dms.dot.gov/submit>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: <http://www.archives.gov> and the Government Printing Office's Web page at: <http://www.access.gpo.gov/nara>.

Background

The Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107), established the IRRBP, codified at 23 U.S.C. 202(d)(4)(B), under which a minimum of \$13 million of IRR Program funds was set aside for a nationwide priority program for improving deficient IRR bridges. On May 8, 2003, the FHWA published a final rule for the IRRBP at 68 FR 24642 (23 CFR 661). This present rulemaking is necessary due to recent legislative changes in section 1119 of SAFETEA-LU (Pub. L. 109-59, 119 Stat. 1144).

Section 1119 of SAFETEA-LU authorizes \$14 million per year for fiscal years 2005 through 2009 from the Highway Trust Fund for the IRRBP to carry out PE, CE, and construction to replace or rehabilitate structurally deficient or functionally obsolete IRR bridges. Pursuant to these new statutory requirements, the FHWA developed proposed amendments to the existing IRRBP regulation. These amendments were distributed to the IRRCC for its review and comment prior to this publication. The IRRCC was established under 25 CFR part 170 by the Secretaries of the Interior and Transportation, to provide input and recommendation to BIA and FHWA in developing IRR Program policies and procedures and to supplement government-to-government consultation by coordinating and obtaining input from Tribes, BIA, and FHWA. The IRRCC consists of a primary and alternate Tribal representative from each of the 12 BIA Regions, along with 2 non-voting Federal representatives (one each from BIA and FHWA). The proposed changes were discussed at several IRRCC meetings and in detail with the IRRCC Funding Workgroup.

The following information highlights the major issues in the discussion at several IRRCC meetings:

1. *First Come, First Serve Basis*—This is the present funding methodology of the IRRBP. The IRRCC's position is that this method only works if there are sufficient funds. The IRRCC recommends using the scoring matrix method similar to the IRR High Priority Project (HPP) program in prioritizing the applications for bridge funding as an alternate method. Although the IRRCC believes this method would provide IRRBP funds to the project that has been rated as having the greatest need, the FHWA believes that its current practice has worked well in equitably addressing bridge rehabilitation and replacement projects in the past.

2. *PE and Construction Costs*—The IRRCC recommends that the set-aside for PE funds should be up to 15 percent of the annual IRRBP allocation. It further recommends that the cost contribution for BIA owned and non-BIA owned IRR bridges should be up to \$150,000 for each project. The FHWA agrees with this recommendation, and proposes to make these changes.

For construction, the IRRCC recommends that the funding ceiling for non-BIA owned bridge projects should be retained at \$1,500,000 per project to meet the rising cost of construction. After reviewing the regulations and the past history and project size of non-BIA owned bridge projects funded under this program, the FHWA proposes to limit the funding for those construction projects to \$1,000,000 in order to maximize the number of bridge projects funded.

3. *The use of IRR Construction Funds on IRRBP Projects*—The IRRCC requests a clear explanation as to how a Tribe may reimburse its IRR construction funds if said funds are used to finance IRRBP projects in advance of receipt of IRRBP funds. This has been included in the proposed changes to the regulation.

4. *Removal of historic bridges*—The FHWA proposes to clarify that existing IRR bridges replaced under the IRRBP must be taken completely out of service and removed from the IRR inventory. This is done so that in the future only the new bridge will be eligible for IRRBP fund consideration. However, the IRRCC requests and the FHWA agrees to propose to allow a Tribe the ability to request a special exemption, from BIADOT, regarding the "removal from service" requirement if the bridge is considered historic.

Section-by-Section Discussion of the Proposed Amendments

Descriptions of the regulatory changes proposed in this part are set forth below. All members of the public who are affected by the amendments to the

regulation are encouraged to submit comments in writing. Comments from interested Tribal members are particularly requested. We have made several minor grammatical changes, such as shortening sentences for clarity, which will not change the meaning or intent of the regulation. These minor changes are not addressed in the Section-by-Section discussion.

Who must comply with this regulation? (661.3)

The requirement for a set of plans, specifications, and estimates from a public authority has been moved to 661.27 for clarification purposes. We propose to include preliminary engineering (PE) as an eligible activity, as established in the section 1119(g) of SAFETEA-LU.

What definitions apply to this regulation? (661.5)

We propose to add the following definitions in this section:

Approach Roadway—the FHWA proposes to add this definition in order to clarify what is eligible in section 661.51.

Life Cycle Cost Analysis (LCCA)—the FHWA proposes to add this definition in order to clarify eligibility for rehabilitation in section 661.21.

National Bridge Inventory (NBI)—the FHWA proposes to add this definition in order to clarify eligibility requirements in section 661.17.

Plans, Specifications, and Estimate (PS&E)—the FHWA proposes to add this definition in order to clarify what is required for a complete application package as set forth in section 661.27.

Preliminary Engineering—the FHWA proposes to add this definition because this is now an eligible activity for this program as set forth in section 1119(g) of SAFETEA-LU.

Structure Inventory and Appraisal (SI&A)—the FHWA proposes to add definition in order to clarify what is required for a complete application package as set forth in sections 661.25 and 661.27.

What is the IRRBP? (661.7)

This section has been modified to delete obsolete language about the annual funding of the IRRBP program. Section 1119(g) of SAFETEA-LU changed the annual funding amount provided to this program. However, the FHWA proposes to delete mention of specific funding amounts in this section, and has instead stated the total funding available in section 661.9.

What is the total funding available for the IRRBP? (661.9)

The FHWA proposes to modify this section to reflect the most recent funding amounts authorized by section 1119(g) of SAFETEA-LU.

What are the eligible activities for IRRBP funds? (661.15)

The FHWA proposes to consolidate the eligibility activities for IRRBP funds into one section. This section also proposes to add preliminary engineering and the demolition of old bridges as new eligible items.

What are the criteria for bridge eligibility? (661.17)

The FHWA proposes to modify this section to eliminate physical deterioration as a criteria for eligibility for this program. This term does not appear in section 1119(g) of SAFETEA-LU and as such we are proposing to delete it from the regulation.

When is a bridge eligible for replacement? (661.19)

The FHWA proposes to clarify in this section that existing IRR bridges replaced under the IRRBP must be taken completely out of service and removed from the IRR inventory. This is done so that in the future, only the new bridge will be eligible for IRRBP fund consideration. However, the IRRCC requests and the FHWA agrees to propose to allow a Tribe the ability to request a special exemption, from BIADOT, regarding the "removal from service" requirement if the bridge is considered historic.

When is a bridge eligible for rehabilitation? (661.21)

The FHWA proposes to remove the word "would" from the criteria to clarify eligibility for bridge replacement.

How will a bridge project be programmed for funding once eligibility has been determined? (661.23)

This section explains the priority process for both BIA and non-BIA owned bridges as well as the separate queues for both construction and preliminary engineering within both categories of bridges.

What does a complete application package for PE consist of and how does the project receive funding? (661.25)

This is a new section that we propose to include in the regulation, which describes the requirements for submitting a complete application package for PE. The complete application packages would be placed in the queues (BIA or non-BIA owned

bridges) after receipt by FHWA. Incomplete application packages would be disapproved and returned for revision and resubmission along with a notation providing the reason for disapproval.

Funding for the approved eligible projects on the queues will be made available to the Tribes or the Secretary of the Interior upon availability of program funding at FHWA.

What does a complete application package for construction consist of and how does the project receive funding? (661.27)

We propose to include in this section that all complete application packages would be placed in the queues (BIA or non-BIA owned bridges). All environmental and archeological clearances and complete grants of public rights-of-way must be acquired prior to submittal of the construction application package. Incomplete application packages would be disapproved and returned for revision and resubmission along with a notation providing the reason for disapproval. Funding for the approved eligible projects on the queues will be made available to the Tribes or the Secretary of the Interior upon availability of program funding at FHWA.

How does ownership impact project selection? (661.29)

The FHWA proposes to maximize the use of IRRBP funds for BIA owned bridges. Up to 80 percent of the available funding made available for PE and construction in any fiscal year will be eligible for use on BIA owned IRR bridges. The remaining 20 percent of IRRBP funding in any fiscal year will be made available for PE and construction for use on non-BIA owned IRR bridges. Each fiscal year the FHWA will review the projects awaiting funding and may shift funds between BIA owned and non-BIA owned bridge projects so as to maximize the number of projects funded and the overall effectiveness of the program.

Do IRRBP projects have to be listed on an approved IRR TIP? (661.31)

The FHWA proposes to change the language of this section to properly identify which Transportation Improvement Program (TIP) is used for the approved bridge projects.

What percentage of IRRBP funding is available for PE and construction? (661.33)

FHWA proposes to include this section in order to identify the amount of funding that will be made available

for the new eligible item of preliminary engineering. The amount recommended was developed in consultation with the IRRCC and represents the average costs of preliminary engineering on bridge projects. The remaining funding is made available for construction.

What percentage of IRRBP funding is available for use on BIA owned IRR bridges and non-BIA owned IRR bridges? (661.35)

The FHWA proposes to utilize the same funding distribution, *i.e.*, up to 80 percent of the available annual funds, for BIA owned bridge projects with the remaining funds utilized for non-BIA owned bridges. After consultation with the IRRCC, FHWA is proposing that the FHWA have the ability to review the queue of projects awaiting funding at various times during the fiscal year, and shift funds between BIA owned and non-BIA owned bridge projects in order to maximize the number of projects funded.

What are the funding limitations on individual IRRBP projects? (661.37)

The FHWA proposes to reduce the funding ceiling for construction on non-BIA owned bridge projects to \$1,000,000. The FHWA reviewed the history of the IRRBP and determined that since 1998, over 100 non-BIA owned bridge projects have been funded with this program. For these non-BIA owned bridge projects, the average project size was less than \$600,000 and more than 75 percent were funded at a level below the proposed \$1,000,000 threshold. In addition, other sources of funds are available for non-BIA owned bridge projects.

Additionally, FHWA proposes to limit the amount of funding available for preliminary engineering to \$150,000 per project. This recommendation is based on the historical size of the bridge projects previously funded under this program and assumes a typical PE cost of around 15 to 20 percent of a project's construction cost.

The IRRCC recommends, and FHWA is proposing, a revision that allows a Tribe to request additional funds above the referenced thresholds by submitting a written justification for consideration to FHWA. The approval of the requests would be considered on a case-by-case basis.

How are project cost overruns funded? (661.39)

The FHWA proposes that if a request for additional funding is approved by the FHWA, the request would be placed at the top of the appropriate queue. Because an ongoing construction project

would be costly to stop and then remobilize, a request to fund a contract modification will have a higher priority than a request for additional funding for a project award. Additional funds could also be made available from a Tribe's existing IRR Program share.

Can other sources of funds be used to finance a queued project in advance of receipt of IRRBP funds? (661.43)

The FHWA proposes to change the phrasing of this section for clarification purposes and to identify that if IRR Program construction funds are used for this purpose, the funds must be identified on an FHWA approved IRR TIP prior to their expenditure.

What happens when IRRBP funds cannot be obligated by the end of the fiscal year? (661.45)

In this new section we propose that IRRBP funds provided to a project and not obligated at the end of the fiscal year must be returned to the FHWA. The funds will be re-allocated to BIA the following fiscal year and would require a justification for the failure to obligate in the previous year.

Can IRRBP funds be spent on Interstate, State Highway, and Toll Road IRR bridges? (661.49)

The FHWA proposes to add this section in order to clarify that bridges on all types of routes that are included in the IRR Inventory are eligible for funding under this program.

Can IRRBP funds be used for the approach roadway to a bridge? (661.51)

The FHWA proposes to include the cost associated with the approach roadway work to be eligible for IRRBP funds. The limit of approach roadway work would be limited to a nominal amount of work, sufficient to connect the new facility to the existing roadway or to return the gradeline to an attainable touchdown point in accordance with good design practice. Long approach fills, causeways, connecting roadways, interchanges, ramps, and other extensive structures, when constructed beyond an attainable touchdown point, would not be eligible for IRRBP funds.

What standards should be used for bridge design? (661.53)

The FHWA proposes to include this new section in order to clarify the design standards that must be met in the design of bridges being funded under this program.

How are BIA and Tribal owned bridges inspected? (661.55)

The FHWA proposes to include this new section in order to clarify the procedures that must be followed when formal bridge inspections are carried out.

What should be done with a deficient BIA owned IRR bridge if the Indian Tribe does not support the project? (661.59)

The FHWA proposes to include this new section in order to clarify the actions that should be taken when a deficient bridge is identified and not scheduled for improvement.

Distribution Table

For ease of reference, distribution and derivation tables are provided for the current sections and the new sections, as follows:

Old section	New section
661.1	661.1.
661.3	661.3—Revised.
661.5	661.5—Revised.
661.7	661.7—Revised.
661.9	661.23—Redesignated and Revised.
661.11	661.41—Redesignated and Revised.
661.13	Removed.
661.15	661.9—Redesignated.
661.17	661.11—Redesignated.
661.19	Removed.
661.21	661.13—Redesignated.
661.23	661.15—Redesignated and Revised.
661.25	661.17—Redesignated and Revised.
661.27	661.19—Redesignated and Revised.
661.29	661.21—Redesignated and Revised.
661.31	661.29—Redesignated and Revised.
661.33	661.31—Redesignated and Revised.
661.35	661.35—Revised.
661.37	661.37—Revised.
661.39	Removed.
661.41	661.27—Redesignated and Revised.
661.43	Removed.
661.45	661.57—Redesignated and Revised.
661.47	Removed.
661.49	661.43—Redesignated and Revised.
661.51	661.47—Redesignated and Revised.
None	661.25—Added.
None	661.33—Added.
None	661.45—Added.
None	661.49—Added.
None	661.51—Added.
None	661.53—Added.
None	661.55—Added.
None	661.59—Added.

Derivation Table

New section	Old section
661.1	661.1.
661.3	661.3.
661.5	661.5.
661.7	661.7.
661.9	661.15.
661.11	661.17.
661.13	661.21.
661.15	661.23.
661.17	661.25.
661.19	661.27.
661.21	661.29.
661.23	661.9.
661.25	None.
661.27	661.41.
661.29	661.31.
661.31	661.33.
661.33	None.
661.35	661.35.
661.37	661.37.
661.39	661.47.
661.41	661.11.
661.43	661.49.
661.45	None.
661.47	661.51.
661.49	None.
661.51	None.
661.53	None.
661.55	None.
661.57	661.45.
661.59	None.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and USDOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action would not be a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and

would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities. This proposed action would amend the existing regulations pursuant to section 1119 of SAFETEA–LU and would not fundamentally alter the funding available for the replacement or rehabilitation of structurally deficient or functionally obsolete IRR bridges. For these reasons, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$128.1 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, tribal governments and the private sector.

Executive Order 13132 (Federalism Assessment)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined preliminarily that this proposed action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA met with the IRRCC at three separate meetings in; Tulsa, Oklahoma, in February 2006; Denver, Colorado, in March 2006; and Hinckley,

Minnesota, in August 2006, to jointly review this proposed regulation and provide the IRRCC with the opportunity to ask questions and make recommendations. The IRRCC was established under 25 CFR part 170 by the Secretaries of the Interior and Transportation, to provide input and recommendation to BIA and FHWA in developing IRR Program policies and procedures and to supplement government-to-government consultation by coordinating and obtaining input from Tribes, BIA, and FHWA. The IRRCC consists of a primary and alternate Tribal representative from each of the 12 BIA Regions, along with 2 non-voting Federal representatives (one each from BIA and FHWA).

The proposed regulation was first distributed to the IRRCC at the Tulsa meeting referenced above. The IRRCC then met in a special meeting in Denver, Colorado, specifically to review the regulation and develop recommendations for the FHWA rulemaking. The funding workgroup of the IRRCC was assigned the task of carrying forth the recommendations to FHWA. In Hinckley, Minnesota, the FHWA met with the funding workgroup and together they reviewed the comments. This regulation reflects the results of the IRRCC input. All aspects of the regulation were reviewed by the IRRCC and the major items of discussion are listed in the background section of this regulation.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, dated May 18, 2001. We have determined that it is not a significant energy action under that order since it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12372 (Intergovernmental Review)

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. Accordingly, the FHWA solicits comments on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the

Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action would not cause any environmental risk to health or safety that might disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this proposed action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 661

Indian Reservation Road Bridge Program.

Issued on: May 15, 2007.

J. Richard Capka,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, by revising part 661 to read as set forth below:

PART 661—INDIAN RESERVATION ROAD BRIDGE PROGRAM

Sec.

- 661.1 What is the purpose of this regulation?
- 661.3 Who must comply with this regulation?
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- 661.9 What is the total funding available for the IRRBP?
- 661.11 When do IRRBP funds become available?
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- 661.17 What are the criteria for bridge eligibility?
- 661.19 When is a bridge eligible for replacement?
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- 661.23 How will a bridge project be programmed for funding once eligibility has been determined?
- 661.25 What does a complete application package for PE consist of and how does the project receive funding?
- 661.27 What does a complete application package for construction consist of and how does the project receive funding?
- 661.29 How does ownership impact project selection?
- 661.31 Do IRRBP projects have to be listed on an approved IRR TIP?
- 661.33 What percentage of IRRBP funding is available for PE and construction?
- 661.35 What percentage of IRRBP funding is available for use on BIA owned IRR bridges and non-BIA owned IRR bridges?
- 661.37 What are the funding limitations on individual IRRBP projects?
- 661.39 How are project cost overruns funded?
- 661.41 After a bridge project has been completed (either PE or construction) what happens with the excess or surplus funding?
- 661.43 Can other sources of funds be used to finance a queued project in advance of receipt of IRRBP funds?
- 661.45 What happens when IRRBP funds cannot be obligated by the end of the fiscal year?
- 661.47 Can bridge maintenance be performed with IRRBP funds?
- 661.49 Can IRRBP funds be spent on Interstate, State Highway, and Toll Road IRR bridges?
- 661.51 Can IRRBP funds be used for the approach roadway to a bridge?
- 661.53 What standards should be used for bridge design?
- 661.55 How are BIA and Tribal owned IRR bridges inspected?

661.57 How is a list of deficient bridges to be generated?

661.59 What should be done with a deficient BIA owned IRR bridge if the Indian Tribe does not support the project?

Authority: 23 U.S.C. 120(j) and (k), 202, and 315; Section 1119 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144); and 49 CFR 1.48.

§ 661.1 What is the purpose of this regulation?

The purpose of this regulation is to prescribe policies for project selection and fund allocation procedures for administering the Indian Reservation Road Bridge Program (IRRBP).

§ 661.3 Who must comply with this regulation?

Public authorities must comply to participate in the IRRBP by applying for preliminary engineering (PE), construction, and construction engineering (CE) activities for the replacement or rehabilitation of structurally deficient and functionally obsolete Indian Reservation Road (IRR) bridges.

§ 661.5 What definitions apply to this regulation?

The following definitions apply to this regulation:

Approach roadway means the portion of the highway immediately adjacent to the bridge that affects the geometrics of the bridge, including the horizontal and vertical curves and grades required to connect the existing highway alignment to the new bridge alignment using accepted engineering practices and ensuring that all safety standards are met.

Construction engineering (CE) is the supervision, inspection, and other activities required to ensure the project construction meets the project's approved acceptance specifications, including but not limited to: additional survey staking functions considered necessary for effective control of the construction operations; testing materials incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates.

Functionally obsolete (FO) is the state in which the deck geometry, load carrying capacity (comparison of the original design load to the State legal load), clearance, or approach roadway alignment no longer meets the usual criteria for the system of which it is an integral part.

Indian Reservation Road (IRR) means a public road that is located within or

provides access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaska Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

Indian reservation road bridge means a structure located on an IRR, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of the openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

Life cycle cost analysis (LCCA) means a process for evaluating the total economic worth of a usable project segment by analyzing initial costs and discounted future costs, such as maintenance, user costs, reconstruction, rehabilitation, restoring, and resurfacing costs, over the life of the project segment.

National Bridge Inventory (NBI) means the aggregation of structure inventory and appraisal data collected to fulfill the requirements of the National Bridge Inspection Standards (NBIS).

Plans, specifications and estimates (PS&E) means construction drawings, compilation of provisions, and construction project cost estimates for the performance of the prescribed scope of work.

Preliminary engineering (PE) means planning, survey, design, engineering, and preconstruction activities (including archaeological, environmental, and right-of-way activities) related to a specific bridge project.

Public authority means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

Public road means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

Structurally deficient (SD) bridge means a bridge that has been restricted to light vehicles only, is closed, or

requires immediate rehabilitation to remain open.

Structure Inventory and Appraisal (SI&A) Sheet means the graphic representation of the data recorded and stored for each NBI record in accordance with the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges (Report No. FHWA-PD-96-001).

Sufficiency rating (SR) means the numerical rating of a bridge based on its structural adequacy and safety, essentiality for public use, and its serviceability and functional obsolescence.

§ 661.7 What is the IRRBP?

The IRRBP, as established under 23 U.S.C. 202(d)(4), is a nationwide priority program for improving structurally deficient and functionally obsolete IRR bridges.

§ 661.9 What is the total funding available for the IRRBP?

The statute authorizes \$14 million to be appropriated from the Highway Trust Fund in Fiscal Years 2005 through 2009.

§ 661.11 When do IRRBP funds become available?

IRRBP funds are authorized at the start of each fiscal year but are subject to Office of Management and Budget apportionment before they become available to FHWA for further distribution.

§ 661.13 How long are these funds available?

IRRBP funds for each fiscal year are available for obligation for the year authorized plus three years (a total of four years).

§ 661.15 What are the eligible activities for IRRBP funds?

(a) IRRBP funds can be used to carry out PE, construction, and CE activities of projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions, or install scour countermeasures for structurally deficient or functionally obsolete IRR bridges, including multiple pipe culverts.

(b) If a bridge is replaced under the IRRBP, IRRBP funds can be also used for the demolition of the old bridge.

§ 661.17 What are the criteria for bridge eligibility?

(a) Bridge eligibility requires the following:

(1) Have an opening of 20 feet or more;

(2) Be located on an Indian Reservation Road that is included in the IRR inventory;

(3) Be unsafe because of structural deficiencies or functional obsolescence; and

(4) Be recorded in the NBI maintained by the FHWA.

(b) Bridges that were constructed, rehabilitated or replaced in the last 10 years, will be eligible only for seismic retrofit or installation of scour countermeasures.

§ 661.19 When is a bridge eligible for replacement?

To be eligible for replacement, the bridge must be considered structurally deficient or functionally obsolete and have a sufficiency rating less than 50. If bridge replacement occurs under this program, it is required that the original bridge be taken completely out of service and removed from the inventory. If the original bridge is considered historic, it must still be removed from the inventory, however the Tribe is allowed to request an exemption from the BIA Division of Transportation (BIADOT) to allow the bridge to remain in place.

§ 661.21 When is a bridge eligible for rehabilitation?

To be eligible for rehabilitation, the bridge must be considered structurally deficient or functionally obsolete and have a sufficiency rating less than or equal to 80 and greater than 50. The work eligible for a bridge rehabilitation project includes the activities required to improve the sufficiency rating to 80 or greater. A bridge eligible for rehabilitation is eligible for replacement if a life cycle cost analysis shows the cost for bridge rehabilitation exceeds the replacement cost.

§ 661.23 How will a bridge project be programmed for funding once eligibility has been determined?

(a) All projects will be programmed for funding after a completed application package is received and accepted by the FHWA. At that time, the project will be acknowledged as either BIA or non-BIA owned and placed in either a PE or construction queue, listed by date received. These queues form the basis for prioritization for funding. After the IRRBP funding for the FY is used up, a queue for the following FY would be established.

(b) In those cases where application packages have arrived at the same time, the packages will be ranked and prioritized based on the following criteria:

(1) Bridge sufficiency rating (SR);

(2) Bridge status with structurally deficient (SD) having precedence over functionally obsolete (FO);

(3) Bridges on school bus routes;

(4) Detour length;

(5) Average daily traffic; and

(6) Truck average daily traffic.

§ 661.25 What does a complete application package for PE consist of and how does the project receive funding?

(a) A complete application package for PE consists of the following: The certification checklist, IRRBP transportation improvement program (TIP), project scope of work, detailed cost for PE, and SI&A sheet.

(b) For non-BIA IRR bridges, the application package must also include a tribal resolution supporting the project and identification of the required minimum 20 percent local funding match.

(c) The IRRBP projects for PE will be placed in queue and determined as eligible for funding after receipt by FHWA of a complete application package. Incomplete application packages will be disapproved and returned for revision and resubmission along with a notation providing the reason for disapproval.

(d) Funding for the approved eligible projects on the queues will be made available to the Tribes or the Secretary of the Interior upon availability of program funding at FHWA.

§ 661.27 What does a complete application package for construction consist of and how does the project receive funding?

(a) A complete application package for construction consists of the following: A copy of the approved PS&E, the certification checklist, SI&A sheet, and IRRBP TIP. For non-BIA IRR bridges, the application package must also include a copy of a letter from the bridge's owner approving the project and its PS&E, a tribal resolution supporting the project, and identification of the required minimum 20 percent local funding match. All environmental and archeological clearances and complete grants of public rights-of-way must be acquired prior to submittal of the construction application package.

(b) The IRRBP projects for construction will be placed in queue and determined as eligible for funding after receipt by FHWA of a complete application package. Incomplete application packages will be disapproved and returned for revision and resubmission along with a notation providing the reason for disapproval.

(c) Funding for the approved eligible projects on the queues will be made

available to the tribes or the Secretary of the Interior upon availability of program funding at FHWA.

§ 661.29 How does ownership impact project selection?

Since the Federal government has both a trust responsibility and owns the BIA bridges on Indian reservations, primary consideration will be given to eligible projects on BIA owned IRR bridges. A smaller percentage of available funds will be set aside for non-BIA IRR bridges, since States and counties have access to Federal-aid and other funding to design, replace and rehabilitate their bridges and that 23 U.S.C. 204(c) requires that IRR funds be supplemental to and not in lieu of other funds apportioned to the State. The program policy will be to maximize the number of IRR bridges participating in the IRRBP in a given fiscal year regardless of ownership.

§ 661.31 Do IRRBP projects have to be listed on an approved IRR TIP?

Yes. All IRRBP projects must be listed on an approved IRR TIP. The approved IRR TIP will be forwarded by FHWA to the respective State for inclusion into its State TIP.

§ 661.33 What percentage of IRRBP funding is available for PE and construction?

Up to 15 percent of the funding made available in any fiscal year will be eligible for PE. The remaining funding in any fiscal year will be available for construction.

§ 661.35 What percentage of IRRBP funding is available for use on BIA owned IRR bridges and non-BIA owned IRR bridges?

(a) Up to 80 percent of the available funding made available for PE and construction in any fiscal year will be eligible for use on BIA owned IRR bridges. The remaining 20 percent of funding in any fiscal year will be made available for PE and construction for use on non-BIA owned IRR bridges.

(b) At various time during the fiscal year, FHWA will review the projects awaiting funding and may shift funds between BIA owned and non-BIA owned bridge projects so as to maximize the number of projects funded and the overall effectiveness of the program.

§ 661.37 What are the funding limitations on individual IRRBP projects?

The following funding provisions apply in administration of the IRRBP:

(a) An IRRBP eligible BIA owned IRR bridge is eligible for 100 percent IRRBP funding, with a \$150,000 maximum limit for PE.

(b) An IRRBP eligible non-BIA owned IRR bridge is eligible for up to 80 percent IRRBP funding, with a \$150,000 maximum limit for PE and \$1,000,000 maximum limit for construction. The minimum 20 percent local match will need to be identified in the application package. IRR construction funds received by a tribe may be used as the local match.

(c) Requests for additional funds above the referenced thresholds may be submitted along with the proper justification to FHWA for consideration. The requests will be considered on a case-by-case basis. There is no guarantee for the approval of the request for additional funds.

§ 661.39 How are project cost overruns funded?

(a) A request for additional IRRBP funds for cost overruns on a specific bridge project must be submitted to BIADOT and FHWA for approval. The written submission must include a justification, an explanation as to why the overrun occurred, and the amount of additional funding required with supporting cost data. If approved by FHWA, the request will be placed at the top of the appropriate queue (with a contract modification request having a higher priority than a request for additional funds for a project award) and funding may be provided if available.

(b) Project cost overruns may also be funded out of the tribe's regular IRR Program construction funding.

§ 661.41 After a bridge project has been completed (either PE or construction) what happens with the excess or surplus funding?

Since the funding is project specific, once a bridge design or construction project has been completed under this program, any excess or surplus funding is returned to FHWA for use on additional approved deficient IRR bridge projects.

§ 661.43 Can other sources of funds be used to finance a queued project in advance of receipt of IRRBP funds?

Yes. A tribe can use other sources of funds on a project that has been approved for funding and placed on a queue and then be reimbursed when IRRBP funds become available. If IRR Program construction funds are used for this purpose, the funds must be identified on an FHWA approved IRR TIP prior to their expenditure.

§ 661.45 What happens when IRRBP funds cannot be obligated by the end of the fiscal year?

IRRBP funds provided to a project that cannot be obligated by the end of the fiscal year are to be returned to FHWA during August Redistribution. The returned funds will be re-allocated to the BIA the following fiscal year after receipt and acceptance at FHWA from BIA of a formal request for the funds, which includes a justification for the amounts requested and the reason for the failure of the prior year obligation.

§ 661.47 Can bridge maintenance be performed with IRRBP funds?

No. Bridge maintenance repairs, e.g., guard rail repair, deck repairs, repair of traffic control devices, striping, cleaning scuppers, deck sweeping, snow and debris removal, etc., are not eligible uses of IRRBP funding. The Department of the Interior annual allocation for maintenance and IRR Program construction funds are eligible funding sources for bridge maintenance.

§ 661.49 Can IRRBP funds be spent on Interstate, State Highway, and Toll Road IRR bridges?

Yes. Interstate, State Highway, and Toll Road IRR bridges are eligible for funding as described in § 661.37(b).

§ 661.51 Can IRRBP funds be used for the approach roadway to a bridge?

(a) Yes, cost associated with approach roadway work, as defined in § 661.5 are eligible.

(b) Long approach fills, causeways, connecting roadways, interchanges, ramps, and other extensive earth structures, when constructed beyond an attainable touchdown point, are not eligible uses of IRRBP funds.

§ 661.53 What standards should be used for bridge design?

(a) Replacement—A replacement structure must meet the current geometric, construction and structural standards required for the types and volumes of projected traffic on the facility over its design life consistent with 25 CFR part 170, Subpart D, Appendix A and 23 CFR part 625.

(b) Rehabilitation—Bridges to be rehabilitated, as a minimum, should conform to the standards of 23 CFR 625, Design Standards for Federal-aid Highways, for the class of highway on which the bridge is a part.

§ 661.55 How are BIA and Tribal owned IRR bridges inspected?

BIA and Tribal owned IRR bridges are inspected in accordance with 25 CFR 170.504–507.

§ 661.57 How is a list of deficient bridges to be generated?

(a) In consultation with the BIA, a list of deficient BIA IRR bridges will be developed each fiscal year by the FHWA based on the annual April update of the NBI. The NBI is based on data from the inspection of all bridges. Likewise, a list of non-BIA IRR bridges will be obtained from the NBI. These lists would form the basis for identifying bridges that would be considered potentially eligible for participation in the IRRBP. Two separate master bridge lists (one each for BIA and non-BIA IRR bridges) will be developed and will include, at a minimum, the following:

- (1) Sufficiency rating (SR);
- (2) Status (structurally deficient or functionally obsolete);
- (3) Average daily traffic (NBI item 29);
- (4) Detour length (NBI item 19); and
- (5) Truck average daily traffic (NBI item 109).

(b) These lists would be provided by the FHWA to the BIADOT for publication and notification of affected BIA regional offices, Indian tribal governments (ITGs), and State and local governments.

(c) BIA regional offices in consultation with ITGs, are encouraged to prioritize the design for bridges that are structurally deficient over bridges that are simply functionally obsolete, since the former is more critical structurally than the latter. Bridges that have higher average daily traffic (ADT) should be considered before those that have lower ADT. Detour length should also be a factor in selection and submittal of bridges, with those having a higher detour length being of greater concern. Lastly, bridges with higher truck ADT should take precedence over those which have lower truck ADT. Other items of note should be whether school buses use the bridge and the types of trucks that may cross the bridge and the loads imposed.

§ 661.59 What should be done with a deficient BIA owned IRR bridge if the Indian tribe does not support the project?

The BIA should notify the tribe and encourage the tribe to develop and submit an application package to FHWA for replacement of the bridge. For safety of the motoring public, if the tribe decides not to pursue the replacement of the bridge, the BIA shall work with the tribe to close the bridge, demolish the bridge and remove it from the IRR inventory in accordance with 25 CFR part 170 (170.813).

[FR Doc. E7-9869 Filed 6-4-07; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG-123365-03]

RIN 1545-BC94

Guidance Regarding the Active Trade or Business Requirement Under Section 355(b); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG-123365-03) that was published in the *Federal Register* on Tuesday, May 8, 2007 (72 FR 26012) providing guidance on issues involving the active trade or business requirement under section 355(b), including guidance resulting from the enactment of section 355(b)(3).

FOR FURTHER INFORMATION CONTACT: Russell P. Subin, (202) 622-7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

The correction notice that is the subject of this document is under section 355(b) of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG-123365-03) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of proposed rulemaking (REG-123365-03), which was the subject of FR Doc. 07-2269, is corrected as follows:

1. On page 26014, column 2, in the preamble, under the paragraph heading “1. SAG Rule Applicable During the Pre-Distribution Period”, second paragraph of the column, fourth line, the language “members are disregarded and all assets” is corrected to read “members is disregarded and all assets”.

2. On page 26014, column 2, in the preamble, under the paragraph heading “1. SAG Rule Applicable During the Pre-Distribution Period”, second paragraph of the column, eleventh line, the language “a five-year active trade or businesses.” is corrected to read “a five-year active trade or business.”.

3. On page 26015, column 1, in the preamble, under the paragraph heading “3. Acquisitions of Stock in Subsidiary

SAG Members”, fifth line of the column, the language “in sections B.4 and C.3.a.ii. of this” is corrected to read “in sections B.4. and C.3.a.ii. of this”.

4. On page 26015, column 1, in the preamble, under the paragraph heading “C. Acquisitions of a Trade or Business”, second line of the paragraph, the language “provide that a trade or business” is corrected to read “provides that a trade or business”.

5. On page 26015, column 3, in the preamble, under the paragraph heading “1. Purpose of Section 355(b)(2)(C) and (D)”, second paragraph of the column, fourth line, the language “using it assets—instead of its stock, or” is corrected to read “using its assets—instead of its stock, or”.

6. On page 26016, column 2, in the preamble, under the paragraph heading “i. Certain Acquisitions by the DSAG or CSAG”, last line of the first paragraph, the language “assets to acquire the trade or business” is corrected to read “assets to acquire the trade or business.”.

7. On page 26016, column 3, in the preamble, under the paragraph heading “ii. Certain Acquisitions by a Distributee Corporation”, tenth line of the paragraph, the language “section A.1 of this preamble, section” is corrected to read “section A.1. of this preamble, section”.

8. On page 26017, column 2, in the preamble, under the paragraph heading “i. Acquisitions in Exchange for Assets”, third paragraph of the column, first line, the language “As discussed in section C.1 of this” is corrected to read “As discussed in section C.1. of this”.

9. On page 26018, column 1, in the preamble, under the paragraph heading “i. Acquisitions in Exchange for Assets”, fourth paragraph of the column, sixth line, the language “and (D) are satisfied. Such an” is corrected to read “and (D) is satisfied. Such an”.

10. On page 26019, column 3, in the preamble, under the paragraph heading “c. Application of Section 355(b)(2)(C) and (D) to Predecessors”, second paragraph of the column, third line, the language “singly-entity for purposes of section” is corrected to read “single-entity for purposes of section”.

11. On page 26025, column 1, in the preamble, under the paragraph heading “J. Additional Requests for Comments”, eleventh line of the column, the language “sections D.1.b. and D.2.c of this” is corrected to read “sections D.1.b. and D.2.c. of this”.

12. On page 26025, column 2, in the preamble, under the paragraph heading “J. Additional Requests for Comments”, fourth line from the bottom of second paragraph, the language “example, § 1.355-3(c) Example (9)” is corrected to

read “example, § 1.355–3(c) *Example 9*”.

§ 1.355–3 [Corrected]

13. On page 26026, column 2, § 1.355–3(b)(1)(i), lines eight and nine of the paragraph, the language “355(b)(1). Sections 355(b)(2)(A) and (b)(3)(A) provide that a corporation is” is corrected to read “355(b)(1). Section 355(b)(2)(A) and (b)(3)(A) provides that a corporation is”.

14. On page 26026, column 2, § 1.355–3(b)(1)(i), seventh line from the bottom of the paragraph, the language “sections solely as a result of” is corrected to read “section solely as a result of”.

15. On page 26028, column 1, § 1.355–3(b)(4)(i)(A), fourth line of the paragraph, the language “Under sections 355(b)(2)(C) and (b)(3), a” is corrected to read “Under section 355(b)(2)(C) and (b)(3), a”.

16. On page 26028, column 1, § 1.355–3(b)(4)(i)(A), last line of the column, the language “by reasons of such transactions” is corrected to read “by reason of such transactions”.

17. On page 26030, column 2, § 1.355–3(d)(1)(iv), third line, the language “within the meeting of section 368(c).” is corrected to read “within the meaning of section 368(c).”.

18. On page 26031, column 3, § 1.355–3(d)(2) *Example 9*.(iii), fourth line from the bottom of paragraph, the language “is engaged the active conduct of ATB2.” is corrected to read “is engaged in the active conduct of ATB2.”.

19. On page 26033, column 2, § 1.355–3(d)(2) *Example 24*., lines six through twelve, the language “Partnership, each of X, Y, and Z satisfy the requirements of paragraph (b)(2)(v)(B) of this section. Accordingly, each of X, Y, and Z are attributed the trade or business assets and activities of Partnership, satisfy the requirements of paragraph (b)(2)(i) of this section, and are engaged in the active” is corrected to read “Partnership, each of X, Y, and Z satisfies the requirements of paragraph (b)(2)(v)(B) of this section. Accordingly, each of X, Y, and Z is attributed the trade or business assets and activities of Partnership, satisfies the requirements of paragraph (b)(2)(i) of this section, and is engaged in the active”.

20. On page 26034, column 1, § 1.355–3(d)(2) *Example 27*., sixth line from the bottom of paragraph, the language “recognized. Accordingly, if the D were to” is corrected to read “recognized. Accordingly, if D were to”.

21. On page 26034, column 1, § 1.355–3(d)(2) *Example 29*., seventh

line, the language “under section 357(c) gain on the transfer of” is corrected to read “under section 357(c) on the transfer of”.

22. On page 26034, column 2, § 1.355–3(d)(2) *Example 32*., sixth line from the bottom of paragraph, the language “neither ATB1 nor control of C were acquired” is corrected to read “neither ATB1 nor control of C was acquired”.

23. On page 26034, column 3, § 1.355–3(d)(2) *Example 35*., second line from the bottom of paragraph, the language “distribution, it can rely on ATB1 to satisfy” is corrected to read “distribution, it could rely on ATB1 to satisfy”.

24. On page 26034, column 3, § 1.355–3(d)(2) *Example 36*., second line, the language “*reorganization and distributions*. For more” is corrected to read “*reorganization and distribution*. For more”.

25. On page 26035, column 2, § 1.355–3(d)(2) *Example 39*., fifth line from the bottom of paragraph, the language “The result would also be the same if prior to” is corrected to read “The result would be the same if prior to”.

26. On page 26035, column 2, § 1.355–3(d)(2) *Example 40*., fourth line from the bottom of paragraph, the language “The result would be the same if P acquired” is corrected to read “The results would be the same if P acquired”.

27. On page 26035, column 3, § 1.355–3(d)(2) *Example 42*., third line of the column, the language “distributes all the C stock, C could not rely” is corrected to read “distributes all the C stock, C cannot rely”.

28. On page 26036, column 3, § 1.355–3(d)(2) *Example 50*., fifteenth line from the bottom of paragraph, the language “if X, instead if S, merged into D, S would” is corrected to read “if X, instead of S, merged into D, S would”.

LaNita Van Dyke,

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

[FR Doc. E7–10799 Filed 6–4–07; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA–HQ–OPPT–2005–0049; FRL–8132–7]

RIN 2070–AC83

Lead; Renovation, Repair, and Painting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: On January 10, 2006, EPA proposed new requirements under the authority of section 402(c)(3) of the Toxic Substances Control Act (TSCA) to reduce exposure to lead hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing. “Target housing” is defined in TSCA section 401 as any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling. The 2006 proposal would establish requirements for training renovators and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. That proposal would also allow interested States, Territories, and Indian Tribes the opportunity to apply for and receive authorization to administer and enforce all of the elements of the new renovation requirements. This supplemental notice contains EPA’s proposal to add child-occupied facilities to the buildings covered by the 2006 proposal. Child-occupied facilities may be located in public or commercial buildings or in target housing. A child-occupied facility would be defined as a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day’s visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours.

DATES: Comments must be received on or before July 5, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2005–0049, by one of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

• *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA-HQ-OPPT-2005-0049. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2005-0049. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website 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 [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available in [regulations.gov](http://www.regulations.gov). To access the electronic docket, go to [http://](http://www.regulations.gov)

www.regulations.gov, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

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

For technical information contact: Mike Wilson, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-0521; e-mail address: wilson.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you perform renovations of child-occupied facilities for compensation or dust sampling in child-occupied facilities. EPA is proposing to define a child-occupied facility as a building, or a portion of a building,

constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Examples of child-occupied facilities are day-care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. Potentially affected entities may include, but are not limited to:

- Building construction (NAICS 236), e.g., single family housing construction, multi-family housing construction, residential remodelers, nonresidential construction.
- Specialty trade contractors (NAICS 238), e.g., plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.
- Real estate (NAICS 531), e.g., lessors of residential and nonresidential buildings, property managers.
- Child day care services (NAICS 624410).
- Elementary and secondary schools (NAICS 611110), e.g., elementary schools with kindergarten classrooms.
- Other technical and trade schools (NAICS 611519), e.g., training providers.
- Engineering services (NAICS 541330) and building inspection services (NAICS 541350), e.g., dust sampling technicians.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Units IV.B. and IV.C. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. *What Action is the Agency Taking?*

EPA is proposing to add child-occupied facilities to the universe of buildings covered by a prior proposal. EPA would apply all of the training, certification, accreditation, work practice, and recordkeeping requirements of the January 10, 2006 proposal ("2006 Proposal", Ref. 1) to child-occupied facilities. A child-occupied facility would be defined as "a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the

combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours." Examples of child-occupied facilities are day-care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings.

The purpose of the 2006 Proposal was to establish new requirements to reduce exposure to lead hazards created by renovation, repair, and painting activities that disturb lead-based paint. The proposal contained requirements for training renovators and dust sampling technicians; certifying renovators, dust sampling technicians, and renovation firms; accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. These requirements would apply in "target housing," which is defined in TSCA section 401 as "any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling." Initially the rule would apply to all renovations for compensation performed in (1) target housing where a child with an increased blood lead level resides; (2) rental target housing built before 1960; and (3) owner-occupied target housing built before 1960, unless, with respect to owner-occupied target housing, the person performing the renovation obtains a statement signed by the owner-occupant that the renovation will occur in the owner's residence and that no child under age 6 resides there. EPA proposed a subsequent phase-in for target housing built in the years 1960 through 1977, with certain exemptions. The training, certification, accreditation, work practice, and recordkeeping requirements of the 2006 Proposal would apply to all persons who do renovation for compensation, including renovation contractors, maintenance workers in multi-family housing, painters and other specialty trades, with certain exceptions. The 2006 Proposal contains exemptions for owner-occupied target housing where no children under age 6 reside, minor repair and maintenance activities that disrupt two square feet or less of painted surfaces per component, or renovations where specified methods have been used to determine that the areas affected by the renovation are free of lead-based paint.

In this document, EPA is proposing to apply these same training, certification, accreditation, work practice, and recordkeeping requirements and

exemptions to firms and individuals who perform renovations for compensation in child-occupied facilities. EPA welcomes comment on this supplemental proposal by entities, such as day care providers, elementary schools, and public or commercial building owners, who would be affected by the expanded scope of coverage. EPA intends to review the comments received on this supplementary proposal and then promulgate a final rule addressing both the 2006 Proposal and this proposal.

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

These training, certification and accreditation requirements and work practice standards are being proposed pursuant to the authority of TSCA section 402(c)(3), 15 U.S.C. 2682(c)(3), as amended by Title X of the Housing and Community Development Act of 1992, Public Law 102-550 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992) ("the Act" or "Title X"). The notification and recordkeeping requirements associated with child-occupied facilities are being proposed pursuant to section 407 of TSCA. The Model State Program and amendments to the regulations on the authorization of State and Tribal programs with respect to renovators and dust sampling technicians are being proposed pursuant to section 404 of TSCA, 15 U.S.C. 2684.

III. Introduction

A. *Reason for this Supplemental Notice*

On January 10, 2006, EPA issued a notice of proposed rulemaking for requirements to reduce exposure to lead hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing (Ref. 1). EPA received approximately 250 comments from a wide variety of commenters, including State and local governments, industry groups, advocacy groups, renovation contractors, training providers, and individuals. Twenty-nine of those commenters observed that the proposal did not cover buildings where children under age 6 spend a great deal of time, such as day care centers and schools. Commenters noted that the risk posed to children from lead-based paint hazards in schools and day-care centers is likely to be equal to, if not greater than, the risk posed from these hazards at home. These commenters suggested that EPA expand its proposal to include such places. Several suggested that EPA use the definition of "child-occupied facility" in 40 CFR § 745.223 to define the expanded scope of coverage.

EPA believes that the suggestions regarding day care centers and schools have merit. EPA is therefore issuing this supplemental proposal to specifically propose expanding the scope of the renovation, repair and painting program to these facilities. EPA believes that the proposed findings underlying the 2006 Proposal also support the expansion of coverage to child-occupied facilities.

B. Development of the Final Rule

It is EPA's intention to issue a final rule based on the 2006 Proposal and this supplemental proposal. As EPA moves forward with the development of the final rule, the Agency is considering the comments and information received during the public comment periods in 2006, and expects to consider the comments related to child-occupied facilities and any new information received on this supplemental proposal. In addition, as discussed in the 2006 Proposal, EPA intends to prepare further analyses and updated assessments for the final rule that will use the information received, as well as the data generated by the EPA study "Characterization of Dust Lead Levels after Renovation, Repair, and Painting Activities" ("Dust Study", Ref. 10), and by the National Association of Home Builders' (NAHB) "Lead Safe Work Practices Survey" ("NAHB Survey", Ref. 11). EPA will also consider the comments received on proposed work practice standards in light of the results of these studies.

EPA is also updating the hazard and exposure assessments it used as a basis for estimating the benefits of the rulemaking. This benefits analysis is part of the economic analysis for the rulemaking. The hazard assessment for the final rule will be based on a hazard assessment that has recently undergone peer review by the Clean Air Science Advisory Committee (CASAC) Lead Review Panel. The revised exposure assessment for the final rule, which will use the data generated by EPA's Dust Study, the NAHB Survey, and other available information, will also undergo a peer review by the CASAC Lead Review Panel. The CASAC, which is comprised of seven members appointed by the EPA Administrator, was established under the Clean Air Act as an independent scientific advisory committee. More information on the CASAC consultation process, along with background documents, is available on EPA's website at <http://www.epa.gov/lead/pubs/casac.htm>.

EPA is not yet able to say with any certainty how the economic analyses or proposed requirements might change for the final rule as a result of the

additional analyses underway or planned, or EPA's consideration of comments or new information received on this supplemental proposal. The Agency does, however, expect that changes may occur.

C. Previous EPA Rulemakings on Lead-based Paint and Lead-based Paint Hazards in Child-Occupied Facilities

In 1996, EPA promulgated the final lead-based paint activities regulations under TSCA section 402(a), codifying them at 40 CFR part 745, subpart L. These regulations were designed to protect the public from the hazards of improperly conducted lead-based paint inspections, risk assessments and abatement projects. The regulation includes:

- Training and certification requirements to ensure the proficiency of contractors who offer these services.
- Accreditation requirements to ensure that training programs provide quality instruction in current and effective work practices.
- Work practice standards to ensure that these lead-based paint activities are conducted safely, reliably and effectively.

As initially proposed in 1994, requirements for the training and certification of contractors and the accreditation of training programs, as well as specific work practice standards would have applied to lead-based paint activities conducted in target housing and public buildings (Ref. 2). A slightly different set of requirements would have applied to lead-based paint activities conducted in commercial buildings and on bridges and other structures. The 1994 proposal would have defined public buildings to include all buildings generally open to the public or occupied or visited by children, such as stores, museums, airports, offices, restaurants, hospitals, and government buildings, as well as schools and day-care centers. During the comment period, a significant majority of commenters expressed the concern that applying these regulations to activities in all of the buildings that EPA would consider public would result in significant costs without a comparable reduction in lead-based paint exposures for children under age 6, the population most vulnerable to lead exposures. Many of these commenters recommended that EPA focus its attention on buildings that are frequented by children, rather than on buildings that may be briefly visited by children. In response to these comments, EPA established, in the final rule, a subset of the buildings EPA had intended to define as public. This subset, called "child-occupied

facilities," was delineated in terms of the frequency and duration of visits by children (Ref. 3). "Child-occupied facility" is defined in 40 CFR 745.223 as "a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms." The training, certification, accreditation, and work practice requirements of the final lead-based paint activities regulations, codified at 40 CFR part 745, subpart L, apply only to activities in target housing and child-occupied facilities.

Subsequently, in 1998, EPA initiated rulemaking under TSCA section 403 to identify lead-based paint hazards. The final standards, promulgated in 2001 and codified at 40 CFR part 745, subpart D, define paint-lead, dust-lead, and soil-lead hazards (Ref. 4). Under 40 CFR 745.61(b), these standards are applicable to target housing and child-occupied facilities. The definition of paint-lead hazard refers to the presence of damaged or deteriorated lead-based paint, as well as lead-based paint on surfaces where it can be damaged, abraded, or ingested. A dust-lead hazard is defined as surface dust that contains a mass-per-area concentration of lead equal to or exceeding 40 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) on floors or 250 $\mu\text{g}/\text{ft}^2$ on interior window sills based on wipe samples. A soil-lead hazard is defined as bare soil that contains total lead equal to or exceeding 400 parts per million ($\mu\text{g}/\text{g}$) in a play area or an average of 1,200 parts per million in the rest of the yard based on soil samples. As discussed in detail in the preamble to the final TSCA section 403 regulations, the dust-lead and soil-lead hazard standards were set with reference to the likelihood that an exposure to such a level would result in a blood lead level above 10 micrograms per deciliter ($\mu\text{g}/\text{dL}$) in a child (Ref. 4 at 1216–1217). This was based on the level that the Centers for Disease Control and Prevention had set as the level of concern for community action. This level is not a threshold for toxicity.

IV. Renovation Activities in Child-occupied Facilities

A. TSCA Section 402(c)(3) Determination

The 2006 Proposal was issued under the authority of TSCA section 402(c), which directs EPA to revise its TSCA section 402(a) lead-based paint activities regulations to apply to renovation activities that create lead-based paint hazards. The revisions proposed in the 2006 Proposal were based on, among other things, a study of renovation activities that EPA conducted as directed by TSCA section 402(c)(2). This study is discussed in greater length in the 2006 Proposal (Ref. 1 at 1591). In this study, EPA found that the following renovation activities, when conducted where lead-based paint is present, generated lead loadings on floors that exceeded 40 µg/ft², the dust-lead hazard standard for floors in 40 CFR 745.65(b):

- Paint removal by abrasive sanding.
- Window replacement.
- HVAC duct work.
- Demolition of interior plaster walls.
- Drilling into wood.
- Sawing into wood.
- Sawing into plaster.

These results, along with the results of other phases of the study, which evaluated worker exposures and the blood lead levels of children in homes where renovations have taken place, led EPA to propose to conclude that renovation activities that disturb lead-based paint cause lead dust in amounts that will create, or could reasonably be anticipated to create, dust-lead hazards.

The dust-lead hazard standards are the same for target housing and child-occupied facilities. EPA believes that the individual activities examined in its renovation study are likely to be part of renovation activities in child-occupied facilities as well as in target housing. EPA is therefore proposing to find that renovation activities that disturb lead-based paint in child-occupied facilities will create, or are reasonably anticipated to create, lead-based paint hazards. EPA requests comment on this proposed finding as well as any available data or studies on the similarities and differences between renovation activities in target housing and renovation activities in child-occupied facilities.

B. Buildings Covered

1. *Buildings covered by the 2006 Proposal.* The requirements of the 2006 Proposal would take effect in two major phases. In the first phase, the proposed requirements would apply to

renovations performed for compensation in:

- Target housing where the firm performing the renovation obtains information indicating that a child under age 6 resides there, if the child has a blood-lead level greater than or equal to 10 µg/dL or a State or local government level of concern, if lower, or the firm does not provide the owners and occupants with the opportunity to inform the firm that a child under age 6 with such a blood-lead level resides there.
- Owner-occupied target housing built before 1960, unless the firm performing the renovation obtains a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides there.

- Rental target housing built before 1960.

The second phase, which would take effect 1 year after the first phase takes effect, would extend the proposed requirements to:

- Owner-occupied target housing built between 1960 and 1978, unless the firm performing the renovation obtains a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides there.
- Rental target housing built between 1960 and 1978.

EPA proposed the two-phase approach primarily because of the reduced prevalence of lead-based paint in housing constructed between 1960 and 1978. According to the National Survey of Lead and Allergens in Housing, 24% of the housing constructed between 1960 and 1978 contains lead-based paint (Ref. 5). As discussed in the 2006 Proposal, EPA is working toward the development of improved test kits that could be used to determine whether or not lead-based paint is present in an area to be renovated (Ref. 1 at 1599). These kits are expected to be commercially available by the time that the second phase of the proposal would take effect, and thus could be used to accurately exclude the 76% of housing constructed between 1960 and 1978 that does not contain lead-based paint.

The 2006 Proposal also discussed several other options for applicability based on the age of the housing, including a single phase regulation covering pre-1960 target housing or pre-1978 target housing. EPA received a great many comments on this aspect of the proposal and the merits of these comments are still being considered.

2. *Buildings covered by this proposal—*a. *Background.* This proposal

would extend the coverage of the training, certification, accreditation, work practice, and recordkeeping requirements of the 2006 Proposal to buildings that children under age 6 frequent, such as day care centers, preschools, and kindergarten classrooms. To accomplish this, EPA is proposing to incorporate into 40 CFR 745.83 the definition of "child-occupied facility" from 40 CFR 745.223, with two modifications. The proposed definition would refer to visits by children under age 6, rather than to visits by children 6 and under, to make the definition consistent with the other scope provisions of the 2006 Proposal. In addition, the proposed definition would clarify that child-occupied facilities may be located in target housing or public or commercial buildings.

The preamble to the 1996 final lead-based paint activities regulations referred to child-occupied facilities as a subset of buildings that EPA had initially proposed to call "public buildings" (Ref. 3 at 45780). The proposed definition of "public building" in the lead-based paint activities rulemaking included buildings that may also be thought of as commercial buildings, such as office buildings. In order to avoid any potential confusion over the scope of buildings covered by this supplemental proposal, EPA is proposing to use the phrase "public or commercial building" to denote buildings generally open to the public or occupied or visited by children. Public or commercial buildings would include stores, museums, airport terminals, convention centers, office buildings, restaurants, hospitals, schools, government buildings, and day care centers.

EPA is proposing to use the term "child-occupied facility" in this rulemaking to identify buildings, or portions of buildings, that would be covered by the rule, regardless of whether those buildings are target housing or public or commercial buildings. EPA is proposing to use the term this way to ensure that day care centers located in target housing would be covered.

One of the elements of the 2006 Proposal is a provision allowing owners of target housing to opt out of the rule if they occupy the housing to be renovated and there is no child under age 6 in residence. If this provision were retained in the final rule, and the definition of "child-occupied facility" did not apply in target housing, the rule would not cover child care centers in owner-occupied target housing where no children under age 6 reside. To ensure that these types of day care

centers are covered, EPA is proposing to add a sentence to the definition of "child-occupied facility" that states: "Child-occupied facilities may be located in target housing or in public or commercial buildings."

b. *Child-occupied facilities in target housing.* This supplemental proposal would cover owner-occupied target housing that meets the definition of "child-occupied facility" in the same way that EPA would cover owner-occupied target housing where a child under age 6 resides. The 2006 Proposal, in effect, would require a renovation firm to assume that target housing is the residence of a child under age 6 unless the firm obtains a statement signed by the owner that the owner resides in the housing to be renovated and no child under age 6 also resides there. With this proposal, EPA would require a similar assumption on the part of the renovation firm with respect to whether target housing is also a child-occupied facility. A renovation firm would be required to assume that target housing is either the residence of a child under age 6 or a child-occupied facility unless the firm obtains a statement signed by the owner that the owner resides in the housing to be renovated, no child under age 6 also resides there, and the housing is not a child-occupied facility. The 2006 Proposal would cover rental target housing regardless of the presence of a child under age 6, so it is not necessary to require a similar assumption in that case. EPA believes that it is reasonable to require renovators to assume that a child-occupied facility exists in owner-occupied target housing.

An alternative approach would merely require the renovation firm to give the owner an opportunity to inform the firm that child care for children under age 6 is provided in the housing. This is the approach that EPA is proposing to use with respect to children under age 6 with increased blood lead levels for the purpose of determining whether target housing or child-occupied facilities built between 1960 and 1978 would be covered in the first phase of the rule. In the 2006 Proposal, EPA did not propose to require a renovation firm to assume that a child under age 6 with an increased blood lead level resides in all target housing. Rather, the renovation firm would only be required to provide the owner and occupant with an opportunity to inform the firm that such a child is in residence. Likewise, EPA is proposing to require a renovation firm to provide the owner and occupant of a child-occupied facility with an opportunity to inform the firm that a child under age 6 with an increased

blood lead level uses the facility. If the firm is so informed, the target housing or child-occupied facility would be covered during the first phase of the rule. If not, and the target housing or child-occupied facility was built between 1960 and 1978, it would not be covered until the second phase of the rule.

However, EPA is not proposing to allow renovation firms to assume that a child-occupied facility is not present in owner-occupied target housing unless the owner informs the firm that such a facility is present. EPA is concerned that this approach for child care facilities in target housing would result in a large number of these facilities being eliminated from coverage by the proposed rule. As described in Unit VI.A. and in the document entitled "Economic Analysis for the Supplemental Proposed Rule on Child-Occupied Facilities Under the TSCA Lead Renovation, Repair, and Painting Program" ("Supplemental Economic Analysis", Ref. 6), EPA estimates that approximately 1,559,000 of the child-occupied facilities across the country are located in target housing, of which an estimated 726,000 were covered by the 2006 Proposal (either because they are in rental housing or because they are in owner-occupied housing where a child under age 6 resides). This supplemental proposal will cover an additional 833,000 child-occupied facilities located in target housing (*i.e.*, in owner-occupied target housing where no child under age 6 resides). EPA requests comment on the proposed requirement that a renovation firm assume that owner-occupied target housing contains a child-occupied facility, and on other possible ways that a renovation firm could determine whether a child-occupied facility is present in target housing.

As discussed in the 2006 Proposal, the Pre-Renovation Education Rule, promulgated under the authority of TSCA section 406(b) and codified at 40 CFR part 745, subpart E, requires owners and occupants of target housing to be informed of the potential risks from renovation projects by providing them with a lead hazard information pamphlet. Persons performing renovations covered by the existing regulations must already either obtain a signed acknowledgment from the owner indicating that the pamphlet has been received, or a certificate of mailing indicating that the pamphlet was mailed at least 7 days before the renovation. EPA has modified the sample acknowledgment form it developed for the 2006 Proposal to add information on child-occupied facilities. This sample

could be used to not only record the owner's receipt of the lead hazard information pamphlet, but to obtain additional information on the housing to be renovated, its residents, and whether the housing is a child-occupied facility (Ref. 7). EPA seeks comment on this sample acknowledgment, a copy of which is available in the docket for this proposed rule and on the Agency's Web page at <http://www.epa.gov/lead/pubs/pre-renovationform.pdf>.

c. *Child-occupied facilities in public or commercial buildings.* This proposal would treat child-occupied facilities that are not in target housing somewhat differently. As discussed in Unit IV.D.2., EPA is proposing to require renovation firms working in child-occupied facilities in public or commercial buildings to distribute lead hazard information to owners and occupants and obtain acknowledgments, like those required under the Pre-Renovation Education Rule for target housing. However, EPA is not proposing to exempt only those projects in public or commercial buildings where the renovation firm has obtained a signed statement by the owner of the building indicating that no child-occupied facility is present in the building. Rather, the firm would be able to determine whether or not a particular renovation in a public or commercial building involves a child-occupied facility. EPA chose this approach for two reasons. First, it should be much easier for the firm to determine whether it is renovating a child-occupied facility in a public or commercial building than it would be for the firm to determine whether the target housing it is to renovate is also a child-occupied facility. A stand-alone day care center is likely to have a name that suggests that it provides day care, and the center's status as a child-occupied facility should be obvious upon entering the center. Day care centers in office buildings are likely to have informational signs posted and the centers are likely to be identified in the building directory. Elementary schools are likely to have kindergarten classrooms. The other reason for not imposing a requirement for firms to obtain a signed owner's statement for each public or commercial building they renovate is the burden of such a requirement. The alternative to allowing the firm to determine that a particular building does not contain a child-occupied facility is to require the firm to obtain signed statements from the owners of all public or commercial buildings renovated. These buildings would include factories, office

buildings, department stores, restaurants, and service stations, many of which do not contain child-occupied facilities.

Under the proposed approach, the firm would have to take appropriate steps to determine whether or not a building is or contains a child-occupied facility, including asking the building's owner, or the person contracting for the renovation, whether a child-occupied facility is present. For example, if a renovation firm accepts a contract for a project in an elementary school, the firm would have to determine whether a kindergarten classroom was present, which common areas the kindergarten children used, and, for exterior projects, which exterior walls were immediately adjacent to the kindergarten classroom and associated common areas. Libraries and recreational facilities may have after-care programs that would cause these buildings to be considered child-occupied facilities; a renovation firm hired to renovate a building of this type would have to make inquiries about the use of the facility by children under age 6. EPA requests comment on its proposed approach, on the alternative of exempting only those public or commercial buildings for which the firm has obtained a signed statement from the owner indicating that there is no child-occupied facility present, and on any other methods for making the determination that a child-occupied facility is or is not present in a public or commercial building.

d. *Applicability based on age of building.* For the purpose of determining applicability of the proposed rule, it is EPA's intention to treat child-occupied facilities, whether they are in target housing or public or commercial buildings, much the same as covered target housing. For example, if EPA retains the phase-in approach discussed previously, the first phase would cover:

- Target housing where a child under age 6 with an increased blood lead level resides.
- Rental target housing built before 1960.
- Owner-occupied target housing built before 1960 where a child under age 6 resides.
- Child-occupied facilities used by a child under age 6 with an increased blood lead level.
- Child-occupied facilities built before 1960.

The second phase would add:

- Rental target housing built between 1960 and 1978.
- Owner-occupied target housing built between 1960 and 1978 where a child under age 6 resides.

- Child-occupied facilities built between 1960 and 1978.

As discussed in the Supplemental Economic Analysis (Ref. 6), EPA has estimated that there are approximately 833,000 child-occupied facilities in target housing that would be covered by this proposal. EPA assumes that the prevalence of lead-based paint in target housing where child care is provided is the same as the prevalence of lead-based paint in target housing as a whole, so there is no reason to treat these child-occupied facilities differently. In addition, the First National Environmental Health Survey of Child Care Centers indicates that 22% of non-home-based child care centers built between 1960 and 1978 contain lead-based paint (Ref. 8). This is slightly less than the 24% of target housing built between 1960 and 1978 that contains lead-based paint, but this difference is not sufficient to justify a difference in regulatory applicability.

e. *Common areas.* The 2006 Proposal would cover renovations in common areas in multi-family rental target housing. EPA requested comment on whether to exempt renovations in common areas in owner-occupied multi-family target housing if the renovation firm has obtained the signature of every owner with access to the common area, stating that the units are owner-occupied and no child under age 6 is in residence. The term "common area" is defined in 40 CFR 745.223 as "a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences." In order to exempt from this supplemental proposal a renovation in a common area in owner-occupied multi-family target housing, EPA is proposing to require the renovation firm to obtain the signature of every owner with access to the common area, stating that, in addition to the units being owner-occupied with no children under age 6 in residence, no child care for children under age 6 is provided in the units.

The lead-based paint activities regulations at 40 CFR part 745, subpart L, apply to common areas in multi-family target housing as well as to common areas in child-occupied facilities. With this supplemental proposal, EPA is not proposing to cover all common areas in public or commercial buildings that contain child-occupied facilities. Rather, EPA is most concerned with those common areas that are actually used by children under age 6, such as classrooms, bathrooms, and cafeterias, and not

common areas that the children merely pass through. Similarly, EPA is not proposing to cover all exterior renovation projects on public or commercial buildings that contain child-occupied facilities. EPA is primarily concerned about the projects on the exteriors of public or commercial buildings that are most likely to affect the children visiting a child-occupied facility. An exterior renovation project on the opposite side of a large office building from the child-occupied facility within the building is far less likely to affect the children at the facility than an exterior renovation project on the same side of the building as the children's outdoor playground. For this reason, EPA is proposing to cover only those exterior renovation projects that are performed on the same side or sides of the building as the child-occupied facility or common area. This proposal would, therefore, incorporate additional text into the definition of "child-occupied facility" to clarify the scope of projects associated with child-occupied facilities in public or commercial buildings. This text would read:

In public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages, are not included. In addition, for public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

EPA requests comment on the likelihood that renovation projects in hallways and stairways, or in rooms not used by children under age 6, will affect the children using a child-occupied facility in a public or commercial building. EPA also requests comment on whether all exterior projects on public or commercial buildings that contain child-occupied facilities should be covered, whether all common areas in such buildings should be covered and whether hallways, stairways, and other areas adjacent to rooms used by children under age 6 should be treated differently than more remote areas of the building. EPA is particularly interested in peer-reviewed studies or data that shed light on the potential exposures and hazards to children under age 6 presented by renovation projects in areas not used by the children. EPA also requests other comments on these limitations,

including the extent to which States, Territories, and Tribes with authorized lead-based paint activities programs might apply this term differently.

C. Activities Covered by this Proposal

The 2006 Proposal would cover activities covered by the Pre-Renovation Education Rule, those activities that meet the definition of "renovation" in 40 CFR 745.83. In general, renovations are activities that modify an existing structure and that result in the disturbance of painted surfaces. In addition, like the Pre-Renovation Education Rule, the 2006 Proposal would cover only renovations performed for compensation. This includes renovations performed by renovation firms and their employees, as well as renovations performed by owners of rental property and their employees. Although the owner of rental property may not be compensated for maintenance and repair work at the time that the work is performed, tenants generally pay rent for the right to occupy a rental unit as well as for maintenance services in that unit. Therefore, EPA considers the payment of rent to be compensation to the owner of rental property for any renovations performed on the property.

Likewise, this proposal would only cover activities that fit within the definition of "renovation" in 40 CFR 745.83 and that are performed for compensation in child-occupied facilities. Compensation includes pay for work performed, such as that paid to contractors; wages, such as those paid to employees of contractors, building owners, and child-occupied facility operators; and rent for target housing or public or commercial building space. Thus, renovations performed by renovation contractors and their employees in child-occupied facilities would be covered, as would be renovations by building owners in child-occupied facilities, if the building owner receives rent for the child-occupied facility's space. Renovations in child-occupied facilities that are performed by employees of the building owner or of the child-occupied facility would be covered if the employees receive wages or other compensation for the work performed.

EPA does not, however, consider child care payments to be compensation for renovations. EPA believes that an agreement to provide child care in exchange for a payment is not a contract for building maintenance services in the same way that a lease or other agreement between a landlord and a tenant generally is. If EPA were to consider payments for child care as

compensation for the purposes of this regulation, this proposal would cover a great many do-it-yourself renovations by the owners of target housing in housing they own and occupy. In 1994, in Unit III.B. of the preamble to the proposed lead-based paint activities regulations, EPA reviewed section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, the section that added Title IV to TSCA, and determined that the emphasis under section 402 of TSCA ought to be the certification and training of contractors, not homeowners. In the course of that review, EPA stated its belief that TSCA section 402(c)(3), the section under which this supplemental proposal is being issued, shows that "Congress" focus was on the need to regulate contractors doing renovation and remodeling activities, and not homeowners doing renovation and remodeling of their own homes" (Ref. 2). Considering payments for child care to be compensation for renovations for the purpose of this supplemental proposal would make this proposal inconsistent with Congressional intent.

This proposal would also cover renovations that are being performed in order to turn a public or commercial building, or part of such a building, into target housing or a child-occupied facility. EPA has always understood the lead-based paint activities regulations in 40 CFR part 745, subpart L, to apply to lead-based paint activities being conducted as part of the conversion of a building into target housing or a child-occupied facility. EPA believes that it is especially important to ensure that renovations done in preparation for use by children under age 6 are done in a lead-safe manner. Therefore, EPA proposes to add the following sentence at the end of the definition of "renovation" in 40 CFR 745.83:

A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart.

EPA is proposing to apply the same exemptions proposed for target housing in 2006 to child-occupied facilities. This proposal would exempt renovations in child-occupied facilities that affect components that have been determined to be free of lead-based paint by a certified lead-based paint inspector or risk assessor, or by a certified renovator using an EPA-approved test kit. Likewise, minor maintenance and repair activities in child-occupied facilities would be exempt. The 2006 Proposal would limit minor maintenance and repair activities to those activities that affect 2 square feet or less of painted surface per component, the current limitation in the Pre-Renovation

Education Rule. However, comment was requested on whether a different exemption for small projects should be used, such as the small project exception from EPA's lead-based paint activities regulations at 40 CFR 745.65(d) and HUD's Lead-Safe Housing Rule at 24 CFR 35.1350(d), which exempt activities that disturb less than 2 square feet of painted surface per room or 20 square feet of painted exterior surfaces. Finally, under this proposal, EPA would apply the same standard to emergency renovation operations in child-occupied facilities as it would under the 2006 Proposal to target housing. The 2006 Proposal would require emergency renovations to be performed in compliance with the notification, training, certification, and work practice requirements to the extent practicable. EPA is still evaluating the numerous comments it received on this aspect of the 2006 Proposal, but it is EPA's intention to cover emergency renovations in child-occupied facilities in the same manner that such renovations in target housing would be covered. EPA requests comment on whether emergency renovation operations should be treated differently in child-occupied facilities than in target housing.

D. Requirements for Renovations in Child-Occupied Facilities

1. Training, certification, accreditation, work practice, and recordkeeping requirements. With this proposal, EPA would extend the training, certification, accreditation, and work practice standard requirements of the 2006 Proposal to renovations for compensation in child-occupied facilities. The 2006 Proposal would require that renovators be trained in the use of lead safe work practices, that renovators and firms be certified, that providers of renovation training be accredited, and that renovators follow renovation work practice standards. The work practices in the 2006 Proposal included the posting of warning signs, isolation of the work area, containment of waste, cleaning, and post-renovation cleaning verification. The 2006 Proposal also would establish a dust sampling technician discipline and would allow certified dust sampling technicians to collect optional dust clearance samples after renovations. Consult the 2006 Proposal for more information on each of these proposed requirements (Ref. 1).

The 2006 Proposal described how the proposed training elements for renovators as well as most of the proposed work practice standards were developed with reference to the EPA-HUD model curriculum entitled "Lead

Safety for Remodeling, Repair, & Painting” and the technical documents used to develop the curriculum, including the “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing” (HUD Guidelines) developed by HUD as directed by the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Ref. 1 at 1608). As discussed in the Supplemental Economic Analysis for this proposal (Ref. 6), EPA has determined that approximately 90% of the child-occupied facilities that would be covered by this proposal are located in target housing. (Roughly half of the child-occupied facilities in target housing were covered by the 2006 Proposal either because they are in rental housing or because they are in owner-occupied housing where a child under age 6 resides.) EPA knows of no reason why the requirements for renovations conducted in target housing that is also a child-occupied facility should be different from the requirements in the 2006 Proposal for renovations in rental target housing and target housing where children under age 6 reside.

EPA also believes that the training, certification, accreditation, work practice, and recordkeeping requirements of the 2006 Proposal are equally applicable to renovations conducted in child-occupied facilities in public or commercial buildings. The HUD Guidelines were also used to develop the required training elements in 40 CFR 745.225 for certified lead-based paint activities professionals, such as abatement supervisors and workers. These individuals, after completing the required training and being certified by EPA, may perform abatements in child-occupied facilities as well as in target housing. Likewise, EPA specifically referenced the HUD Guidelines in 40 CFR 745.227(a)(3) in describing the methods that certified professionals must follow in performing lead-based paint activities in target housing or in child-occupied facilities. Thus, EPA did not distinguish between target housing and child-occupied facilities in designing the training, certification, and accreditation requirements of the lead-based paint activities regulations. In addition, the only way that EPA distinguished between child-occupied facilities and multi-family target housing in the work practice requirements of 40 CFR 745.227 was in incorporating special instructions at 40 CFR 745.227(d)(7) for dust sampling in child-occupied facilities when performing a risk assessment. In promulgating the lead-

based paint activities regulations under TSCA section 402(a), EPA determined that the same training, certification, and accreditation requirements would apply in target housing and child-occupied facilities. In addition, EPA found that the same work practice requirements would be equally reliable, effective and safe in target housing and child-occupied facilities. EPA noted that commenters did not support the development of different sets of work practices for target housing and child-occupied facilities.

In late 2006, EPA conducted an additional renovation study, which was designed to characterize dust lead levels at various stages of renovation projects. As part of this study, renovation projects were performed in child-occupied facilities in public or commercial buildings. In a March 16, 2007 Notice of Availability (Ref. 9), EPA described its intention to consider the results of its Dust Study (Ref. 10), along with the NAHB Survey (Ref. 11), in the development of the final rule. In the March 2007 notice, EPA requested comment from the public on the work practice provisions of the 2006 Proposal in light of the results of these studies.

TSCA section 402(a)(1) directs EPA to promulgate regulations that, among other things, contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. In revising those regulations to apply to renovation activities in child-occupied facilities, EPA is proposing to find that the same work practice requirements would be equally reliable, effective, and safe in target housing and child-occupied facilities. EPA therefore is proposing to extend the work practice standards of the 2006 Proposal to firms and individuals performing renovations in child-occupied facilities. This proposal would also impose the training, certification, accreditation, work practice and recordkeeping requirements of the 2006 Proposal on firms and individuals performing renovations in child-occupied facilities, because EPA has determined that the same requirements should apply in child-occupied facilities and target housing. EPA requests comment on these proposed findings. EPA also invites commenters to identify peer-reviewed studies and data, of which EPA may not be aware, that shed light on potential differences between renovations in target housing and renovations in child-occupied facilities.

EPA remains concerned about the potential exposures to lead hazards that may be created by untrained homeowners doing work in the presence

of lead-based paint. EPA specifically requests comment on whether any aspects of the proposed requirements, such as training, certification, work practices, or recordkeeping, should be modified to make compliance more feasible for target housing owner-occupants who provide child care for compensation and who choose to undertake their own renovations.

2. Information distribution requirements. TSCA section 406(b) directs EPA to promulgate regulations requiring that every person who performs renovations for compensation in target housing provide a lead-hazard information pamphlet to the owner and the occupant of the housing before the renovation commences. The Pre-Renovation Education Rule, which implements this directive, was promulgated in 1998 and codified at 40 CFR part 745, subpart E. Much of the proposed regulatory text in the 2006 Proposal would be codified in that subpart along with the existing information distribution regulations.

Under today's proposal, firms and individuals performing renovations for compensation in target housing, whether or not the target housing contains a child-occupied facility, would still be required to provide the lead-hazard information pamphlet as required by TSCA section 406(b) and its implementing regulations. Today's proposal would also require a similar information distribution for renovation projects in child-occupied facilities in public or commercial buildings. EPA has previously used the authority of TSCA section 407 to impose notification requirements for lead-based paint training course providers and for firms performing lead-based paint abatements (Ref. 12). TSCA section 407 authorizes EPA to promulgate recordkeeping or reporting requirements as necessary for the effective implementation of TSCA Title IV. EPA finds that the distribution of lead hazard information, before renovation projects begin, to the owners and occupants of child-occupied facilities as well as the owners of public or commercial buildings that contain child-occupied facilities is necessary to ensure effective implementation of this proposed regulation. Information on lead hazards, and lead safe work practices that minimize the creation of hazards, will stimulate interest on the part of child-occupied facilities and public or commercial building owners in these work practices and increase the demand for their use. In addition, providing information to the parents and guardians of children frequenting child-occupied facilities will enable the

parents and guardians to make decisions regarding their children's welfare.

Under this proposal, unless they own the building being renovated, firms and individuals performing renovation projects in child-occupied facilities would be required to provide a lead hazard information pamphlet to the owner of the building and either obtain a signed acknowledgment that the owner received the pamphlet or document through a certificate of mailing that the pamphlet was mailed to the owner at least 7 days, but no more than 60 days, before the date that the renovation begins. In addition, if the renovation is not being performed by the entity that operates the child-occupied facility, a lead hazard information pamphlet must be provided to an adult representative of the child-occupied facility and a signed acknowledgment obtained, the reason for the lack of a signed acknowledgment documented, or a certificate of mailing obtained. EPA is also proposing to require that the renovation firm either distribute the pamphlet and general information on the renovation project to the parents or guardians of children using the facility or post, while the project is ongoing, informational signs describing the general nature and locations of the project and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the lead hazard information pamphlet or information on how interested parents and guardians can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. EPA requests comment on the utility of this kind of information for child-occupied facilities and public or commercial building owners, and on the usefulness of informational signs for parents and guardians of children visiting the child-occupied facility.

E. State Renovation Model Program and Authorization Process

As described in Unit IV.F. of the 2006 Proposal, EPA would give interested States, Territories, and Indian Tribes the opportunity to apply for, and receive authorization to administer and enforce all of the elements of the revised 40 CFR part 745, subpart E (Ref. 1 at 1616). This would include the existing elements of subpart E, the Pre-Renovation Education Rule, as well as the new training, certification, accreditation, work practice, and recordkeeping requirements of the proposed

renovation, repair, and painting program. The 2006 Proposal would allow States, Territories and Tribes to choose to administer and enforce just the existing requirements of subpart E, the pre-renovation education elements, or all of the requirements of the proposed subpart E, as amended. EPA did not propose to allow States, Territories, and Tribes to seek authorization to administer and enforce only the training, certification, accreditation, work practice, and recordkeeping requirements of the 2006 Proposal and not the pre-renovation education provisions of existing subpart E.

This supplemental proposal would not fundamentally change the authorization scheme in the 2006 Proposal. Interested States, Territories, and Indian Tribes would still be given the opportunity to apply for, and receive authorization to, administer and enforce just the pre-renovation education provisions of revised 40 CFR part 745, subpart E, or both the pre-renovation education provisions and the training, certification, accreditation, work practice, and recordkeeping provisions of subpart E, as amended. However, this supplemental proposal would mean that States, Territories, and Tribes that wish to administer and enforce the pre-renovation education provisions of subpart E, as amended, would have to include both target housing and child-occupied facilities within the scope of their program. Similarly, States, Territories, and Tribes that are also interested in obtaining authorization to administer and enforce the training, certification, accreditation, work practice, and recordkeeping elements of subpart E, as amended, would have to include both target housing and child-occupied facilities within the scope of their program. States with existing authorized pre-renovation education programs would be required to demonstrate that they have modified their programs to include child-occupied facilities. These States would have to provide this demonstration in the first report that they submit pursuant to 40 CFR 745.324(h) more than one year after the final rule is promulgated.

V. References

1. U.S. Environmental Protection Agency (USEPA). Lead; Renovation, Repair, and Painting Program: Proposed Rule. **Federal Register** (71 FR 1587, January 10, 2006).
2. USEPA. Lead; Requirements for Lead-Based Paint Activities: Proposed Rule. **Federal Register** (59 FR 45872, September 2, 1994).

3. USEPA. Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities: Final Rule. **Federal Register** (61 FR 45778, August 29, 1996).

4. USEPA. Lead; Identification of Dangerous Levels of Lead: Final Rule. **Federal Register** (66 FR 1206, January 5, 2001).

5. U.S. Department of Housing and Urban Development (HUD). National Survey of Lead and Allergens in Housing, Volume I: Analysis of Lead Hazards, Final Report, Revision 7.1. (October 31, 2002).

6. USEPA, Office of Pollution Prevention and Toxics (OPPT). Economic Analysis for the Supplemental Proposed Rule on Child-Occupied Facilities Under the TSCA Lead Renovation, Repair, and Painting Program (January 2007).

7. USEPA, OPPT. Sample acknowledgment form (2007).

8. HUD. First National Environmental Health Survey of Child Care Centers, Volume I: Analysis of Lead Hazards, Final Report. (July 15, 2003).

9. USEPA. Lead; Renovation, Repair, and Painting Program; Notice of Availability. **Federal Register** (72 FR 12582, March 16, 2007).

10. USEPA, Office of Pollution Prevention and Toxics (OPPT). Characterization of Dust Lead Levels after Renovation, Repair, and Painting Activities; Draft Final Report (January 2007).

11. National Association of Home Builders. Lead Safe Work Practice Survey Project Report (November 2006).

12. USEPA. Lead; Notification Requirements for Lead-Based Paint Abatement Activities and Training: Final Rule. **Federal Register** (69 FR 18489, April 8, 2004).

13. USEPA, Office of Pollution Prevention and Toxics (OPPT). Economic Analysis for the Renovation, Repair, and Painting Program Proposed Rule (February 2006).

14. USEPA. Second Proposed Rule Related Addendum to Existing EPA ICR entitled: TSCA section 402/404 Training and Certification, Accreditation, and Standards for Lead-Based Paint Activities (January 2007).

15. ASTM International. Standard Practice for Clearance Examinations Following Lead Hazard Reduction Activities in Single-Family Dwellings and Child-Occupied Facilities (E 2271-05).

16. ASTM International. Standard Guide for Evaluation, Management, and Control of Lead Hazards in Facilities (E 2052-99).

17. ASTM International. Standard Practice for Evaluating the Performance

Characteristics of Qualitative Chemical Spot Test Kits for Lead in Paint (E 1828-01).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), it has been determined that this supplemental proposed rule is a "significant regulatory action" under section 3(f)(1) of the Executive Order because EPA estimates that, when considered in conjunction with the 2006 proposal, it will have an annual effect on the economy of \$100 million or more. Accordingly, this action was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made based on OMB recommendations have been documented in the public docket for this rulemaking as required by section 6(a)(3)(E) of the Executive Order.

In addition, EPA has prepared an analysis of the potential costs and benefits associated with this proposed rulemaking. This analysis is contained in the Supplemental Economic Analysis (Ref. 6), which is available in the docket for this action and is briefly summarized here.

1. *Types of facilities.* This supplemental proposed rule applies to an estimated 930,000 child-occupied facilities, of which approximately 833,000 are in target housing where child care is provided. The 2006 Proposal covered child-occupied facilities in rental housing and in owner-occupied housing where a child under age 6 resides. This supplemental proposed rule covers additional child-occupied facilities that were not covered by the 2006 Proposal because they are located in target housing where no child under age 6 resides. This supplemental proposal also applies to child-occupied facilities in public or commercial buildings.

2. *Options evaluated.* EPA considered a variety of options for addressing the risks presented by renovation, repair, and painting actions where lead-based paint is present. The Supplemental Economic Analysis analyzed several different options for the rule. Option A applies to renovation, repair, and painting activities performed for compensation in all child-occupied facilities built before 1978. Option B has 2 phases. The first phase applies to child-occupied facilities built before 1960 as well as child-occupied facilities built between 1960 and 1978 that are

used by a child under age 6 with an increased blood lead level. The second phase, which takes effect a year after the first phase, adds the remaining child-occupied facilities built between 1960 and 1978. Option C also has 2 phases. The first phase applies to child-occupied facilities built before 1950, and the second phase, which takes effect a year after the first phase, applies to child-occupied facilities built before 1978. Option D covers the same facilities and phases as Option B, and differs only in the amount of flexibility allowed a certified renovator in selecting appropriate work practices for each individual job. Option D prescribes the practices to be followed, so does not provide flexibility. Option E has the same phases as Option B, but considers child care payments to be compensation for renovations. Thus, for example, this option covers a renovation by a homeowner in owner-occupied target housing if the housing qualifies as a child-occupied facility and the homeowner provides paid child care. The proposed rule is Option B.

3. *Number of events and individuals affected.* Under the supplemental proposal, in Phase 1 there will be 243,000 events in child-occupied facilities where lead-safe work practices will be used due to the rule. As a result, there will be approximately 633,000 exposures avoided in children under age 6. In Phase 2, lead-safe work practices will be used in about 140,000 events as a result of the supplemental proposed rule. About 916,000 exposures will be avoided in children under age 6 each year as a result. There will also be about 166,000 exposures avoided in adults in Phase 1, and about 224,000 per year in Phase 2. The affected adults are the staff of child-occupied facilities in public or commercial buildings (such as schools and day care centers) and the residents of target housing where child care is provided.

4. *Benefits.* The Supplemental Economic Analysis describes the estimated benefits of the proposed rulemaking in qualitative and quantitative terms. Benefits result from the prevention of adverse health effects attributable to lead exposure. These health effects include impaired cognitive function in children and several illnesses in children and adults. One of the stated purposes of Title X is to prevent childhood lead poisoning. EPA considered the potential benefits to children separately from adults, because the reduction in the threat of childhood lead poisoning is a focus of Title X, and because of uncertainties about the exposure of adults to lead in dust from renovation, repair, and painting

activities in these facilities, and the resulting health effects. The Agency specifically seeks comment on its consideration of potential benefits to both children and adults, as well as comments and information about the potential uncertainties associated with adult exposures and health effects.

Quantifying the adverse health effects associated with renovation, repair, and painting projects involves 4 steps: first, estimating the amount of lead contamination due to the renovation project under various assumptions about cleaning; second, estimating the blood-lead levels resulting from this contamination; third, estimating the adverse health effects (such as loss in IQ points) due to increased blood-lead levels using dose-response functions; and fourth, assigning medical costs, reduced income, or another proxy for willingness-to-pay to avoid the adverse health effects.

The Supplemental Economic Analysis estimates the benefits of avoided incidence of IQ loss due to reduced lead exposure to children. The analysis was limited to the avoided incidence of IQ loss because there are not sufficient data at this time to develop dose-response functions for other health effects in children. The Supplemental Economic Analysis provides six alternative estimates of children's benefits, depending on which of two models is used to relate exposure to blood-lead levels, which of two age groups the model is applied to, and which of two exposure metrics is used. Furthermore, benefits are estimated using two different scenarios for cleaning assumptions. The range of benefits estimates described below reflects the minimum and maximum of the six alternative blood-lead estimates and the two cleaning scenarios. The benefits of avoided exposure to adults were not quantified due to uncertainties about the estimation of such exposure.

Depending on which blood-lead model and exposure assumptions are used, the quantified IQ benefits to children for the supplemental proposed rule range from \$64 million to \$257 million per year when annualized using a 3% discount rate, and from \$68 million to \$272 million per year when using a 7% discount rate. The estimated benefits for the other options range from \$64 million to \$386 million using a 3% discount rate and from \$67 million to \$408 million using a 7% discount rate. There are additional unquantified benefits, including avoided health effects in adults.

5. *Costs.* The Supplemental Economic Analysis estimates the potential costs of complying with the training,

certification, and work practice requirements in the supplemental proposed rule. Costs may be incurred by child-occupied facilities that use their own staff for renovation, repair, and painting events; landlords that use their own staff for renovation, repair, and painting events in public or commercial buildings that they lease to child-occupied facilities; and contractors that perform renovation, repair, and painting work for compensation in child-occupied facilities.

The supplemental proposed rule, if finalized as proposed, is estimated to result in a total potential cost of \$53 million in Phase 1. The 50-year annualized costs provide a measure of the steady-state cost. Annualized costs of the supplemental proposed rule are estimated to be \$39 million per year using a 3% discount rate and \$43 million per year using a 7% discount rate. Annualized costs for the other options range from \$39 million to \$92 million per year using a 3% discount rate and \$42 million to \$102 million per year using a 7% discount rate.

6. *Net benefits.* Net benefits are the difference between benefits and costs. The supplemental proposed rule, if finalized as proposed, is estimated to result in potential net benefits of \$1 million to \$157 million in Phase 1 based on children's benefits alone. The 50-year annualized net benefits for the proposed rule based on children's benefits are estimated to be \$25 million to \$218 million per year using a 3% discount rate and \$25 million to \$229 million per year using a 7% discount rate. The net benefits for the other options range from -\$8 million to \$293 million per year using a 3% discount rate and -\$12 million to \$306 million per year using a 7% discount rate. There are additional unquantified benefits, including avoided health effects in adults, that are not included in the net benefits estimates.

7. *Request for comment.* To improve the analysis for the final rule, the Agency conducted a number of sensitivity analyses in its Supplemental Economic Analysis (Ref. 6). These analyses examined the sensitivity of the overall costs and benefits of the rule to selected parameters which appear to be important and for which relatively few supporting data are available. These include alternative assumptions regarding compliance with this rule, the effectiveness of daily cleaning, areas of schools other than pre-kindergarten and kindergarten classrooms that are routinely used by children under age 6, the number of unscheduled maintenance events in child-occupied facilities in public or commercial

buildings, the effectiveness of current work practices in child-occupied facilities in public or commercial buildings, and how lead loadings from renovation events may vary with the age of a building. The Agency is specifically interested in comments on these sensitivity analyses and supporting information, particularly peer-reviewed studies and data, on the following questions related to the Agency's analysis:

- How often are unplanned maintenance activities that would be covered by this supplemental proposal performed in child care centers and schools?
- How often are classrooms in child-occupied facilities in public or commercial buildings swept and how often are they mopped? Do janitorial staff use single bucket mopping or the two bucket mopping method required by the rule and how frequently do they change the water? What are the efficiencies of the various cleaning methods?
- What share of the renovations in schools and child care centers use work practices required by this supplemental proposal, and which particular work practices do they use?
- How do renovations performed by contractors and those performed by homeowners differ, particularly with respect to the frequency with which work practices required by this proposal are already being used and the expected compliance rates if homeowner renovations were covered by the regulation? (This supplemental proposal would not cover persons who perform renovations in housing that they own and occupy, but one of the regulatory options evaluated in EPA's Supplemental Economic Analysis covered renovations by homeowners who provide child care for compensation in their homes.)
- When estimating the lead loadings from renovations, how should EPA's analysis take into account variations in the amount of lead in paint by component type and building age?

B. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 USC 3501 *et seq.* An Information Collection Request (ICR) document prepared by EPA, an amendment to an existing ICR and referred to as the Second ICR Addendum (EPA ICR No. 1715.08, OMB Control Number 2070-0155) has been placed in the public docket for this proposed rule (Ref. 14).

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 codified in Chapter 40 of the CFR, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

The new information collection activities contained in this supplemental proposed rule are designed to assist the Agency in meeting the core objectives of TSCA section 402, including ensuring the integrity of accreditation programs for training providers, providing for the certification of renovators, and determining whether work practice standards are being followed. EPA has carefully tailored the proposed recordkeeping and recordkeeping requirements so they will permit the Agency to achieve statutory objectives without imposing an undue burden on those firms that choose to be involved in renovation, repair, and painting activities.

Burden under the PRA means the total time, effort, or financial resources expended by persons to generate, maintain, retain, 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.

Under this supplemental proposal, the new information collection requirements may affect training providers and firms that perform renovation, repair, or painting for compensation in child-occupied facilities. Although these firms have the option of choosing to engage in the covered activities, once a firm chooses to do so, the information collection activities contained in this rule become mandatory for that firm.

The ICR document provides a detailed presentation of the estimated burden and costs for 3 years of the program. The

aggregate burden varies by year due to changes in the number of firms that will seek certification each year. The burden and cost to training providers and firms engaged in renovation, repair, and painting activities is summarized in this section.

There are an average of 145 training providers that are estimated to incur burden to notify EPA (or an authorizing State, Tribe, or Territory) before and after training courses. The average burden for training provider notifications as a result of the supplemental proposed rule is estimated at 7 to 18 hours per year, depending on the number of additional training courses provided. Total training provider burden is estimated to average 1,700 hours per year.

There are an average of 38,000 firms estimated to become certified to engage in renovation, repair, or painting activities in child-occupied facilities under the supplemental proposed rule. The average certification burden is estimated to be 3.5 hours per firm in the year a firm is initially certified, and 0.5 hours in years that it is re-certified (which occurs every 3 years). Firms must also distribute lead hazard information to the owners and occupants of public or commercial buildings that contain child-occupied facilities. Finally, firms must keep records of the work they perform in child-occupied facilities; this recordkeeping is estimated to typically take approximately 5 hours per year. Total burden for these firms is estimated to average 280,000 hours per year.

Total respondent burden as a result of the supplemental proposed rule during the period covered by the ICR is estimated to average approximately 281,000 hours per year.

There are also government costs to administer the program. States, Tribes, and Territories are allowed, but are under no obligation, to apply for and receive authorization to administer these proposed requirements. EPA will directly administer programs for States, Tribes, and Territories that do not become authorized. Because the number of States, Tribes, and Territories that will become authorized is not known, administrative costs are estimated assuming that EPA will administer the program everywhere. To the extent that other government entities become authorized, EPA's administrative costs will be lower.

Direct your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated

collection techniques, to EPA using the public docket that has been established for this proposed rule (Docket ID No. EPA-HQ-OPPT-2005-0049). In addition, send a copy of your comments about the ICR to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to complete its review of the ICR between 30 and 60 days after June 5, 2007, please submit your ICR comments for OMB consideration to OMB by July 5, 2007.

The Agency will consider and address comments received on the information collection requirements contained in this proposal when it develops the final rule.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C.601 *et seq.*, and the Agency's long-standing policy of always considering whether there may be a potential for adverse impacts on small entities, the Agency has evaluated the potential small entity impacts of its 2006 Proposal and this supplemental proposal. The Agency's analysis of the potentially adverse economic impacts of this supplemental proposal is contained in the Supplemental Economic Analysis (Ref. 6). The analysis of the potentially adverse economic impacts of the 2006 Proposal is contained in the document entitled "Economic Analysis for the Renovation, Repair, and Painting Program Proposed Rule" (Ref. 13). Because EPA intends to promulgate a single final rule that encompasses both the 2006 Proposal and this supplemental proposal, EPA has evaluated the small entity impacts for the combined effects of the two proposals. The initial regulatory flexibility analysis was reviewed in the preamble to the 2006 Proposal. This analysis has been revised to include information on this supplemental proposal. The following is an overview of the revised analysis.

1. *Legal basis and objectives for the proposed rule.* As discussed in Unit IV.A. of this preamble, TSCA section 402(c)(2) directs EPA to study the extent to which persons engaged in renovation, repair, and painting activities are exposed to lead or create lead-based paint hazards regularly or occasionally. After concluding this study, TSCA section 402(c)(3) further directs EPA to revise its lead-based paint activities regulations under TSCA section 402(a) to apply to renovation or remodeling activities that create lead-based paint hazards. Because EPA's study found

that activities commonly performed during renovation and remodeling create lead-based paint hazards, EPA is proposing to revise the TSCA section 402(a) regulatory scheme to apply to individuals and firms engaged in renovation, repair, and painting activities. The primary objective of the combined proposals is to prevent the creation of new lead-based paint hazards from renovation, repair, and painting activities in housing where children under age 6 reside and in housing or other buildings frequented by children under age 6.

2. *Potentially affected small entities.* Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined in accordance with section 601 of the RFA as:

(1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The small entities that are potentially directly regulated by this proposed rule include: small businesses (including contractors and non-residential property owners and managers); small non-profits (certain daycare centers and private schools); and small governments (school districts).

In determining the number of small businesses affected by the proposed rule, the Agency applied U.S. Economic Census data to the SBA's definition of small business. However, applying the U.S. Economic Census data requires either under or overestimating the number of small businesses affected by the proposed rule. For example, for many construction establishments, the SBA defines small businesses as having revenues of less than \$13 million. With respect to those establishments, the U.S. Economic Census data groups all establishments with revenues of \$10 million or more into one revenue bracket. On the one hand, using data for the entire industry would overestimate the number of small businesses affected by the proposed rule and would defeat the purpose of estimating impacts on small business. It would also underestimate the proposed rule's impact on small businesses because the impacts would be calculated using the revenues of large businesses in addition to small businesses. On the other hand, applying the closest, albeit lower,

revenue bracket would underestimate the number of small businesses affected by the proposed rule while at the same time overestimating the impacts.

Similar issues arose in estimating the fraction of non-residential commercial property owners and managers that are small businesses. For other sectors (non-profits operating daycare centers or private schools), EPA assumed that all affected firms are small, which may overestimate the number of small entities affected by the rule. The Agency requests comments and information regarding available data to better estimate the number of small entities affected by the rule.

The vast majority of entities in the industries affected by this rule are small. Using EPA's estimates, when the supplemental proposal is combined with the 2006 Proposal, the renovation, repair, and painting program will affect an average of approximately 186,000 small entities.

3. *Potential economic impacts on small entities.* EPA evaluated two factors in its analysis of the rule's requirements on small entities, the number of firms that would experience the impact, and the size of the impact. Annual compliance costs as a percentage of annual revenues were used to assess the potential impacts of the rule on small businesses and small governments. This ratio is a good measure of entities' ability to afford the costs attributable to a regulatory requirement, because comparing compliance costs to revenues provides a reasonable indication of the magnitude of the regulatory burden relative to a commonly available measure of economic activity. Where regulatory costs represent a small fraction of a typical entity's revenues (for example, less than 1%, and not greater than 3%), the financial impacts of the regulation on such entities may be considered as not significant. For non-profit organizations, impacts were measured by comparing rule costs to the organization's annual expenditures. When expenditure data were not available, however, revenue information was used as a proxy for expenditures. It is appropriate to calculate the impact ratios using annualized costs, because these costs are more representative of the continuing costs entities face to comply with the rule.

EPA estimates that there are an average of 186,000 small entities that would be affected by the combined renovation, repair, and painting activities program. Of these, there are an estimated 163,000 small businesses with an average impact of 0.9%, 17,000 small non-profits with an average impact of

0.1%, and 6,000 small governments with an average impact of 0.004%.

4. *Relevant Federal rules.* The proposed requirements in this rulemaking will fit within an existing framework of other Federal regulations that address lead-based paint.

The Pre-Renovation Education Rule, discussed in Unit IV.A.2. of this preamble, requires renovators to distribute a lead hazard information pamphlet to owners and occupants before conducting a renovation in target housing. This proposal has been carefully crafted to harmonize with the existing pre-renovation education requirements.

Disposal of waste from renovation projects that would be regulated by this proposal is covered by the Resource Conservation and Recovery Act (RCRA) regulations for solid waste. This proposal does not contain specific requirements for the disposal of waste from renovations.

HUD has extensive regulations that address the conduct of interim controls, as well as other lead-based paint activities, in Federally assisted housing. Some of HUD's interim controls would be regulated under this proposal as renovations, depending upon whether the particular interim control measure disturbs more than the threshold amount of paint. In most cases, the HUD regulations are comparable to, or more stringent than this proposal. In general, persons performing HUD-regulated interim controls must have taken a course in lead-safe work practices, which is also a requirement of this proposal. However, this proposal would not require dust clearance testing, a process required by HUD after interim control activities that disturb more than a minimal amount of lead-based paint.

Finally, OSHA's Lead Exposure in Construction standard covers potential worker exposures to lead during many construction activities, including renovation, repair, and painting activities. Although this standard may cover many of the same projects as today's proposal, the requirements themselves do not overlap. The OSHA rule addresses the protection of the worker, this EPA proposal addresses the protection of the building occupants, particularly children under age 6.

5. *Skills needed for compliance.* This proposal would establish requirements for training renovators and dust sampling technicians; certifying renovators, dust sampling technicians, and entities engaged in renovation, repair, and painting activities; accrediting providers of renovation and dust sampling technician training; and for renovation work practices.

Renovators and dust sampling technicians would have to take a course to learn the proper techniques for accomplishing the tasks they will perform during renovations. These courses are intended to provide them with the information they would need to comply with the rule based on the skills they already have. Entities would be required to apply for certification to perform renovations; this process does not require any special skills other than the ability to complete the application. They would also need to document the work they have done during renovations. This does not require any special skills. Training providers must be knowledgeable about delivering technical training. Training providers would be required to apply for accreditation to offer renovator and dust sampling technician courses. They would also be required to provide prior notification of such courses and provide information on the students trained after each such course. Completing the accreditation application and providing the required notification information does not require any special skills.

6. *Small Business Advocacy Review Panel.* Since the earliest stages of planning for this regulation under Section 402(c)(3) of TSCA, EPA has been concerned with potential small entity impacts. EPA conducted outreach to small entities, and, in 1999, convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the small entities that would potentially be subject to this regulation's requirements. At that time, EPA was planning an initial regulation that would apply to renovations in target housing, with requirements for public and commercial building renovations, including child-occupied facility renovations, to follow at a later date. The small entity representatives (SERs) chosen for consultation reflect that initial emphasis. They included maintenance and renovation contractors, painting and decorating contractors, multi-family housing owners and operators, training providers/consultants, and representatives from several national contractor associations, the National Multi-Housing Council, and the National Association of Home Builders.

After considering the existing lead-based paint activities regulations, and taking into account preliminary stakeholder feedback, EPA identified eight key elements of a potential renovation and remodeling regulation for the Panel's consideration. These elements were:

- Applicability and scope.

- Firm certification.
- Individual training and certification.
- Accreditation of training courses.
- Work practice standards.
- Prohibited practices.
- Exterior clearance.
- Interior clearance.

EPA also developed several options for each of these key elements. Although the scope and applicability options specifically presented to the Panel covered only target housing, background information presented to the SERs and to the Panel members shows that EPA was also considering a regulation covering child-occupied facilities. More information on the Panel, its recommendations, and how EPA implemented them in the development of the program, are provided in Unit VIII.C.6 of the preamble to the 2006 Proposal (Ref. 1).

EPA invites comments on all aspects of the supplemental proposal and its impacts on small entities.

D. Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act (UMRA) (Public Law 104–4), EPA has determined that when this supplemental proposed rule is considered by itself, it does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of \$100 million in any 1 year by the private sector or by State, local, and Tribal governments in the aggregate. (When adjusted for inflation, the value of the UMRA threshold is over \$118 million.) However, when considered in conjunction with the 2006 Proposal, the combined requirements will result in annual expenditures by the private sector above the UMRA threshold. Accordingly, EPA has prepared a written statement under section 202 of the UMRA which has been placed in the public docket for this rulemaking and is summarized here.

1. *Authorizing legislation.* This proposal is issued under the authority of TSCA sections 402(c)(3) and 404.

2. *Cost-benefit analysis.* EPA has prepared an analysis of the costs and benefits associated with this supplemental proposal, a copy of which is available in the docket for this rulemaking (Ref. 6). The Supplemental Economic Analysis presents the costs of the proposal as well as various regulatory options and is summarized in Unit VII.A. of this preamble. EPA has estimated that the total annualized costs of this supplemental proposal when using a 3% discount rate are \$39 million per year, and that benefits are \$64 million to \$257 million per year. Using

a 7% discount rate, costs are \$43 million per year and benefits are \$68 million to \$272 million per year.

3. *State, local, and Tribal government input.* EPA has sought input from State, local and Tribal government representatives throughout the development of the renovation, repair, and painting program. EPA's experience in administering the existing lead-based paint activities program under TSCA section 402(a) suggests that these governments will play a critical role in the successful implementation of a national program to reduce exposures to lead-based paint hazards associated with renovation, repair, and painting activities. Consequently, as discussed in Unit III.C.2. of the preamble to the 2006 Proposal (Ref. 1), the Agency has met with State, local, and Tribal government officials on numerous occasions to discuss renovation issues.

4. *Least burdensome option.* EPA considered a wide variety of options for addressing the risks presented by renovation activities where lead-based paint is present. The Supplemental Economic Analysis analyzed several different options for the scope of the supplemental rule. As part of the development of the renovation, repair, and painting program, EPA has considered different options for the scope of the rule, various combinations of training and certification requirements for individuals who perform renovations, various combinations of work practice requirements, and various methods for ensuring that no lead-based paint hazards are left behind by persons performing renovations. Additional information on the options considered is available in Unit VIII.C.6. of the preamble to the 2006 Proposal (Ref. 1), and in the Supplemental Economic Analysis (Ref. 6). EPA has determined that the proposed option is the least burdensome option available that achieves the objective of this supplemental rule, which is to prevent the creation of new lead-based paint hazards from renovation, repair, and painting activities in child-occupied facilities.

This rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA. Based on the definition of "small government jurisdiction" in RFA section 601, no State governments can be considered small. Small Territorial or Tribal governments could apply for authorization to administer and enforce this program, which would entail costs, but these small jurisdictions are under no obligation to do so.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments operate schools that are child-occupied facilities. EPA generally measures a significant impact under UMRA as being expenditures, in the aggregate, of more than 1% of small government revenues in any one year. As explained in Unit VI.C.3., the rule is expected to result in small government impacts well under 1% of revenues. So EPA has determined that the rule does not significantly affect small governments.

Nor does the rule uniquely affect small governments, as the rule is not targeted at small governments, does not primarily affect small governments, and does not impose a different burden on small governments than on other entities that operate child-occupied facilities.

E. Federalism

Pursuant to Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have "federalism implications," because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this proposed rule.

States would be able to apply for, and receive authorization to administer these proposed requirements, but would be under no obligation to do so. In the absence of a State authorization, EPA will administer these requirements.

Nevertheless, in the spirit of the objectives of this Executive Order, and consistent with EPA policy to promote communications between the Agency and State and local governments, EPA has consulted with representatives of State and local governments in developing the renovation, repair, and painting program. These consultations are as described in the preamble to the 2006 Proposal (Ref. 1).

EPA specifically solicits additional comment on this proposed rule from State and local officials. EPA is particularly interested in information on the number of public housing agencies who own or operate detached or off-site child-occupied facilities and this regulation's potential impacts on those agencies.

F. Tribal Implications

As required by Executive Order 13175, entitled "Consultation and

Coordination with Indian Tribal Governments” (59 FR 22951, November 6, 2000), EPA has determined that this proposed rule does not have tribal implications because it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Tribes would be able to apply for, and receive authorization to administer these proposed requirements on Tribal lands, but Tribes would be under no obligation to do so. In the absence of a Tribal authorization, EPA will administer these requirements. While Tribes may operate child-occupied facilities covered by the rule such as kindergartens, pre-kindergartens, and daycare facilities, EPA has determined that this proposal would not have substantial direct effects on the tribal governments that operate these facilities.

Thus, Executive Order 13175 does not apply to this rule. Although Executive Order 13175 does not apply to this rule, EPA consulted with Tribal officials and others by discussing potential renovation regulatory options for the renovation, repair, and painting program at several national lead program meetings hosted by EPA and other interested Federal agencies.

EPA specifically solicits additional comment on this proposed rule from Tribal officials.

G. Children's Health Protection

Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to this supplemental rule because, when considered in conjunction with the 2006 Proposal, the combination would be designated as an “economically significant regulatory action” as defined by Executive Order 12866, and because the environmental health or safety risk addressed by this action have a disproportionate effect on children. Accordingly, EPA has evaluated the environmental health or safety effects of renovation, repair, and painting projects on children. Various aspects of this evaluation are discussed in the preamble to the 2006 Proposal (Ref. 1).

The primary purpose of this supplemental proposed rule is to prevent the creation of new lead-based paint hazards from renovation, repair, and painting activities in child-occupied facilities. In the absence of this regulation, adequate lead-safe work

practices are not likely to be employed during renovation, repair, and painting activities. EPA's analysis indicates that there will be approximately 916,000 exposures avoided per year to children under age 6 as a result of the rule. These children are projected to receive considerable benefits due to this regulation.

H. Energy Effects

This rule is not a “significant energy action” as defined in Executive Order 13211, entitled “Actions concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have any adverse effect on the supply, distribution, or use of energy.

I. Technology Standards

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 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.

In the 2006 Proposal, EPA proposed to adopt a number of work practice requirements that could be considered technical standards for performing renovation projects in residences that contain lead-based paint. This supplemental proposal would extend those work practice requirements to child-occupied facilities that contain lead-based paint. As discussed in Unit VIII.I. of the 2006 Proposal, EPA identified two potentially-applicable voluntary consensus standards (Ref. 1 at 1626). ASTM International (formerly the American Society for Testing and Materials) has developed 2 potentially-applicable documents: “Standard Practice for Clearance Examinations Following Lead Hazard Reduction Activities in Single-Family Dwellings and Child-Occupied Facilities” (Ref. 15), and “Standard Guide for Evaluation, Management, and Control of Lead Hazards in Facilities” (Ref. 16). With respect to the first document, EPA did not propose to require traditional clearance examinations, including dust sampling, following renovation projects.

However, EPA did propose to require that a visual inspection for dust, debris, and residue be conducted after cleaning and before post-renovation cleaning verification is performed. The first ASTM document does contain information on conducting a visual inspection before collecting dust clearance samples. The second ASTM document is a comprehensive guide to identifying and controlling lead-based paint hazards. Some of the information in this document is relevant to the work practices that EPA proposed to require. Each of these ASTM documents represents state-of-the-art knowledge regarding the performance of these particular aspects of lead-based paint hazard evaluation and control practices and EPA continues to recommend the use of these documents where appropriate. However, because each of these documents is extremely detailed and encompasses many circumstances beyond the scope of this rulemaking, EPA determined that it would not be practical to incorporate these voluntary consensus standards into the 2006 Proposal.

In addition, the 2006 Proposal contained a provision for EPA to recognize test kits that could be used by certified renovators to determine whether components to be affected by a renovation contain lead-based paint. Under that proposal, EPA would recognize those kits that meet certain performance standards for limited false positives and negatives. Further, EPA would also recognize only those kits that have been properly validated by a laboratory independent of the kit manufacturer. Although EPA did not propose to establish a particular method to be used for validating kits, for chemical spot test kits, EPA announced its intention to look to the ASTM document entitled “Standard Practice for Evaluating the Performance Characteristics of Qualitative Chemical Spot Test Kits for Lead in Paint” (Ref. 17) to determine whether a particular kit's validation is adequate.

The provisions discussed here would apply equally to renovation projects in child-occupied facilities. EPA welcomes comments from entities potentially regulated by this supplemental proposal on this aspect of the proposed rulemaking. EPA specifically invites these entities to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Environmental Justice

Under Executive Order 12898, entitled “Federal Actions to Address

Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994), the Agency has assessed the potential impact of this proposal on minority and low-income populations. The results of this assessment are presented in the Supplemental Economic Analysis for this proposal, which is available in the public docket for this rulemaking (Ref. 6). The rule will not have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

List of Subjects in 40 CFR Part 745

Child-occupied facility, Environmental protection, Housing renovation, Lead, Lead-based paint, Renovation, Reporting and recordkeeping requirements.

Dated: May 24, 2007.

Stephen L. Johnson,
Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 745—[AMENDED]

1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681–2692 and 42 U.S.C. 4852d.

2. Section 745.80 is revised to read as follows:

§ 745.80 Purpose.

This subpart contains regulations developed under sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this subpart is to ensure the following:

(a) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and

(b) Persons performing renovations regulated in accordance with § 745.82 are properly trained; renovators, dust sampling technicians, and firms performing these renovations are certified; and lead-safe work practices are followed during these renovations.

3. Section 745.81 is revised to read as follows:

§ 745.81 Effective dates.

(a) *Training, certification and accreditation requirements and work practice standards.* The training, certification and accreditation requirements and work practice

standards in this subpart are applicable as of [insert date 1 year after date of publication of the final rule in the **Federal Register**] in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. The training, certification and accreditation requirements and work practice standards in this subpart will become effective as follows:

(1) *Training programs.* Effective [insert date 60 days after date of publication of the final rule in the **Federal Register**], no training program may provide, offer, or claim to provide training or refresher training for EPA certification as a renovator or a dust sampling technician without accreditation from EPA under § 745.225. Training programs may apply for accreditation under § 745.225 beginning [insert date 1 year after date of publication of the final rule in the **Federal Register**].

(2) *Firms.* Firms may apply for certification under § 745.89 beginning [insert date 18 months after date of publication of the final rule in the **Federal Register**].

(i) No firm may perform, offer, or claim to perform renovations, as defined in this subpart, without certification from EPA under § 745.89 on or after [insert date 2 years after date of publication of the final rule in the **Federal Register**]:

(A) In any target housing where the firm obtains information indicating that a child under age 6 with a blood lead level greater than or equal to 10 µg/dL or the applicable State or local government level of concern, if lower, resides there, or in any target housing where the firm has not provided the owners and occupants with the opportunity to inform the firm that a child under age 6 with such a blood lead level resides there;

(B) In any child-occupied facility where the firm obtains information indicating that the facility is used by a child under age 6 with a blood lead level greater than or equal to 10 µg/dL or the applicable State or local government level of concern, if lower, or in any child-occupied facility where the firm has not provided the owners and occupants with the opportunity to inform the firm that the facility is used by a child under age 6 with such a blood lead level; or

(C) In target housing or child-occupied facilities constructed before 1960, unless, in the case of owner-occupied target housing, the firm has obtained a statement signed by the owner that the renovation will occur in the owner's residence and no child

under age 6 resides or is provided child care there.

(ii) No firm may perform, offer, or claim to perform renovations, as defined in this subpart, without certification from EPA under § 745.89 on or after [insert date 3 years after date of publication of the final rule in the **Federal Register**] in any target housing or child-occupied facility, unless, in the case of owner-occupied target housing, the firm has obtained a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides or is provided child care there.

(3) *Individuals.* (i) All renovations, as defined in this subpart, must be directed by renovators certified in accordance with § 745.90(a) and performed by certified renovators or individuals trained in accordance with § 745.90(b)(2) on or after [insert date 2 years after date of publication of the final rule in the **Federal Register**]:

(A) In any target housing where the firm performing the renovation obtains information indicating that a child under age 6 with a blood lead level greater than or equal to 10 µg/dL or the applicable State or local government level of concern, if lower, resides there, or in any target housing where the firm has not provided the owners and occupants with the opportunity to inform the firm that a child under age 6 with such a blood lead level resides there;

(B) In any child-occupied facility where the firm obtains information indicating that the facility is used by a child under age 6 with a blood lead level greater than or equal to 10 µg/dL or the applicable State or local government level of concern, if lower, or in any child-occupied facility where the firm has not provided the owners and occupants with the opportunity to inform the firm that the facility is used by a child under age 6 with such a blood lead level; or

(C) In target housing or child-occupied facilities constructed before 1960, unless, in the case of owner-occupied target housing, the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides or is provided child care there.

(ii) All renovations, as defined in this subpart, must be directed by renovators certified in accordance with § 745.90(a) and performed by certified renovators or individuals trained in accordance with § 745.90(b)(2) on or after [insert date 3 years after date of publication of the final rule in the **Federal Register**] in any target housing or child-occupied

facility, unless, in the case of owner-occupied target housing, the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides or is provided child care there.

(4) *Work practices.* (i) All renovations, as defined in § 745.83, must be performed in accordance with the work practice standards in § 745.85 and the associated recordkeeping requirements in § 745.86(b)(6) and (b)(7) on or after [insert date 2 years after date of publication of the final rule in the **Federal Register**]:

(A) In any target housing where the firm performing the renovation obtains information indicating that a child under age 6 with a blood lead level greater than or equal to 10 µg/dL or the applicable State or local government level of concern, if lower, resides there, or in any target housing where the firm has not provided the owners and occupants with the opportunity to inform the firm that a child under age 6 with such a blood lead level resides there;

(B) In any child-occupied facility where the firm obtains information indicating that the facility is used by a child under age 6 with a blood lead level greater than or equal to 10 µg/dL or the applicable State or local government level of concern, if lower, or in any child-occupied facility where the firm has not provided the owners and occupants with the opportunity to inform the firm that the facility is used by a child under age 6 with such a blood lead level; or

(C) In target housing or child-occupied facilities constructed before 1960, unless, in the case of owner-occupied target housing, the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides or is provided child care there.

(ii) All renovations, as defined in this subpart, must be performed in accordance with the work practice standards in § 745.85 and the associated recordkeeping requirements in § 745.86(b)(6) and (b)(7) on or after [insert date 3 years after date of publication of the final rule in the **Federal Register**] in any target housing or child-occupied facility, unless, in the case of owner-occupied target housing, the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides or is provided child care there.

(5) The suspension and revocation provisions in § 745.91 are effective [insert date 2 years after date of publication of the final rule in the **Federal Register**].

(b) *Renovation-specific pamphlet.* Before [insert date 8 months after date of publication of the final rule in the **Federal Register**], renovators or firms performing renovations in States and Indian Tribal areas without an authorized program may provide owners and occupants with either of the following EPA pamphlets: *Protect Your Family From Lead in Your Home* or *Protect Your Family from Lead During Renovation, Repair & Painting*. After that date, *Protect Your Family from Lead During Renovation, Repair & Painting* must be used exclusively.

(c) *Pre-Renovation Education Rule.* With the exception of the requirement to use the pamphlet titled *Protect Your Family from Lead During Renovation, Repair & Painting*, the provisions of the Pre-Renovation Education Rule in this subpart have been in effect since June 1999.

4. Section 745.82 is revised to read as follows:

§ 745.82 Applicability.

(a) This subpart applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(1) Minor repair and maintenance activities (including minor electrical work and plumbing) that disrupt 2 square feet or less of painted surface per component.

(2) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector (certified pursuant to either Federal regulations at § 745.226 or a State or Tribal certification program authorized pursuant to § 745.324) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter (mg/cm²) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination.

(3) Renovations in target housing or child-occupied facilities in which a certified renovator, using an acceptable test kit and following the kit manufacturer's instructions, has determined that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5% by weight.

(b) The information distribution requirements in § 745.84 do not apply to

emergency renovation operations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovation operations. The work practice, training, and certification requirements in §§ 745.85, 745.89, 745.90 and the recordkeeping requirements in § 745.86(b)(6) and (b)(7) apply to emergency renovation operations to the extent practicable.

(c) The work practice standards for renovation activities in § 745.85 apply to all renovations covered by this subpart, except for renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides or is provided child care there. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.

5. Section 745.83 is amended as follows:

- a. Remove the definition of "Emergency renovation operations."
- b. Revise the definition of "Pamphlet" and the definition of "Renovator."
- c. Add 13 definitions in alphabetic order.

§ 745.83 Definitions.

* * * * *

Acceptable test kit means a commercially available kit recognized by EPA pursuant to section 405 of TSCA as being capable of allowing a user to accurately determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5% lead by weight, in a paint chip, paint powder, or painted surface.

* * * * *

Child-occupied facility means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits

last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. In public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, for public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

Cleaning verification card means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

Component or building component means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: Ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: Painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

Dry disposable cleaning cloth means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

* * * * *

Firm means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

HEPA-equipped vacuum means a vacuum equipped with a high efficiency particulate air filter.

Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

* * * * *

Pamphlet means the EPA pamphlet titled *Protect Your Family from Lead During Renovation, Repair & Painting* developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information). Before [insert date 8 months after date of publication of the final rule in the **Federal Register**], the term "pamphlet" also means any pamphlet developed by EPA under section 406(a) of TSCA or any State or Tribal pamphlet approved by EPA pursuant to § 745.326.

* * * * *

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): The removal or modification of painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of large structures (e.g., walls, ceiling, large surface replastering, major re-plumbing); and window replacement. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart.

Renovator means a person who either performs or directs uncertified workers who perform renovations. A certified

renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.

Training hour means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

Wet disposable cleaning cloth means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

Wet mopping system means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor.

Work area means the area that the certified renovator establishes to contain all of the dust and debris generated by a renovation, based on the certified renovator's evaluation of the extent and nature of the activity and the specific work practices that will be used.

§ 745.84 [Removed]

6. Section 745.84 is removed.

§ 745.85 [Redesignated]

7. Section 745.85 is redesignated as § 745.84.

8. Newly designated § 745.84 is amended as follows:

a. Revise the introductory text of paragraph (a) and revise paragraph (a)(2)(i).

b. Revise the introductory text of paragraph (b) and revise paragraphs (b)(2) and (b)(4).

c. Redesignate paragraph (c) as paragraph (d).

d. Add a new paragraph (c).

c. Revise the introductory text of newly designated paragraph (d).

§ 745.84 Information distribution requirements.

(a) *Renovations in dwelling units.* No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:

(1) * * *

(2) * * *

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult

occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature.

* * * * *

(b) *Renovations in common areas.* No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must:

(1) * * *

(2) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet, at no charge, from the firm performing the renovation.

(3) * * *

(4) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.

(c) *Renovations in child-occupied facilities.* (1) No more than 60 days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(i) Provide the owner of the building with the pamphlet, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(ii) If the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

(A) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet; or certify in writing that a

pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility.

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians.

(d) *Written acknowledgment.* The written acknowledgments required by paragraphs (a)(1)(i), (a)(2)(i), (b)(1)(i), (c)(1)(i)(A), and (c)(1)(ii)(A) of this section must:

* * * * *

9. Section 745.85 is added to subpart E to read as follows:

§ 745.85 Work practice standards.

(a) *Standards for renovation activities.* Renovations must be performed by certified firms using certified renovators as directed in § 745.89.

(1) *Occupant protection.* Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR

35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(2) *Containing the work area.* Before beginning the renovation, the firm must isolate the work area so that no visible dust or debris leaves the work area while the renovation is being performed.

(i) *Interior renovations.* The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

(B) Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(D) Cover the floor surface of the work area with plastic sheeting or other impermeable material with all seams taped and all edges secured at the perimeter of the work area.

(E) Ensure that all personnel, tools, and other items including waste are free of dust and debris when leaving the work area. Alternatively, the paths used to reach the exterior of the building must be covered with plastic sheeting or other impermeable material to prevent the spread of lead contaminated dust and debris outside the work area.

(ii) *Exterior renovations.* The firm must:

(A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.

(B) Ensure that doors within the work area that must be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending out from the edge of the structure a sufficient distance to collect falling paint debris.

(3) *Waste from renovations.* (i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent identifiable releases of dust and debris.

(4) *Cleaning the work area.* After the renovation has been completed, the firm must clean the work area until no visible dust, debris or residue remains.

(i) *Interior and exterior renovations.* The firm must:

(A) Pick up all paint chips and debris.

(B) Remove the protective sheeting.

Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(ii) *Additional cleaning for interior renovations.* The firm must clean all objects and surfaces in and around the work area in the following manner, cleaning from higher to lower:

(A) *Walls.* Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA-equipped vacuum or wiping with a damp cloth.

(B) *Remaining surfaces.* Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA-equipped vacuum. The HEPA-equipped vacuum must be equipped with a beater bar when vacuuming carpets and rugs. Where feasible, floor surfaces underneath a rug or carpeting must also be thoroughly vacuumed with a HEPA-equipped vacuum.

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a 2-bucket mopping method that keeps the wash water separate from the rinse water, or using a wet mopping system.

(b) *Standards for post-renovation cleaning verification.* (1) *Interiors.* (i) A certified renovator must perform a

visual inspection to determine whether visible amounts of dust, debris or residue are still present. If visible amounts of dust, debris or residue are present, these conditions must be eliminated by re-cleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.

(1) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches the cleaning verification card, the windowsill has been adequately cleaned.

(2) If the cloth does not match the cleaning verification card, re-clean the windowsill as directed in paragraphs (a)(4)(ii)(B) and (a)(4)(ii)(C) of this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the windowsill again. If the cloth matches the cleaning verification card, that windowsill has been adequately cleaned.

(3) If the cloth does not match the cleaning verification card, clean that windowsill again as directed in paragraphs (a)(4)(ii)(B) and (a)(4)(ii)(C) of this section and wait for 1 hour or until the windowsill has dried completely, whichever is longer.

(4) After waiting for the windowsill to dry, wipe the windowsill with dry disposable cleaning cloths until a cloth, or section of cloth, used to wipe the windowsill matches the cleaning verification card.

(B) Wipe uncarpeted floors within the work area with a wet disposable cleaning cloth, using an application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the floor for post-renovation cleaning verification. If the floor surface within the work area is greater than 40 square feet, the floor within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the floor within the work area matches the cleaning verification card, the floor has been adequately cleaned.

(1) If the cloth used to wipe a particular floor section does not match the cleaning verification card, re-clean that section of the floor as directed in paragraphs (a)(4)(ii)(B) and (a)(4)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the

cleaning verification card, that section of the floor has been adequately cleaned.

(2) If the cloth used to wipe a particular floor section does not match the cleaning verification card after the floor has been re-cleaned, clean that section of the floor again as directed in paragraphs (a)(4)(ii)(B) and (a)(4)(ii)(C) of this section and wait for 1 hour or until the entire floor within the work area has dried completely, whichever is longer.

(3) After waiting for the entire floor within the work area to dry, wipe those sections of the floor that have not yet achieved post-renovation cleaning verification with dry disposable cleaning cloths until a cloth that has wiped those sections of the floor matches the cleaning verification card. This wiping must also be performed using an application device with a long handle and a head to which the cloths are attached.

(iii) Dust clearance sampling may be performed instead of, or in addition to, the procedures identified in paragraph (b)(1)(ii) of this section. If dust clearance sampling is performed, it must be performed in accordance with § 745.227(e)(8) through (e)(9), except that a dust sampling technician certified in accordance with this subpart may collect and report the results of the required samples.

(iv) When the work area passes the post-renovation cleaning verification or dust clearance sampling, remove the warning signs.

(2) *Exteriors.* A certified renovator must perform a visual inspection to determine whether visible amounts of dust, debris or residue are still present. If visible amounts of dust, debris or residue are present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(c) *Activities conducted after post-renovation cleaning verification.*

Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this subpart if they are conducted after post-renovation cleaning verification has been performed.

10. Section 745.86 is amended by revising paragraph (a) and adding new paragraphs (b)(6) and (b)(7) to read as follows:

§ 745.86 Recordkeeping requirements.

(a) Firms performing renovations or conducting dust sampling must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a

period of 3 years following completion of the renovation or dust sampling activities. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation, including any applicable State or Tribal laws or regulations.

(b) * * *

(6) Any signed and dated statements received from owner-occupants that no children under age 6 reside or are provided child care in housing being renovated which document that the requirements of § 745.85 do not apply. These statements must include a declaration that the renovation will occur in the owner's residence, a declaration that no children under age 6 reside or are provided child care there, the address of the unit undergoing renovation, the owner's name, the signature of the owner, and the date of signature. These statements must be written in the same language as the text of the renovation contract, if any. This requirement includes any statements received from owners or occupants that a child under age 6 with a blood lead level that equals or exceeds 10 µg/dL, or an applicable State or local government level of concern, if lower, resides or is provided child care there.

(7) Documentation of compliance with the requirements of § 745.85, including documentation that a certified renovator was assigned to the project, the certified renovator provided on-the-job training for uncertified workers used on the project, the certified renovator performed or directed uncertified workers who performed all of the tasks described in § 745.85(a), and the certified renovator performed the post-renovation cleaning verification described in § 745.85(b). This documentation must include a copy of the certified renovator's or dust sampling technician's training certificate, and signed and dated descriptions of how activities performed by the certified renovator or dust sampling technician, including worker training activities, sign posting, work area containment, waste handling, cleaning, and post-renovation cleaning verification or clearance were conducted in compliance with this subpart. The descriptions of these activities must include a certification by the record preparer that the descriptions are complete and accurate.

11. Section 745.87 is amended by revising paragraph (e) to read as follows:

§ 745.87 Enforcement and inspections.

* * * * *

(e) Lead-based paint is assumed to be present at renovations covered by this

subpart. EPA may conduct inspections and issue subpoenas pursuant to the provisions of TSCA section 11 (15 U.S.C. 2610) to ensure compliance with this subpart.

§ 745.88 [Removed]

12. Section 745.88 is removed.

13. Section 745.89 is added to subpart E to read as follows:

§ 745.89 Firm certification.

(a) *Initial certification.* (1) Firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling. To apply, a firm must submit to EPA a completed "Application for Firms," signed by an authorized agent of the firm, and pay at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(2) After EPA receives a firm's application, EPA will take one of the following actions within 90 days of the date the application is received:

(i) EPA will approve a firm's application if EPA determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When EPA approves a firm's application, EPA will issue the firm a certificate with an expiration date not more than 3 years from the date the application is approved. EPA certification allows the firm to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete. If EPA requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request.

(iii) EPA will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (a)(2)(ii) of this section or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm

a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(b) *Re-certification.* To maintain its certification, a firm must be re-certified by EPA every 3 years.

(1) *Timely and complete application.* To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Application for Firms" which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until EPA has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and EPA does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until EPA approves its re-certification application.

(iii) If the firm fails to obtain recertification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (a) of this section.

(2) *EPA action on an application.* After EPA receives a firm's application for re-certification, EPA will review the application and take one of the following actions within 90 days of receipt:

(i) EPA will approve a firm's application if EPA determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When EPA approves a firm's application for re-certification, EPA will issue the firm a new certificate with an expiration date 3 years from the date that the firm's current certification

expires. EPA certification allows the firm to perform renovations or dust sampling covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete.

(iii) EPA will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(c) *Amendment of certification.* A firm must amend its certification within 45 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 45 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(1) To amend a certification, a firm must submit a completed "Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(2) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, EPA will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(3) Amending a certification does not affect the certification expiration date.

(d) *Firm responsibilities.* Firms performing renovations or dust sampling must ensure that:

(1)(i) All persons performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90.

(ii) All persons performing dust sampling on behalf of the firm are certified as either risk assessors, inspectors, or dust sampling technicians.

(2) A certified renovator is assigned to each renovation performed by the firm

and discharges all of the certified renovator responsibilities identified in § 745.90; and

(3) All renovations performed by the firm are performed in accordance with the work practice standards in § 745.85.

14. Section 745.90 is added to subpart E to read as follows:

§ 745.90 Renovator and dust sampling technician certification.

(a) *Renovator and dust sampling technician certification.* (1) To become a certified renovator or dust sampling technician, a person must successfully complete the appropriate course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part. The course completion certificate serves as proof of certification. EPA renovator certification allows the certified individual to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. EPA dust sampling technician certification allows the certified individual to perform dust sampling covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(2) To maintain renovator or dust sampling technician certification, a person must complete a renovator or dust sampling technician refresher course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part within 3 years of the date the person completed the initial course described in paragraph (a)(1) of this section. If the person does not complete a refresher course within this time, the person must re-take the initial course to become certified again.

(3) Persons who have a valid lead-based paint abatement supervisor or worker certification issued by EPA under § 745.226 or by a State or Tribal program authorized under subpart Q of this part are also deemed to be certified renovators.

(4) Persons who have a valid lead-based paint inspector or risk assessor certification issued by EPA under § 745.226 or by a State or Tribal program authorized under subpart Q of this part are also deemed to be certified dust sampling technicians.

(b) *Renovator responsibilities.* Certified renovators are responsible for ensuring compliance with § 745.85 at all renovations to which they are assigned. A certified renovator:

(1) Must perform all of the tasks described in § 745.85(b) and must either perform or direct uncertified workers

who perform all of the tasks described in § 745.85(a).

(2) Must provide training to uncertified workers on the lead-safe work practices they will be using in performing their assigned tasks, how to isolate the work area and maintain the integrity of the containment barriers, and how to avoid spreading dust or debris beyond the work area.

(3) Must be physically present at the work site when the signs required by § 745.85(a)(1) are posted, while the work area containment required by § 745.85(a)(2) is being established, and while the work area cleaning required by § 745.85(a)(4) is performed.

(4) Must direct work being performed by uncertified persons to ensure that lead-safe work practices are being followed, the integrity of the containment barriers is maintained, and dust or debris is not spread beyond the work area.

(5) Must be available, either on-site or by telephone, at all times that renovations are being conducted.

(6) When requested by the entity contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint.

(7) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

(c) *Dust sampling technician responsibilities.* A certified dust sampling technician:

(1) Must collect dust samples in accordance with § 745.227(e)(8), must send the collected samples to a laboratory recognized by EPA under TSCA section 405(b), and must compare the results to the clearance levels in accordance with § 745.227(e)(8).

(2) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

15. Section 745.91 is added to subpart E to read as follows:

§ 745.91 Suspending, revoking, or modifying an individual's or firm's certification.

(a)(1) *Grounds for suspending, revoking or modifying an individual's certification.* EPA may suspend, revoke, or modify an individual's certification if the individual fails to comply with Federal lead-based paint statutes or regulations. EPA may also suspend, revoke, or modify a certified renovator's certification if the renovator fails to ensure that all assigned renovations

comply with § 745.85. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(2) *Grounds for suspending, revoking or modifying a firm's certification.* EPA may suspend, revoke, or modify a firm's certification if the firm:

(i) Submits false or misleading information to EPA in its application for certification or re-certification.

(ii) Fails to maintain or falsifies records required in § 745.86.

(iii) Fails to comply, or an individual performing a renovation on behalf of the firm fails to comply, with Federal lead-based paint statutes or regulations. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(b) *Process for suspending, revoking, or modifying certification.* (1) Prior to taking action to suspend, revoke, or modify an individual's or firm's certification, EPA will notify the affected entity in writing of the following:

(i) The legal and factual basis for the proposed suspension, revocation, or modification.

(ii) The anticipated commencement date and duration of the suspension, revocation, or modification.

(iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive certification in the future.

(iv) The opportunity and method for requesting a hearing prior to final suspension, revocation, or modification.

(2) If an individual or firm requests a hearing, EPA will:

(i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertions of the legal and factual basis for its proposed action.

(ii) Appoint an impartial official of EPA as Presiding Officer to conduct the hearing.

(3) The Presiding Officer will:

(i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.

(ii) Consider all relevant evidence, explanation, comment, and argument submitted.

(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency

action which may be subject to judicial review.

(4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the certification of any individual or firm prior to the opportunity for a hearing, it will:

(i) Notify the affected entity in accordance with paragraph (b)(1)(i) through (b)(1)(iii) of this section, explaining why it is necessary to suspend the entity's certification before an opportunity for a hearing.

(ii) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(5) Any notice, decision, or order issued by EPA under this section, any transcript or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section will be available to the public, except as otherwise provided by section 14 of TSCA or by part 2 of this title. Any such hearing at which oral testimony is presented will be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or part 2 of this title.

(6) EPA will maintain a publicly available list of entities whose certification has been suspended, revoked, modified or reinstated.

16. Section 745.220 is amended by revising paragraph (a) to read as follows:

§ 745.220 Scope and applicability.

(a) This subpart contains procedures and requirements for the accreditation of training programs for lead-based paint activities and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This subpart also requires that, except as discussed below, all lead-based paint activities, as defined in this subpart, be performed by certified individuals and firms.

* * * * *

17. Section 745.225 is amended as follows:

a. Revise paragraph (a).

b. Revise the introductory text of paragraph (b), revise paragraph (b)(1)(ii), and add paragraph (b)(1)(iv)(C).

c. Revise the introductory text of paragraph (c), add paragraphs (c)(6)(vi), (c)(6)(vii), and (c)(8)(vi), and revise paragraphs (c)(8)(iv) and (c)(10).

d. Amend paragraph (c)(13) by replacing the phrase "lead-based paint activities" with the phrase "renovator, dust sampling technician, or lead-based paint activities" wherever it appears in the paragraph.

e. Add paragraphs (d)(6) and (d)(7).

f. Revise the introductory text of paragraph (e).

g. Amend paragraph (e)(1) by removing the word "activities" wherever it appears in the paragraph.

h. Revise paragraph (e)(2).

§ 745.225 Accreditation of training programs; target housing and child-occupied facilities.

(a) *Scope.* (1) A training program may seek accreditation to offer courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.

(2) Training programs may first apply to EPA for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section on or after August 31, 1998. Training programs may first apply to EPA for accreditation of their renovator or dust sampling technician courses or refresher courses pursuant to this section on or after [insert date 1 year after date of publication of the final rule in the **Federal Register**].

(3) A training program must not provide, offer, or claim to provide EPA-accredited lead-based paint activities courses without applying for and receiving accreditation from EPA as required under paragraph (b) of this section on or after March 1, 1999. A training program must not provide, offer, or claim to provide EPA-accredited renovator or dust sampling technician courses without applying for and receiving accreditation from EPA as required under paragraph (b) of this section on or after [insert date 60 days after date of publication of the final rule in the **Federal Register**].

(b) *Application process.* The following are procedures a training program must follow to receive EPA accreditation to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses:

(1) * * *

(ii) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages are considered different courses, and each must

independently meet the accreditation requirements.

* * * * *

(iv) * * *

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate.

* * * * *

(c) *Requirements for the accreditation of training programs.* For a training program to obtain accreditation from EPA to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses, the program must meet the following requirements:

* * * * *

(6) * * *

(vi) The renovator course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the renovator course are contained in paragraph (d)(6) of this section. Hands-on training activities must cover renovation methods that minimize the creation of dust and lead-based paint hazards, interior and exterior containment and cleanup methods, and post-renovation cleaning verification.

(vii) The dust sampling technician course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the dust sampling technician course are contained in paragraph (d)(7) of this section. Hands on training activities must cover dust sampling methodologies.

* * * * *

(8) * * *

(iv) For initial inspector, risk assessor, project designer, supervisor, or abatement worker course completion certificates, the expiration date of interim certification, which is 6 months from the date of course completion.

* * * * *

(vi) The language in which the course was taught.

* * * * *

(10) Courses offered by the training program must teach the work practice standards contained in § 745.85 or § 745.227, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting.

* * * * *

(d) * * *

(6) *Renovator.* (i) Role and responsibility of a renovator.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Procedures for using acceptable test kits to determine whether paint is lead-based paint.

(v) Renovation methods to minimize the creation of dust and lead-based paint hazards.

(vi) Interior and exterior containment and cleanup methods.

(vii) Methods to ensure that the renovation has been properly completed, including clean-up verification, and clearance testing.

(viii) Waste handling and disposal.

(7) *Dust sampling technician.* (i) Role and responsibility of a dust sampling technician.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Dust sampling methodologies.

(v) Clearance standards and testing.

(vi) Report preparation.

* * * * *

(e) *Requirements for the accreditation of refresher training programs.* A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. To obtain EPA accreditation to offer refresher training, a training program must meet the following minimum requirements:

* * * * *

(1) * * *

(2) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours.

* * * * *

18. Section 745.320 is amended by revising paragraph (c) to read as follows:

§ 745.320 Scope and purpose.

* * * * *

(c) A State or Indian Tribe may seek authorization to administer and enforce all of the provisions of subpart E of this part or just the pre-renovation education provisions of subpart E of this part. The provisions of §§ 745.324 and 745.326

apply for the purposes of such program authorizations.

* * * * *

19. Section 745.324 is amended as follows:

a. Revise paragraph (a)(1).

b. Delete the phrase "lead-based paint training accreditation and certification" from the second sentence of paragraph (b)(1)(iii).

c. Revise paragraph (b)(2)(ii).

d. Revise paragraphs (e)(2)(i) and (e)(4).

e. Revise paragraph (f)(2).

f. Revise paragraph (i)(8).

§ 745.324 Authorization of State or Tribal programs.

(a) *Application content and procedures.* (1) Any State or Indian Tribe that seeks authorization from EPA to administer and enforce the provisions of subpart E or subpart L of this part must submit an application to the Administrator in accordance with this paragraph.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(ii) An analysis of the State or Tribal program that compares the program to the Federal program in subpart E or subpart L of this part, or both. This analysis must demonstrate how the program is, in the State's or Indian Tribe's assessment, at least as protective as the elements in the Federal program at subpart E or subpart L of this part, or both. EPA will use this analysis to evaluate the protectiveness of the State or Tribal program in making its determination pursuant to paragraph (e)(2)(i) of this section.

* * * * *

(e) * * *

(2) * * *

(i) The State or Tribal program is at least as protective of human health and the environment as the corresponding Federal program under subpart E or subpart L of this part, or both; and

* * * * *

(4) If the State or Indian Tribe applies for authorization of State or Tribal programs under both subpart E and subpart L, EPA may, as appropriate, authorize one program and disapprove the other.

* * * * *

(f) * * *

(2) If a State or Indian Tribe does not have an authorized program to administer and enforce the pre-renovation education requirements of subpart E of this part by August 31, 1998, the Administrator will, by such date, enforce those provisions of subpart

E of this part as the Federal program for that State or Indian Country. If a State or Indian Tribe does not have an authorized program to administer and enforce the training, certification and accreditation requirements and work practice standards of subpart E of this part by [insert date 1 year after date of publication of the final rule in the **Federal Register**], the Administrator will, by such date, enforce those provisions of subpart E of this part as the Federal program for that State or Indian Country.

* * * * *

(i) * * *

(8) By the date of such order, the Administrator will establish and enforce the provisions of subpart E or subpart L of this part, or both, as the Federal program for that State or Indian Country.

20. Section 745.326 is revised to read as follows:

§ 745.326 Renovation: State and Tribal program requirements.

(a) *Program elements.* To receive authorization from EPA, a State or Tribal program must contain the following program elements:

(1) For pre-renovation education programs, procedures and requirements for the distribution of lead hazard information to owners and occupants of target housing and child-occupied facilities before renovations for compensation.

(2) For renovation training, certification, accreditation, and work practice standards programs:

(i) Procedures and requirements for the accreditation of renovation and dust sampling technician training programs.

(ii) Procedures and requirements for the certification of renovators and dust sampling technicians.

(iii) Procedures and requirements for the certification of individuals and/or firms.

(iv) Requirements that all renovations be conducted by appropriately certified individuals and/or firms.

(v) Work practice standards for the conduct of renovations.

(3) For all renovation programs, development of the appropriate infrastructure or government capacity to effectively carry out a State or Tribal program.

(b) *Pre-renovation education.* To be considered at least as protective as the Federal program, the State or Tribal program must:

(1) Establish clear standards for identifying renovation activities that trigger the information distribution requirements.

(2) Establish procedures for distributing the lead hazard information

to owners and occupants of housing and child-occupied facilities prior to renovation activities.

(3) Require that the information to be distributed include either the pamphlet titled *Protect Your Family from Lead During Renovation, Repair & Painting*, developed by EPA under section 406(a), or an alternate pamphlet or package of lead hazard information that has been submitted by the State or Tribe, reviewed by EPA, and approved by EPA for that State or Tribe. Such information must contain renovation-specific information similar to that in *Protect Your Family from Lead During Renovation, Repair & Painting*, must meet the content requirements prescribed by section 406(a) of TSCA, and must be in a format that is readable to the diverse audience of housing and child-occupied facility owners and occupants in that State or Tribe.

(i) A State or Tribe with a pre-renovation education program approved before [insert date 60 days after date of publication of the final rule in the **Federal Register**] must demonstrate that it meets the requirements of this section no later than the first report that it submits pursuant to § 745.324(h) of this subpart on or after [insert date 1 year after date of publication of the final rule in the **Federal Register**].

(ii) A State or Tribe with an application for approval of a pre-renovation education program submitted but not approved before [insert date 60 days after date of publication of the final rule in the **Federal Register**] must demonstrate that it meets the requirements of this section either by amending its application or in the first report that it submits pursuant to § 745.324(h) of this part on or after [insert date 1 year after date of publication of the final rule in the **Federal Register**].

(iii) A State or Indian Tribe submitting its application for approval of a pre-renovation education program on or after [insert date 60 days after date of publication of the final rule in the **Federal Register**] must demonstrate in its application that it meets the requirements of this section.

(c) *Accreditation of training programs.* To be considered at least as protective as the Federal program, the State or Tribal program must meet the requirements of either paragraph (c)(1) or (c)(2) of this section:

(1) The State or Tribal program must establish accreditation procedures and requirements, including:

(i) Procedures and requirements for the accreditation of training programs, including, but not limited to:

(A) Training curriculum requirements.

(B) Training hour requirements.

(C) Hands-on training requirements.

(D) Trainee competency and proficiency requirements.

(E) Requirements for training program quality control.

(ii) Procedures and requirements for the re-accreditation of training programs.

(iii) Procedures for the oversight of training programs.

(iv) Procedures and standards for the suspension, revocation, or modification of training program accreditations; or

(2) The State or Tribal program must establish procedures and requirements for the acceptance of renovation training offered by training providers accredited by EPA or a State or Tribal program authorized by EPA under this subpart.

(d) *Certification of renovators.* To be considered at least as protective as the Federal program, the State or Tribal program must:

(1) Establish procedures and requirements for individual certification that ensure that certified renovators are trained by an accredited training program.

(2) Establish procedures and requirements for re-certification.

(3) Establish procedures for the suspension, revocation, or modification of certifications.

(e) *Work practice standards for renovations.* To be considered at least as protective as the Federal program, the State or Tribal program must establish standards that ensure that renovations are conducted reliably, effectively, and safely. At a minimum, the State or Tribal program must contain the following requirements:

(1) Renovations must be conducted only by certified contractors.

(2) Renovations are conducted using lead-safe work practices that are at least as protective to occupants as the requirements in § 745.85.

(3) Certified contractors must retain appropriate records.

21. Section 745.327 is amended by revising paragraphs (b)(1)(iv) and (b)(2)(ii) to read as follows:

§ 745.327 State or Indian Tribal lead-based paint compliance and enforcement programs.

* * * * *

(b) * * *

(1) * * *

(iv) Requirements that regulate the conduct of renovation activities as described at § 745.326.

(2) * * *

(ii) For the purposes of enforcing a renovation program, State or Tribal

officials must be able to enter a firm's place of business or work site.

* * * * *

22. Section 745.339 is revised to read as follows:

§ 745.339 Effective dates.

States and Indian Tribes may seek authorization to administer and enforce subpart L of this part pursuant to this subpart at any time. States and Indian Tribes may seek authorization to administer and enforce subpart E of this part pursuant to this subpart effective [insert date 60 days after date of publication of the final rule in the **Federal Register**].

[FR Doc. E7-10797 Filed 6-4-07; 8:45 am]

BILLING CODE 6560-50-S

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 367

[Docket No. FMCSA-2007-27871]

RIN 2126-AB09

Fees for Unified Carrier Registration Plan and Agreement; Correction

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: On May 29, 2007, (72 FR 29472), FMCSA published a proposed rule in the **Federal Register** that would establish annual fees and a fee bracket structure for the Unified Carrier Registration Agreement. This action is required under the Unified Carrier Registration Act of 2005, enacted as Subtitle C of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. This document corrects some errors in that proposed rule.

DATES: The comment period has not changed. You must submit comments on the proposed rule on or before June 13, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Regulatory Development Division, (202) 366-5370 or by e-mail at FMCSAregs@DOT.gov.

SUPPLEMENTARY INFORMATION: The Federal Motor Carrier Safety Administration (FMCSA) published a proposed rule in the **Federal Register** of May 29, 2007 (72 FR 29472). That document proposed to establish fees and a fee bracket structure for the Unified Carrier Registration Agreement.

Inadvertently, there were a number of errors in the preamble of that document.

In proposed rule FR Doc. 07-2652, beginning on page 29472 in the issue of May 29, 2007, make all the following corrections.

1. On page 29472, beginning in the first column, correct the Addresses section to read:

ADDRESSES: You may submit comments, identified by DOT DMS Docket Number FMCSA-2007-27871, by any of the following methods:

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

- *Agency Web Site:* <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site. *Note:* Due to the relocation of the U.S. Department of Transportation, the DOT electronic docket site will not be available between June 13 and June 17, 2007. During this time you may submit comments by one of the alternate methods listed.

- *Fax:* 1-202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number (FMCSA-2007-27871). Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

Correct the **SUPPLEMENTARY INFORMATION** section by making all of the following changes.

2. On page 29472, in the third column, add this sentence to the end of the *I. Legal Basis for the Rulemaking* section, immediately above the *II. Statutory Requirements for UCR Fees* heading:

Because of this very short time period set by the statute to complete the rulemaking, the comment period for this notice of proposed rulemaking will be fifteen days.

3. On page 29472, in the third column, in the first sentence under the *II. Statutory Requirements for UCR Fees* heading, correct the U.S.C. reference to read: "(see 49 U.S.C. 14504a(d)(7)(A), (f)(1) and (g))".

4. On page 29478, under the heading *E. Carrier Population*, in the third column, change three numbers to correct an arithmetical error. On line 14, correct "6,647" to "6,665" wherever it appears. On lines 27 and 32, correct "2,532" to "2,550" wherever it appears. On line 33, correct "2,582" to "2,600."

5. On page 29480, in the third column, under the heading *National Environmental Policy Act*, correct the reference on line 4 that reads "(42 D.S.C. 4321 *et seq.*)" to read "(42 U.S.C. 4321 *et seq.*)" and the reference on line 20 that reads "(42 D.S.C. 7401 *et seq.*)" to read "(42 U.S.C. 7401 *et seq.*)".

6. On page 29481, in the first column, on line 5 under the heading *Executive Order 13211 (Energy Effects)*, correct "VSE" to read "Use."

Issued on: May 31, 2007.

William A. Quade,

Acting Associate Administrator for Enforcement and Program Delivery.

[FR Doc. 07-2787 Filed 5-31-07; 3:23 pm]

BILLING CODE 4910-EX-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Wolverine as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; initiation of status review and request for new information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the opening of a public comment period regarding the status of the wolverine (*Gulo gulo luscus*) in the contiguous United States. We are initiating this status review pursuant to a court order requiring us to prepare a 12-month finding on a petition to list the wolverine in the contiguous United States as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). Through this action, we encourage all interested parties to provide us information regarding the status of, and any potential threats to, the wolverine in the contiguous United States.

DATES: To be fully considered in the 12-month finding, comments must be received on or before August 6, 2007. However, new information on the wolverine will be accepted after the official comment period closes.

ADDRESSES: If you wish to provide new information, you may submit your comments and materials by any of the following methods:

(1) You may mail or hand-deliver written comments and information to Wolverine Status Review, U.S. Fish and Wildlife Service, Montana Field Office, 585 Shepard Way, Helena, MT 59601.

(2) You may e-mail your information to FW6_wolverine@fws.gov. For directions on how to submit comments by email, see the "Public Comments Solicited" section of this notice.

FOR FURTHER INFORMATION CONTACT:

Mark Wilson, Field Supervisor, Montana Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES**), or phone 406-449-5225. Additional information is available at <http://www.r6.fws.gov/species/mammals/wolverine/>.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2000, we received a petition from the Biodiversity Legal Foundation and other petitioners to list

the wolverine within the contiguous United States as a threatened or endangered species and to designate critical habitat for the species. We published a 90-day petition finding in the **Federal Register** on October 21, 2003 (68 FR 60112). The 90-day finding determined that the petition failed to present substantial scientific and commercial information indicating that listing the wolverine may be warranted.

Defenders of Wildlife and other plaintiffs filed a complaint on June 8, 2005, alleging that we used the wrong standards to assess the wolverine petition. On September 29, 2006, the U.S. District Court, District of Montana, ruled that our 90-day petition finding was in error and ordered us to make a 12-month finding on the status of the wolverine. On April 18, 2007, the U.S. District Court granted our April 5, 2007 (unopposed), motion for a modification to extend the deadline for the status review and 12-month finding for the wolverine by five months, to February 28, 2008.

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants (Lists) that contains substantial scientific or commercial information that the petitioned action may be warranted, we make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) Not warranted, (b) warranted, or (c) warranted, but that the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether other species are threatened or endangered, and we are making expeditious progress to add or remove qualified species from the Lists. This current status review process, which will culminate in the 12-month finding on the wolverine, is initiated by court order rather than initiated by a substantial 90-day finding.

At this time, we are soliciting new information on the status of and potential threats to the wolverine. We will base our 12-month finding on a review of the best scientific and

commercial information available, including all such information received as a result of this notice. We are aware that several peer-reviewed research manuscripts on the wolverine are currently in preparation for publication in *The Journal of Wildlife Management*. If they are completed in time, we will consider these papers, in addition to any other works constituting the best scientific and commercial information available, in making our 12-month finding.

Public Comments Solicited

Please submit email comments in an ASCII or Microsoft Word file and avoid the use of any special characters or any form of encryption. Also, please include "Attn: wolverine status review" in the subject line of your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described in the **ADDRESSES** section.

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.

Author

The primary author of this document is staff of the Montana Field Office, U.S. Fish and Wildlife Service, Helena, MT.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 24, 2007.

Randall B. Luthi,

Acting Director, Fish and Wildlife Service.

[FR Doc. E7-10570 Filed 6-4-07; 8:45 am]

BILLING CODE 4310-55-P

Notices

Federal Register

Vol. 72, No. 107

Tuesday, June 5, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Office of the Secretary

[Agency Docket Number: 07050115-7106-01]

Notice of Availability of Fleet Alternative Fuel Vehicle Reports

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice of availability of reports.

SUMMARY: In compliance with the Energy Policy Act of 1992, this notice announces the availability of the Department of Commerce's (DOC) alternative fuel vehicle (AFV) reports for fiscal years 2005 and 2006 for its agency fleet. Additionally, this report includes data concerning DOC's efforts to reduce energy consumption.

ADDRESSES: U.S. Department of Commerce, Office of the Chief Financial Officer and Assistant Secretary for Administration, Office of Administrative Services, 1401 Constitution Avenue, NW., Room 6316, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Joy Taylor or e-mail jtaylor2@doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Pub. L. 102-486, Title III, Sec. 310, Oct. 24, 1992, 106 Stat. 2874.

The Energy Policy Act of 1992 (Pub. L. 102-486, 42 U.S.C. 13211-13219) (EPAAct), requires that AFV reports for FY 1999 and beyond be made public, including placement of the reports on the DOC Web site and announcement of the availability of the reports in the **Federal Register**. DOC's AFV reports for FY 2005 and FY 2006 are available on the internet at <http://www.osec.doc.gov/oas/fleet.htm>. The AFV reports contain information pertaining to planned acquisitions and projections for FY 2006 and FY 2007. EPAAct requires that seventy-five percent of all covered, light-duty vehicles acquired for Federal fleets in FY 1999 and beyond be AFVs.

In FY 2005 and FY 2006, the DOC exceeded the seventy-five percent acquisition requirement.

Dated: May 3, 2007.

Fred E. Fanning,

Director for Administrative Services.

[FR Doc. 07-2775 Filed 6-4-07; 8:45 am]

BILLING CODE 3510-03-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No.1512]

Expansion of Foreign-Trade Zone 104, Savannah, Georgia, Area

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

Whereas, the Savannah Airport Commission, grantee of Foreign-Trade Zone 104, submitted an application to the Board for authority to expand FTZ 104 to include a site (98 acres) at an industrial park (Site 8) in the Savannah, Georgia, area, adjacent to the Savannah Customs and Border Protection port of entry (FTZ Docket 40-2006; filed 9/25/06);

Whereas, notice inviting public comment was given in the **Federal Register** (71 FR 59071, 10/06/06), and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 104 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and subject to a sunset provision that would terminate authority for the proposed site on May 31, 2012, unless the site is activated under FTZ procedures before that date.

Signed at Washington, DC, this 18th day of May 2007.

David M. Spooner,

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

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7-10783 Filed 6-4-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

(Docket 19-2007)

Foreign-Trade Zone 197 -- Doña Ana County, New Mexico, Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Board of County Commissioners of Doña Ana County, New Mexico, grantee of FTZ 197, requesting authority to expand its zone to include additional sites in Santa Teresa within the Santa Teresa Customs and Border Protection port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 25, 2007.

FTZ 197 was approved on November 26, 1993 (Board Order 665, 58 FR 64546, 12/8/03). The general-purpose zone currently consists of two sites (895 acres) in Doña Ana County: *Site 1* (689 acres, 2 parcels) -- Parcel 1 (481 acres) located within the Santa Teresa Airport Industrial Park and Parcel 2 (208 acres) located within the Santa Teresa Business Center adjacent to the Doña Ana County Airport at Santa Teresa; and, *Site 2* (206 acres) -- located within the 1,820-acre West Mesa Industrial Park, adjacent to the Las Cruces International Airport.

The applicant is now requesting authority to expand Site 1 to include an additional parcel and to expand the zone to include an additional site in Santa Teresa: *Expand Site 1* to include an additional parcel at the 208-acre Santa Teresa Logistics Park located at 4800 Avenida Creel; and, *Proposed Site 3* (304 acres) -- Santa Teresa Bi-National Park located at 401 Avenida Ascension.

The sites are owned by Verde Realty Operating Partnership, LP. The sites will provide warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 6, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 20, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: Community Development Department at the Doña Ana County Government Center, 845 N. Motel Boulevard, Las Cruces, NM 88007; and, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

For further information, contact Camille Evans at Camille_Evans@ita.doc.gov or (202) 482-2350.

Dated: May 29, 2007.

Andrew McGilvray,
Executive Secretary.

[FR Doc. E7-10784 Filed 6-4-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 20-2007]

Foreign-Trade Zone 57 -- Charlotte, North Carolina, Expansion of Capacity and Manufacturing Authority -- Subzone 57B, Volvo Construction Equipment North America, Inc., Skyland, North Carolina, Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Volvo Construction Equipment North America (Volvo CENA), operator of Subzone 57B, at the Volvo CENA construction equipment manufacturing plant in Skyland, North Carolina, requesting to expand capacity as well as the scope of manufacturing activity conducted under zone

procedures within Subzone 57B. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 30, 2007.

Subzone 57B (240 employees) was approved by the Board in 2001 for the manufacture of construction equipment, specifically wheel loaders and articulated haulers (Board Order 1164, 66 FR28890, 5/25/01), and authority was expanded on August 21, 2003 to include skid-steer loaders and compaction rollers (Board Order 1284, 68 FR 52383, 9/3/03). The subzone currently consists of two sites totaling 64 acres located at 2169 Hendersonville Road in Skyland, North Carolina and 1865 Hendersonville Road in Asheville, North Carolina.

The current request involves an expansion of manufacturing capacity under FTZ procedures to include an additional 1,000 wheel loaders (up to 4,000 units annually) as well as to expand the scope of manufacturing activity conducted under FTZ procedures at Subzone 57B to include an additional finished product (excavators, up to 4,500 units annually). Finished excavators enter the United States duty-free. Volvo CENA is also requesting authority to conduct cab fabrication under FTZ procedures to produce cabs which will be used in excavator and wheel loader manufacturing. Currently the finished cabs are imported from the parent company in Sweden. Cabs fabricated at the Skyland site would replace those that are currently imported.

Volvo CENA's application indicates that foreign-sourced materials to be used under the expanded scope of authority fall into categories which are in the company's current scope of authority. Duty rates on the imports sourced from abroad range from duty-free to 12%. Zone procedures for the expanded finished products and inputs would exempt Volvo CENA from customs duty payments on the foreign components used in export production to non-NAFTA countries. Currently, foreign inputs account for approximately 65 percent of the value of the excavator. For domestic and NAFTA markets, Volvo CENA could choose the duty rate that applies to the finished product (duty-free) for the components used in production when the finished products are entered for U.S. consumption from the zone.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the

address below. The closing period for their receipt is August 6, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 20, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, 521 East Morehead St., Suite 435, Charlotte, North Carolina 28202. Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW, Washington, DC 20230. For further information, contact Christopher Kemp at Christopher_kemp@ita.doc.gov or (202) 482-0862.

Dated: May 30, 2007.

Andrew McGilvray,
Executive Secretary.

[FR Doc. E7-10782 Filed 6-4-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Deemed Export Advisory Committee; Notice of Partially Closed Meeting

The Deemed Export Advisory Committee (DEAC) will meet in an open session on Tuesday, June 19, 2007 from 9:30 a.m.-12:30 p.m. at the Massachusetts Institute of Technology, 77 Massachusetts Avenue, (Maclaurin Buildings) Building 10-250; Cambridge, MA 02139-4307. A map of the campus can be found at the following Web site: <http://www.web.mit.edu/facilities/maps/index.html>. Parking information can be found at the following Web site: <http://www.web.mit.edu/facilities/transportation/index.html>.

The DEAC is a Federal advisory Committee established in accordance with the requirements of the Federal Advisory Committee Act, as amended, 5 U.S.C. app. 2. It advised the Secretary of Commerce on deemed export licensing policy. A tentative agenda of topics for discussion is listed below. While these topics will likely be discussed, this list is not exhaustive and there may be discussion of other related items during the public session.

June 19, 2007

Public Session

1. Introductory Remarks.
2. Current Deemed Export Control Policy Issues.

3. Technology Transfer Issues.
4. U.S. Industry Competitiveness.
5. U.S. Academic and Government Research Communities.
6. Industry, Academia and other Stakeholder Comments.

Parking will be available on-site for members of the public at a cost of \$20 per vehicle. In addition, a limited number of seats will be available for the public session. Reservations will not be accepted. To the extent time permits, members of the general public may present oral statements to the DEAC. The general public may submit written statements at any time before or after the meeting. However, to facilitate distribution to DEAC members, BIS suggests that general public presentation materials or comments be forwarded before the meeting to Ms. Yvette Springer at Yspringer@bis.doc.gov.

June 29, 2007

Closed Session

The DEAC will also meet in a closed session on Tuesday, June 19, 2007, from 8 a.m.–9:30 a.m. and 2 p.m.–6 p.m. During the closed session, there will be discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3). The Assistant Secretary for Administration formally determined on May 31, 2007, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 section (10)(d)), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4), the portion of the meeting concerning matters the premature disclosure of which would be likely to significantly frustrate implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B), and the portion of the meeting dealing with matters that are (A) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive Order (5 U.S.C. 552b(c)(1)(A) and (1)(B)), shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3). All other portions of the DEAC meeting will be open to the public.

For more information, please call Yvette Springer at (202) 482–2813.

Dated: May 31, 2007.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 07–2786 Filed 6–4–07; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Automotive Replacement Glass Windshields from the People's Republic of China: Final Results of Sunset Review and Revocation of Antidumping Duty Order

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

SUMMARY: On March 1, 2007, the Department of Commerce (“the Department”) initiated the sunset review of the antidumping duty order on automotive replacement glass windshields from the People's Republic of China (“PRC”). Because the domestic interested parties did not participate in the sunset review, the Department is revoking the antidumping duty order.

EFFECTIVE DATE: April 4, 2007

FOR FURTHER INFORMATION CONTACT:

Hilary E. Sadler, Esq., or Juanita Chen, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4340 and (202) 482–1904, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2002, the Department issued an antidumping duty order on automotive replacement glass windshields from the PRC. *See Antidumping Duty Order: Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 16087 (April 4, 2002). Pursuant to section 751(c) of the Act and 19 CFR 351.218, the Department initiated the sunset review of this order. *See Notice of Initiation of Five-year (“Sunset”) Reviews*, 72 FR 9307 (March 1, 2007). The Department did not receive a notice of intent to participate in the sunset review from domestic interested parties by the deadline date. *See* 19 CFR 351.218(d)(1)(i). As a result, the Department determined that no domestic party intends to participate in the sunset review. On March 21, 2007, the Department notified the International Trade Commission of its intent to issue a final determination revoking this antidumping duty order.

Scope of the Order

The products covered by this order are automotive replacement glass windshields, and parts thereof, whether clear or tinted, whether coated or not,

and whether or not they include antennas, ceramics, mirror buttons or VIN notches, and whether or not they are encapsulated. Automotive replacement glass windshields are laminated safety glass (*i.e.*, two layers of (typically float) glass with a sheet of clear or tinted plastic in between (usually polyvinyl butyral)), which are produced and sold for use by automotive glass installation shops to replace windshields in automotive vehicles (*e.g.*, passenger cars, light trucks, vans, sport utility vehicles, etc.) that are cracked, broken or otherwise damaged. Automotive replacement glass windshields subject to this order are currently classifiable under subheading 7007.21.10.10 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Specifically excluded from the scope of the order are laminated automotive windshields sold for use in original assembly of vehicles. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Determination to Revoke

Pursuant to section 751(c)(3)(A) of the Tariff Act of 1930, as amended (“the Act”) and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination revoking the order within 90 days after the initiation of the review. Because no domestic interested party filed a notice of intent to participate or a substantive response, the Department finds that no domestic interested party is participating in this review and is revoking this antidumping duty order. Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is April 4, 2007 (*i.e.*, the fifth anniversary of the date of publication in the **Federal Register** of the notice of the antidumping duty order). The Department will instruct U.S. Customs and Border Protection to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after April 4, 2007, the effective date of revocation of the antidumping duty order. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

This five-year sunset review and notice are in accordance with section

751(c)(3)(A) and published pursuant to section 777(i)(1) of the Act.

Dated: May 25, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7-10779 Filed 6-4-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-504]

Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order

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

ACTION: Notice of Affirmative Final Determination of Circumvention of the Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China.

SUMMARY: On March 28, 2007, the Department of Commerce (the Department) published its preliminary determination that the importation by, or sale to, three U.S. importers (DECOR-WARE, Inc., A&M Wholesalers, Inc., and Albert E. Price) of wickless petroleum wax forms from the PRC, which subsequently undergo insertion of a wick and clip assembly in the United States, constitutes circumvention of the antidumping duty order on petroleum wax candles from the People's Republic of China (*see Antidumping Duty Order: Petroleum Wax Candles From the People's Republic of China*, 51 FR 30686 (August 28, 1986) (*Candles Order*)), within the meaning of section 781(a) of the Tariff Act of 1930, as amended (the Act). *See Petroleum Wax Candles From the People's Republic of China: Partial Termination of Circumvention Inquiry and Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 72 FR 14518 (March 28, 2007) (*Preliminary Determination*). We gave interested parties an opportunity to comment on the *Preliminary Determination*, and notified the United States International Trade Commission (ITC) because, pursuant to section 781(e) of the Act, the ITC may request consultations concerning the Department's proposed inclusion of the subject merchandise. The ITC notified the Department on April 24, 2007, that consultations were not necessary. The National Candle

Association (NCA), the petitioners in this proceeding, filed the circumvention allegation, submitted a case brief, and no parties submitted rebuttal briefs. The Department addresses the issue raised in the case brief, and the Department's final determination is unchanged from its preliminary determination.

EFFECTIVE DATE: June 5, 2007.

FOR FURTHER INFORMATION CONTACT:

Steve Bezirgianian or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: 202-482-1131 and 202-482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2007, the Department of Commerce (the Department) published its preliminary determination that the importation by, or sale to, three U.S. importers (DECOR-WARE, Inc.; A&M Wholesalers, Inc.; and Albert E. Price) of wickless petroleum wax forms from the PRC constitutes circumvention of the aforementioned order, within the meaning of section 781(a) of the Tariff Act of 1930, as amended (the Act). *See Preliminary Determination*, 72 FR 14518. On April 24, 2007, the Department was notified by the ITC that consultations pursuant to section 781(e)(2) of the Act were not necessary. *See Memorandum to the File from Steve Bezirgianian*, dated May 9, 2007. The NCA is the only interested party that filed a case brief.

Scope of the Order

The products covered by this order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers.

The products were classified in the original investigation under the Tariff Schedules of the United States item 755.25, Candles and Tapers. The products covered are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 3406.00.00. Although the HTSUS subheading is provided for convenience purposes, the written description remains dispositive.

In addition, the Department has determined that mixed-wax candles containing any amount of petroleum wax are later-developed merchandise and are within the scope of the Candles

Order. *See Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 71 FR 59075 (October 6, 2006).

Scope of the Anticircumvention Inquiry

The products covered by this inquiry are certain scented or unscented petroleum wax forms that do not incorporate a wick within the wax, whether or not having pre-drilled wick holes (wickless petroleum wax forms) that are imported into the United States and assembled into petroleum wax candles, and are currently classifiable under HTSUS subheading 9602.00.40. Wickless petroleum wax forms are sold in the following shapes: tapers, spirals, straight-sided wax forms; rounds, columns, pillars, votives; and various wax-filled containers. This inquiry only covers such products that are imported by, or sold to DECOR-WARE, Inc., A&M Wholesalers, Inc., or Albert E. Price.

Applicable Statute

Section 781 of the Act addresses circumvention of antidumping or countervailing duty orders. With respect to merchandise assembled or completed in the United States, section 781(a)(1) of the Act provides that if: (A) the merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of an antidumping duty order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components produced in the foreign country is a significant portion of the total value of the merchandise, then the Department may include within the scope of the order the imported parts or components produced in the foreign country used in the completion or assembly of the merchandise in the United States, after taking into account any advice provided by the ITC under section 781(e) of the Act.

In determining whether the process of assembly or completion in the United States is minor or insignificant, section 781(a)(2) of the Act directs the Department to consider: (A) the level of investment; (B) the level of research and development; (C) the nature of the production process; (D) the extent of production facilities and (E) whether the

value of processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.

Section 781(a)(3) of the Act sets forth the factors to consider in determining whether to include parts or components in an antidumping duty order. The Department shall take into account: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States; and (C) whether imports into the United States of the parts or components produced in the foreign country have increased after the initiation of the investigation which resulted in the issuance of the order.

Analysis

We have analyzed the comment of NCA, namely, that the Department's precedent requires the Department to use an inference that is adverse to the interests of the three respondents that did not respond to our requests for information because they failed to cooperate by not acting to the best of their ability, and that the Department should apply an adverse rate of 108.30 percent (the PRC-wide rate) for each of the three respondent importers.

The Department agrees with NCA that adverse facts available (AFA) is appropriate for DECOR-WARE, Inc., A&M Wholesalers, Inc., and Albert E. Price. Pursuant to sections 776(a) and 776(b) of the Act, the Department applied adverse facts available for those respondents in its Preliminary Determination because these respondents did not provide responses to the Department's requests for information, and the Department determined that these respondents failed to cooperate to the best of their ability. The *Preliminary Determination* states, in pertinent part:

The refusals by DECOR-WARE, Inc., A&M Wholesalers, Inc., and Albert E. Price to respond to our questionnaire precludes the Department from making an informed determination based on record evidence as to whether they are (or are not) circumventing the antidumping duty order. In addition, because these importers failed to provide the Department with any information, we are also unable to distinguish between their imports or purchase of wickless petroleum wax forms for purposes other than U.S. assembly into merchandise covered by the *Candles Order*. Accordingly, we are making an adverse inference

pursuant to section 776(b) of the Act that wickless petroleum wax forms imported by, or sold to, DECOR-WARE, Inc., A&M Wholesalers, Inc., and Albert E. Price are completed or assembled in the United States by the insertion of a wick and clip assembly within the meaning of section 781(a) of the Act.

See *Preliminary Determination*, 72 FR at 14520. The Department's adverse inference is that all such wickless petroleum wax forms imported by, or sold to, the three respondents ultimately are completed or assembled in the United States by the insertion of a wick and clip assembly.

With respect to the cash deposit rate to be used for entries of wickless petroleum wax forms imported by, or sold to, the three respondents in question, the Department's preliminary determination indicated that Customs and Border Protection (CBP) "shall require cash deposits in accordance with those rates prevailing at the time of entry, depending upon the exporter in question." See *Preliminary Determination*, 72 FR at 14520. As noted, the adverse inference is that all of the wickless petroleum wax candles imported by, or sold to, the three respondents in question are covered by the scope.

With respect to NCA's request that the Department assign an AFA rate to the three respondents, we note that the purpose of an anticircumvention proceeding is to determine whether the importation of the product in question (wickless petroleum wax forms) is evading or circumventing the *Candles Order* (see section 781 of the Act, and 19 CFR 351.225(a) and (g)). Other provisions of the statute, namely those in section 751 of the Act, provide for the periodic determination of antidumping duty rates for specific exporters/producers.

Assigning importer-specific cash deposit rates would constitute a change to the cash deposit rates for the parties subject to an order (*i.e.*, exporters and producers), and the cash deposit rate of a company subject to an order is only changed as the result of a new shipper review or an administrative review (see *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews*, 64 FR 66880, 66881 (November 30, 1999)). If an interested party believes that the deposits paid do not accurately reflect the actual amount of dumping, it is entitled to request an administrative review during the anniversary month of

the publication of the order of those entries to determine the proper importer-specific assessment rates (see, *e.g.*, *Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 70 FR 37327, 37330 (June 29, 2005), results unchanged in *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 70 FR 48673 (August 19, 2005)).¹

Thus, consistent with sections 781(a), 776(a), and 776(b) of the Act, we continue to apply as AFA the inference that all wickless petroleum wax forms imported by, or sold to, DECOR-WARE, Inc., A&M Wholesalers, Inc., and Albert E. Price ultimately are completed or assembled in the United States by the insertion of a wick and clip assembly, and are covered by the scope of the *Candles Order*.

Affirmative Final Determination of Circumvention

For the reasons described in the *Preliminary Determination*, we continue to find that circumvention of the antidumping duty order on petroleum wax candles from the PRC is occurring by reason of exports of wickless petroleum wax forms from the PRC imported by, or sold to, DECOR-WARE, Inc., A&M Wholesalers, Inc., and Albert E. Price.

Continuation of Suspension Of Liquidation

In accordance with section 351.225(l)(3) of the Department's regulations, the Department will continue to direct U.S. Customs and Border Protection (CBP) to suspend liquidation for all wickless petroleum wax forms (as defined in the Scope of the Anticircumvention Inquiry section above) from the People's Republic of China imported by, or sold to DECOR-WARE, Inc., A&M Wholesalers, Inc., or Albert E. Price that were entered, or withdrawn from warehouse, for consumption on or after May 11, 2006, the date of initiation of this anticircumvention inquiry. CBP shall require cash deposits in accordance with those rates prevailing at the time

¹ We note, however, that as of the date of this final determination, the current cash deposit rate for all PRC exporters of subject merchandise is 108.30 percent, which is the PRC-wide rate. As such, the 108.30 percent rate will apply to all subject merchandise imported by the three respondents. As a result of a future administrative review, however, the PRC-wide rate may change and/or different separate rates may be established for specific exporters.

of entry, depending upon the exporter in question.

This affirmative final circumvention determination is in accordance with section 781(a)

of the Act and 19 CFR 351.225(g).

Dated: May 30, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7-10781 Filed 6-4-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Palmer Barge Superfund Site in Jefferson County, TX; Settlement Agreement and Draft Restoration Plan and Environmental Assessment

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a proposed Settlement Agreement and Draft Restoration Plan and Environmental Assessment for ecological injuries and service losses associated with the Palmer Barge Superfund Site in Jefferson County, Texas and of a 30-day period for public comment on the Settlement Agreement and the Draft Restoration Plan and Environmental Assessment beginning July 5, 2007.

SUMMARY: Pursuant to 43 CFR 11.32 and 11.81-82, notice is hereby given that a proposed Settlement Agreement in resolution of the Natural Resource Trustees' claim for natural resource damages (Agreement) associated with the Palmer Barge Superfund Site and the "Draft Restoration Plan and Environmental Assessment for the Palmer Barge Waste Site, Port Arthur, Jefferson County, Texas" (Draft DARP/EA) are available for public review and comment. This document has been approved by the state and federal Natural Resource Trustee agencies to address natural resource injuries and resource services losses of an ecological nature attributable to releases of hazardous substances from the Palmer Barge Superfund Site (Site). The natural resource trustees include: The National Oceanic and Atmospheric Administration (NOAA), Commerce; United States Department of the Interior (DOI); Texas Parks and Wildlife Department (TPWD); Texas General Land Office (GLO); and Texas Commission on Environmental Quality (TCEQ). The Natural Resource Trustees

have reached a proposed agreement with E.I. du Pont de Nemours and Company, Texaco Inc., Ashland Inc. and Kirby Inland Marine to resolve their liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) for damages to natural resources resulting from releases of hazardous substances from the Site. This draft DARP/EA presents the Trustees' assessment of these natural resource injuries and service losses attributable to the Site, and the plan for restoring ecological resources and services to compensate for those injuries and losses. The Trustees will consider input received during the public comment period before finalizing the DARP/EA.

FOR FURTHER INFORMATION: Comments must be submitted in writing on or before thirty (30) days from the publication of this notice to Richard Seiler of the TCEQ or Jessica White of NOAA at the addresses listed in the previous paragraph. The Trustees will consider all written comments prior to finalizing the DARP/EA.

To receive a copy of the proposed Agreement, the Draft DARP/EA, or any other related information, interested members of the public are invited to contact Richard Seiler at the Texas Commission on Environmental Quality, Remediation Division MC 225, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2523 (phone) or (512) 239-4814 (fax), or contact Jessica White of NOAA at NOAA c/o US EPA, 1445 Ross Avenue, MC 6SF\T, Dallas, TX 75202, (214) 665-2217 (phone) or (214) 665-6460 (fax).

SUPPLEMENTARY INFORMATION: The Site consists of approximately 17 acres located 4.5 miles northeast of the city of Port Arthur in Jefferson County along Ferry (or Old Yacht Club) Road on Pleasure Islet, approximately one-half mile southwest of the confluence of the Neches River and the Sabine-Neches Ship Channel. The Site is bordered by the State Marine Superfund site to the south, Sabine Lake to the east, Old Yacht Club Road to the West, and vacant property to the north.

The Site was originally used as a municipal landfill for the city of Port Arthur, which operated the landfill from 1956 until the mid-1980s. In 1982, the city of Port Arthur sold the property and it was subsequently used as a marine barge cleaning operation (Palmer Barge Marine) from 1982 until 1997. Operations performed at the site included cleaning, degassing, maintenance and inspection of barges and marine equipment. A flare was located on-site to burn excess gasses and

liquids produced during the facility operations, in addition to multiple above-ground storage tanks. In July 1997, Palmer Barge Line was purchased and operations on the property ceased. Currently the site is owned by a private individual who is redeveloping it as an industrial property.

In 1996, the TCEQ (then known as the Texas Natural Resource Conservation Commission, or TNRCC) conducted a multi-media inspection of the Site which identified large areas of contamination on Site soils. These findings triggered further investigation by both the U.S. Environmental Protection Agency (EPA) and TCEQ. In 1996, an expanded site inspection (ESI) was performed for the purpose of evaluating the nature and extent of on-site and off-site contamination and evaluating the environmental fate of the contaminants. This evaluation indicated the presence of both organic and inorganic contaminants in Site soils and in the shallow near-shore sediments of Sabine Lake. Semi-volatile contaminants of concern identified at the Site include acenaphthylene, anthracene, benzo(a)pyrene, chrysene and fluoranthene. There were also numerous pesticides and polychlorinated bi-phenyls detected in the Site soil samples. Elevated levels of inorganic contaminants included chromium, copper, lead, and zinc.

The Site was placed on the National Priorities List (Superfund) on July 27, 2000 and the EPA authorized an emergency removal action for reduction of on-site contamination in August 2000. Removal activities included removal of wastes, wastewater treatment, and sludge stabilization. A Remedial Investigation (RI) was performed at the Site pursuant to an Administrative Order on Consent signed by the EPA and the Settling Parties in 2002, and based on information developed in the RI, a Record of Decision (ROD) for the Site was signed on September 30, 2005. The ROD requires the excavation of approximately 1,204 cubic yards of soil which exceeded risk-based levels, backfilling of excavated areas with clean soil, and off-site disposal of excavated soils at a permitted disposal facility. Existing above-ground storage tanks will be demolished and removed. As planned, and when implemented, the remedy selected to address the contamination at the Site is expected to protect natural resources in the vicinity of the Site from further or future injury.

NOAA, DOI, TPWD, GLO and TCEQ are designated Natural Resource Trustees under Section 107(f) of CERCLA, Section 311 of the Federal

Water Pollution and Control Act (FWPCA), 33 U.S.C. Section 1321, and other applicable federal or state laws, including Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR 300.600–300.615. As trustees, these agencies are authorized to act on behalf of the public under these authorities to protect and restore natural resources injured or lost as a result of discharges or releases of hazardous substances.

Paralleling the remedial investigations at the Site, the Trustees worked cooperatively with E.I. du Pont de Nemours and Company, Texaco Inc., Ashland Inc, and Kirby Inland Marine, L.P., to evaluate natural resource injuries and ecological service losses resulting from releases of hazardous substances to areas at or adjacent to the Site. The Trustees' evaluation focused on natural resource injuries or service losses of an ecological nature caused by hazardous substances at the Site based on known contamination and anticipated remedial actions. As a result of this assessment, the Trustees determined that hazardous substances (including semi-volatile organic compounds, poly-cyclic aromatic hydrocarbons, poly-chlorinated biphenyls, pesticides, and metals) were available in the sediments and injury to ecological habitat of approximately 7.55 acres had occurred.

The Draft DARP/EA identifies the information and methods used to define the natural resource injuries and losses of an ecological nature, including the scale of restoration actions, and identifies the restoration actions which are preferred to restore, replace or acquire resources or services equivalent to those lost.

Dated: May 29, 2007.

Brian Julius,

Deputy Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E7–10733 Filed 6–4–07; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[XRIN: 0648–XA65]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a three-day Council meeting, on June 19–21, 2007, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, June 19 beginning at 8:30 a.m., and Wednesday and Thursday, June 20–21, beginning at 8 a.m. each day.

ADDRESSES: The meeting will be held at the Eastland Park Hotel, 157 High Street, Portland, ME 04101; telephone: (207) 775–5411.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (NEFMC); telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, June 19, 2007

Following introductions, the Council will hear a series of brief reports from the Council Chairman and Executive Director, the NOAA Northeast Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NOAA Enforcement, and the Atlantic States Marine Fisheries Commission. Following these reports, the Council will be asked to comment on procedures related to the Magnuson-Stevens Act requirement for a referendum on any individual fishing quota program under consideration by the Council. Following consultation with all eight Fishery Management Councils, NOAA Fisheries will publish a proposed rule to address the referendum process, voter eligibility and related issues. The Enforcement Committee will ask for approval of recommendations concerning the use of “safe harbors” and requiring a declaration before transiting closed areas. During the afternoon session, the Council plans to approve final action on phase one of Essential Fish Habitat (EFH) Omnibus Amendment 2. This part of the overall amendment includes improved EFH designations for the species under Council management; new and/or modified HAPC designations; an evaluation of prey species for NEFMC-managed species and life stages; and an evaluation and description of the impacts of non-fishing activities on EFH, including conservation and enhancement activities. The Sector Committee will seek approval of terms of reference as it

continues to work on processes and policies that will govern the use of sectors in NEFMC fishery management plans (FMPs). The Council may determine if they will develop a policy only concerning sectors or move forward with an omnibus amendment that would apply to sectors in all fishery management plans.

Wednesday, June 20, 2007

The Council will review public comments and intends to approve a Draft Supplemental Environmental Impact Statement and final management measures for Amendment 11 to the Sea Scallop Fishery Management Plan. It also will review and may approve Framework Adjustment 20 to the FMP, an action to extend measures implemented by emergency action to prevent overfishing through the end of fishing year 2007. During this afternoon session, the Council will discuss and possibly approve a request to NOAA Fisheries for at-sea observer coverage on all at-sea processor vessels.

Thursday, June 21, 2007

The Council's Research Steering Committee Chairman will report on the committee's recommendations concerning the use of information provided in several cooperative research final reports. This will be followed by a discussion of other issues related to cooperative research, including comments on a peer review of a pilot study fleet cooperative research project, experimental fisheries permit policies and issues related to data archiving and access in the context of making cooperative research results available. This discussion will be followed by an opportunity for the public to briefly address items that are relevant to Council business but not otherwise listed on the agenda. The Groundfish Committee will report on its efforts to develop Amendment 16 to the Northeast Multispecies FMP. The Council will review and approve recommendations for management alternatives in amendment. It may also approve standards to be used by the Regional Administrator to allow the use of additional gear in the Eastern U.S. Canada Haddock Special Access Program and trawl gear Category B (regular) days-at-sea program, as well as a number of recently received sector proposals. The Standardized Bycatch Reporting Methodology (SBRM) Committee will review and ask for approval of the final SBRM Amendment during the afternoon session. This action would modify all Council fishery management plans (FMPs) to include SBRM provisions. Lastly, the Council

intends to approve skate management alternatives to be analyzed in proposed Amendment 3 to the Skate FMP.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's 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 Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 31, 2007.

Tracey L. Thompson,

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

[FR Doc. E7-10775 Filed 6-4-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[XRIN: 0648-XA63]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Steller Sea Lion Mitigation Committee (SSLMC) will meet in Seattle, WA.

DATES: The meeting will be held on June 19-21, 2007, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center, 7600 Sand Point Way NE, Bldg 4, Room 2076, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

FOR FURTHER INFORMATION CONTACT: Bill Wilson, North Pacific Fishery Management Council; telephone: (907) 271-2809.

SUPPLEMENTARY INFORMATION: The SSLMC will review proposal scores, clarify Proposed Ranking Tool model runs, develop a framework for outside the model proposal analysis, and discuss the new draft Steller Sea Lion Recovery Plan.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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 Council's 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 Gail Bendixen, (907) 271-2809, at least 5 working days prior to the meeting date.

Dated: May 31, 2007.

Tracey L. Thompson,

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

[FR Doc. E7-10774 Filed 6-4-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[XRIN: 0648-XA64]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Crab Committee will meet in Seattle, WA.

DATES: The meeting will be held on June 19, 2007, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center, 7600 Sand Point Way NE, Building 1, Workforce Management Conference Room, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

FOR FURTHER INFORMATION CONTACT: Mark Fina, North Pacific Fishery

Management Council; telephone: (907) 271-2809.

SUPPLEMENTARY INFORMATION: The Crab Committee will review: (1) the current uses of B shares (those shares exempt from the processing share landing requirements) and whether those uses are consistent with the Council's original intent for the use of B shares, and (2) regulatory issues related to administration of the harvest share and processing share allocations and the arbitration program.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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 Council's 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 Gail Bendixen, (907) 271-2809, at least 5 working days prior to the meeting date.

Dated: May 31, 2007.

Tracey L. Thompson,

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

[FR Doc. E7-10776 Filed 6-4-07; 8:45 am]

BILLING CODE 3510-22-S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Wednesday, June 13, 2007, 10:30 a.m.-12 p.m.

PLACE: Corporation for National and Community Service; 8th Floor; 1201 New York Avenue, NW., Washington, DC 20525.

STATUS: Open.

MATTERS TO BE CONSIDERED:

- I. Chair's Opening Remarks.
- II. Consideration of Prior Meeting's Minutes.
- III. Committee Reports.
- IV. Vote on Annual Update to Strategic Plan.
- V. CEO Report.
- VI. Public Comment.

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m. on Monday, June 11, 2007.

CONTACT PERSON FOR MORE INFORMATION: Rachel Needle, Office of the CEO, Corporation for National and Community Service, 10th Floor, Room 10205, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606-6742. Fax (202) 606-3460. TDD: (202) 606-3472. E-mail: rneedle@cns.gov.

Dated: May 31, 2007.

Frank R. Trinity,

General Counsel.

[FR Doc. 07-2808 Filed 6-1-07; 1:34 pm]

BILLING CODE 6050--\$-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 07-25]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 07-25 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 29, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-M



DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

MAY 25 2007
In reply refer to:
I-07/005003

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-25, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Japan for defense articles and services estimated to cost \$40 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in cursive script that reads "Richard J. Millies".

Richard J. Millies
Deputy Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations

Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations

Transmittal No. 07-25

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Japan
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|---------------------|
| Major Defense Equipment* | \$34 million |
| Other | <u>\$ 6 million</u> |
| TOTAL | \$40 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** up to 24 SM-2 Block IIIB Tactical STANDARD missiles with MK 13 MOD 0 canisters; 24 AN/DKT-71A telemeters and conversion kits; containers; spare and repair parts; supply support; U.S. Government and contractor technical assistance and other related elements of logistics support.
- (iv) **Military Department:** Navy (AQO)
- (v) **Prior Related Cases, if any:** numerous FMS cases pertaining to the STANDARD missiles
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** MAY 25 2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATIONJapan - SM-2 Block IIIB STANDARD Missiles

The Government of Japan has requested a possible sale for 24 SM-2 Block IIIB Tactical STANDARD missiles with MK 13 MOD 0 canisters; 24 AN/DKT-71A telemeters and conversion kits; containers; spare and repair parts; supply support; U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is \$40 million.

Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key ally of the United States in ensuring the peace and stability of this region. The U.S. Government shares bases and facilities in Japan. It is vital to the U.S. national interest to assist Japan to develop and maintain a strong and ready self-defense capability, which will contribute to an acceptable military balance in the area. This proposed sale is consistent with these U.S. objectives and with the 1960 Treaty of Mutual Cooperation and Security.

The SM-2 missiles will be used on ships of the Japan Maritime Self Defense Force fleet and will provide enhanced capabilities in providing defense of critical sea-lanes of communication. Japan has already integrated the SM-2 Block IIIB into its ship combat systems. It maintains two Intermediate-Level Maintenance Depots capable of maintaining and supporting the SM-2. Japan will have no difficulty absorbing these additional missiles.

The prime contractor is Raytheon Company in Tucson, Arizona and the MK 13 Mod 0 canister's prime contractor is BAE Systems of Minneapolis, Minnesota. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 07-2776 Filed 6-4-07; 8:45 am]
BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal Nos. 07-33]

36b(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 07-33 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 29, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

MAY 25 2007
In reply refer to:
I-07/007218-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-33, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to India for defense articles and services estimated to cost \$1,059 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,


JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House

Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations

Senate

Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations

Transmittal No. 07-33

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

(i) Prospective Purchaser: India**(ii) Total Estimated Value:**

Major Defense Equipment*	\$ 522 million
Other	<u>\$ 537 million</u>
TOTAL	\$1,059 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:

- 6 Lockheed Martin C-130J United States Air Force (USAF) baseline aircraft including USAF baseline equipment
- 4 Rolls Royce AE 2100D3 spare engines
- 8 AAR-47 Missile Warning Systems (two of them spares)
- 8 AN/ALR-56M Advanced Radar Warning Receivers (two of them spares)
- 8 AN/ALE-47 Counter-Measures Dispensing Systems (two of them spares)
- 8 AAQ-22 Star SAFIRE III Special Operations Suites (two of them spares)
- 8 ALQ-211 Suite of Integrated Radio Frequency Countermeasures (two of them spares)
- 2 spare AN/ARC-210 Single Channel Ground and Airborne Radio Systems (SINCGARS)
- 8 spare Secure Voice Very High Frequency/Ultra High Frequency Radios
- 4 spare Secure Voice High Frequency Radios
- 3 spare AN/AAR-222 SINCGARS and Key Gen (KV-10) Systems
- 1 KIV-119 Non-standard Communication/COMSEC equipment
- 2 ARC-210 Non-standard Communication/COMSEC equipment

* as defined in Section 47(6) of the Arms Export Control Act.

Also included are spare and repair parts, configurations updates, communications security equipment and radios, integration studies, support equipment, publications and technical documentation, technical services, personnel training and training equipment, foreign liaison office support, Field Service Representatives' services, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support.

- (iv) Military Department: Air Force (SAA)
- (v) Prior Related Cases, if any: none
- (vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none
- (vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached
- (viii) Date Report Delivered to Congress: MAY 25 2007

POLICY JUSTIFICATION**India - C-130J Aircraft**

The Government of India has requested a possible sale of

- 6 Lockheed Martin C-130J United States Air Force (USAF) baseline aircraft including USAF baseline equipment
- 4 Rolls Royce AE 2100D3 spare engines
- 8 AAR-47 Missile Warning Systems (two of them spares)
- 8 AN/ALR-56M Advanced Radar Warning Receivers (two of them spares)
- 8 AN/ALE-47 Counter-Measures Dispensing Systems (two of them spares)
- 8 AAQ-22 Star SAFIRE III Special Operations Suites (two of them spares)
- 8 ALQ-211 Suite of Integrated Radio Frequency Countermeasures (two of them spares)
- 2 spare AN/ARC-210 Single Channel Ground and Airborne Radio Systems (SINCGARS)
- 8 spare Secure Voice Very High Frequency/Ultra High Frequency Radios
- 4 spare Secure Voice High Frequency Radios
- 3 spare AN/AAR-222 SINCGARS and Key Gen (KV-10) Systems
- 1 KIV-119 Non-standard Communication/COMSEC equipment
- 2 ARC-210 Non-standard Communication/COMSEC equipment

Also included are spare and repair parts, configuration updates, communications security equipment and radios, integration studies, support equipment, publications and technical documentation, technical services, personnel training and training equipment, foreign liaison office support, Field Service Representatives' services, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is \$1,059 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of an important partner and to strengthen the U.S.-India strategic relationship, which continues to be an important force for political stability, peace, and economic progress in South Asia.

India and the United States are forging an important strategic partnership. The proposed sale will enhance the foreign policy and national security objectives of the U.S. by providing the Indian Government with a credible special operations airlift capability that will deter aggression in the region, provide humanitarian airlift capability and ensure interoperability with U.S. forces in coalition operations.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Lockheed Martin Aeronautics Company in Fort Worth, Texas and Rolls-Royce Corporation in Indianapolis, Indiana. Offset agreements associated with this proposed sale are expected, but at this time the specific offset agreements are undetermined and will be defined in negotiations between the purchaser and contractors.

Implementation of this proposed sale may require the assignment of 10 each U.S. Government and contractor representatives in India for a periodic of up to two weeks.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 07-33

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The C-130 Hercules aircraft primarily performs the tactical portion of the airlift mission. The aircraft is capable of operating from rough, dirt strips and is the prime transport for air dropping troops and equipment into hostile areas. The C-130 operates throughout the U.S. Air Force fulfilling a wide range of operational missions in both peace and war. The C-130J improvements over the C-130E include improved maximum speed, climb time, cruising altitude and range. The C-130J has 55 feet of cargo compartment length - an additional 15 feet over the original "short" aircraft.

2. The AN/ALE-47 Counter-Measures Dispensing System (CMDS) is an integrated, threat-adaptive, software-programmable dispensing system capable of dispensing chaff, flares, and active radio frequency expendables. The threats countered by the CMDS include radar-directed anti-aircraft artillery (AAA), radar command-guided missiles, radar homing guided missiles, and infrared (IR) guided missiles. The system is internally mounted and may be operated as a stand-alone system or may be integrated with other on-board early warning and avionics systems. The AN/ALE-47 uses threat data received over the aircraft interfaces to assess the threat situation and to determine a response. Expendable routines tailored to the immediate aircraft and threat environment may be dispensed using one of four operational modes. Hardware is Unclassified. Technical data and documentation to be provided is Unclassified.

3. The AN/AAR-47 Missile Warning System is a small, lightweight, passive, electro-optic, threat warning device used to detect surface-to-air missiles fired at helicopters and low-flying fixed-wing aircraft and automatically provide countermeasures, as well as audio and visual-sector warning messages to the aircrew. The basic system consists of multiple Optical Sensor Converter (OSC) units, a Computer Processor (CP) and a Control Indicator (CI). The set of OSC units, normally four, is mounted on the aircraft exterior to provide omni-directional protection. The OSC detects the rocket plume of missiles and sends appropriate signals to the CP for processing. The CP analyzes the data from each OSC and automatically deploys the appropriate countermeasures. The CP also contains

comprehensive built-in test circuitry. The control indicator displays the incoming direction of the threat, so that the pilot can take appropriate action. Hardware is Unclassified. Technical data and documentation to be provided is Unclassified.

4. The AN/ALR-56M Advanced Radar Warning Receiver continuously detects and intercepts radio frequency signals in certain frequency ranges and analyzes and separates threat signals from non-threat signals. It contributes to full-dimensional protection by providing individual aircraft probability of survival through improved aircrew situational awareness of the radar-guided threat environment. The ALR-56M is designed to provide improved performance in a dense signal environment and improved detection of modern threats signals. Hardware is Unclassified. Technical data and documentation to be provided is Unclassified.

5. The AN/ALQ-211 Suite of Integrated Radio Frequency Countermeasures (SIRFC) is a fully integrated electronic combat system that provides advanced radar warning, situational awareness and electronic countermeasures (ECM) capabilities. SIRFC will provide defensive, offensive, active, and passive ECM to ensure protection against Active Pulse, Mono-Pulse radar, and Continuous Wave radars. The AN/ALQ-211 is internally mounted, consisting of the Advanced Threat Warning Receiver and the Advanced Threat Radar Jammer. Hardware is considered Unclassified. Technical data and documentation to be provided are considered Unclassified.

6. The AN/AAQ-22 Star SAFIRE III is a gyro-stabilized, multi-spectral Electro-Optical/Infrared (EO/IR) system configured to operate simultaneously in multiple bands including the visible, near-IR and mid-wave IR bands. The system consists of an externally mounted turret sensor unit and internally mounted central electronics unit and system control unit. Images will be displayed in the aircraft real-time, and recorded for subsequent ground analysis. Hardware is considered Unclassified. Technical data and documentation to be provided are considered Unclassified.

7. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

ENVIRONMENTAL PROTECTION AGENCY

[EPA-R01-OAR-2007-0373; A-1-FRL-8321-6]

Adequacy Status of the Submitted 2009 Early Progress Direct PM_{2.5} and NO_x Motor Vehicle Emission Budgets for Transportation Conformity Purposes; Connecticut; New York-Northern New Jersey-Long Island, NY-NJ-CT PM_{2.5} Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that EPA has found that the 2009 motor vehicle emissions budgets in the April 17, 2007 Connecticut State Implementation Plan (SIP) revision are adequate for transportation conformity purposes. The submittal included MOBILE6.2 motor

vehicle emissions budgets for 2009 for the Connecticut portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT PM_{2.5} Area. On March 2, 1999, the D.C. Circuit Court ruled that budgets in submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the State of Connecticut can use the MOBILE6.2 motor vehicle emissions budgets from the submitted plan for future conformity determinations for the Connecticut portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT PM_{2.5} area.

DATES: These motor vehicle emissions budgets are effective June 20, 2007.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, Environmental Scientist, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ),

Boston, MA 02114-2023, (617) 918-1668, cooke.donald@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, whenever “we,” “us” or “our” is used, we mean EPA.

Today’s notice is simply an announcement of a finding that we have already made. EPA New England sent a letter to Connecticut Department of Environmental Protection on May 24, 2007, stating that the 2009 MOBILE6.2 motor vehicle emissions budgets in the April 17, 2007 State Implementation Plans (SIPs) are adequate for transportation conformity purposes. This finding will also be announced on EPA’s conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>, (once there, click on “What SIP submissions has EPA already found adequate or inadequate?”). The adequate motor vehicle emissions budgets (MVEBs) are provided in the following table:

ADEQUATE MOTOR VEHICLE EMISSIONS BUDGETS

	Direct PM _{2.5} (tons per year)	NO _x (tons per year)
Year 2009 MVEBs for the Connecticut portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT PM _{2.5} Area.	360	18,279

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA’s conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP’s motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA’s completeness review, and it also should not be used to prejudge EPA’s ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in a May 14, 1999 memorandum entitled “Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision.” Additional guidance on EPA’s adequacy process was published in a July 1, 2004

Federal Register final rulemaking, “Transportation Conformity Rule Amendments for the New 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes” (69 FR 40004). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401-7671q.

Dated: May 29, 2007.

Robert W. Varney,
Regional Administrator, EPA New England.
[FR Doc. E7-10770 Filed 6-4-07; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-ORD-2007-0243; FRL-8321-5]

Board of Scientific Counselors, Ecological Research Program Mid-Cycle Review Meeting—Spring 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Eco Mid-Cycle Subcommittee.

DATES: The meeting (a teleconference call) will be held on Thursday, June 28, 2007, from 10 a.m. to 12 p.m. All times noted are eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting.

ADDRESSES: Participation in the conference call will be by teleconference only—a meeting room will not be used. Members of the public may obtain the call-in number and access code for the call from Heather Drumm, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2007-0243, by one of the following methods:

• www.regulations.gov: Follow the on-line instructions for submitting comments.

• *E-mail*: Send comments by electronic mail (e-mail) to: ORD.Docket@epa.gov, Attention Docket ID No. EPA-HQ-ORD-2007-0243.

• *Fax*: Fax comments to: (202) 566-0224, Attention Docket ID No. EPA-HQ-ORD-2007-0243.

• *Mail*: Send comments by mail to: Board of Scientific Counselors, Ecological Mid-Cycle Subcommittee Meeting—Spring 2007 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-ORD-2007-0243.

• *Hand Delivery or Courier*. Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA-HQ-ORD-2007-0243. Note: this is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-ORD-2007-0243. 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 Board of Scientific Counselors, Ecological Mid-Cycle Subcommittee Meeting—Spring 2007 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the ORD Docket is (202) 566-1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Heather Drumm, Mail Drop 8104-R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1300 Pennsylvania Ave., NW., Washington, DC 20460; via phone/voice mail at: (202) 564-8239; via fax at: (202) 565-2911; or via e-mail at: drumm.heather@epa.gov.

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Heather Drumm, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meeting include, but are not limited to finalizing the subcommittee's draft report and discussing the rating component for the Eco research program. The meeting is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Heather Drumm at (202) 564-8239 or drumm.heather@epa.gov. To request accommodation of a disability, please contact Heather Drumm, preferably at least 10 days prior to the

meeting, to give EPA as much time as possible to process your request.

Dated: May 31, 2007.

Mary Ellen Radzikowski,

Acting Director, Office of Science Policy.

[FR Doc. E7-10769 Filed 6-4-07; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 20, 2007.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *William M. Spang, Jr.*, Eveleth, Minnesota; to acquire control of Timberland Bancorp, Baxter, Minnesota, and thereby indirectly acquire control of First National Bank of Buhl, Buhl, Minnesota.

Board of Governors of the Federal Reserve System, May 31, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7-10751 Filed 6-4-07; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or

bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 29, 2007.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *First State Bancshares, Inc.*, Farmington, Missouri; to acquire 100 percent of the voting shares of Progress Bancshares, Inc., Sullivan, Missouri, and thereby indirectly acquire voting shares of Progress Bank of Missouri, Sullivan, Missouri.

Board of Governors of the Federal Reserve System, May 31, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7-10750 Filed 6-4-07; 8:45 am]

BILLING CODE 6210-01-S

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Termination of Environmental Impact Statement (EIS); Los Angeles FBI Field Office, Los Angeles, California

AGENCY: Portfolio Management Division, Pacific Rim Region 9.

ACTION: Notice.

The purpose of this notice is to inform all interested parties that the General Services Administration (GSA) has cancelled the Environmental Impact Statement (EIS) for the proposed Federal Bureau of Investigation (FBI) Field Office headquarters. GSA is looking for

other alternatives meeting the purpose and need as stated in the EIS.

EFFECTIVE DATE: May 16, 2007.

FOR FURTHER INFORMATION CONTACT Gene Gibson, Regional Public Affairs Officer, U. S. General Services Administration, 450 Golden Gate Avenue, San Francisco, CA 94102. Phone: 415-522-3001.

Peter G. Stamison,

Regional Administrator GSA, Region 9.

[FR Doc. E7-10748 Filed 6-4-07; 8:45 am]

BILLING CODE 6820-YF-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Preparedness and Response; HHS Public Health Emergency Medical Countermeasures Enterprise Stakeholders Workshop

AGENCY: Department of Health and Human Services.

Subagency: Office of the Secretary.

Subject: HHS Public Health Emergency Medical Countermeasures Enterprise Stakeholders Workshop.

Authority: Dr. Gerald Parker, Principal Deputy Assistant Secretary, Office of the Assistant Secretary for Preparedness and Response.

ACTION: Notice of meeting.

SUMMARY: The Department of Health and Human Services is pleased to announce the upcoming HHS Public Health Emergency Medical Countermeasures Enterprise Stakeholders Workshop, to be held July 31–August 2, 2007, in Washington, DC. This three-day event is an open meeting that seeks to bring together representatives from the pharmaceutical and biotechnology industries, professional societies, state and local public health organizations, the academic research and development community, public interest groups, stakeholder federal agencies, and Congress. Featured topics will include the Biomedical Advanced Research and Development Authority (BARDA); Project BioShield; the *HHS PHEMCE Implementation Plan for Chemical, Biological, Radiological and Nuclear Threats*; the *HHS Pandemic Influenza Implementation Plan*; and contracting with HHS for medical countermeasure development and acquisition.

DATES: The Workshop will be held July 31–August 2, 2007. Each day will begin at 8 a.m.

ADDRESSES: The Workshop will be held at the Fairmont, Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Agenda: The preliminary agenda is available at www.hhs.gov/aspr/ophemc/enterprise/bioshield/2007workshop.html.

Registration: There is no fee to attend; however, space is limited and registration is required. Register online at www.hhs.gov/aspr/ophemc/enterprise/bioshield/2007workshop.html.

SUPPLEMENTARY INFORMATION:

Immediately following the Workshop, HHS is also hosting the 2007 Biomedical Advanced Research and Development Authority (BARDA) Industry Day on August 3, 2007 at the Fairmont Hotel Washington, DC. This unique event will provide an opportunity for industry representatives and other interested parties to demonstrate the operation and effectiveness of relevant biodefense technologies in vaccines, diagnostics, and therapeutics. For more information on presenting at or attending the BARDA Industry Day, visit www.hhs.gov/aspr/ophemc/barda/index.html.

DATE: This notice is effective 14 May 2007.

FOR FURTHER INFORMATION CONTACT:

Joanna M. Prasher, Ph.D., Office of the Biomedical Advanced Research and Development Authority, Office of the Assistant Secretary for Preparedness and Response at 330 Independence Ave., SW., Room G640, Washington, DC 20201, e-mail at BioShield@hhs.gov, or by phone at 202-260-1200.

Carol D. Linden,

Principal Deputy & Acting Director, BARDA.

[FR Doc. E7-10742 Filed 6-4-07; 8:45 am]

BILLING CODE 4150-37-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: State Plan for Child Support under Title IV–D of the Social Security Act (OCSE–100 and OCSE–21–U4).

OMB No.: 0970–0017.

Description: The State plan preprint pages and amendments serve as a contract between the Office of Child Support Enforcement and State and Territory IV–D agencies. These State plan preprint pages and amendments outline the activities States and Territories will perform as required by law, in Section 454 of the Social

Security Act, in order for States and Territories to receive Federal funds to

meet the costs of child support enforcement.

Respondents: State and Territory IV-D Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan (OCSE-100)	54	8	.5	216
State Plan Transmittal (OCSE-21-U4)	54	8	.25	108

Estimated Total Annual Burden Hours: 324.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: infocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 29, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07-2768 Filed 6-4-07; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Children and Families (ACF), as follows: Chapter KA, The Office of the Assistant Secretary (OAS), as previously amended at 69 FR 76949, December 23, 2004, (transferring the Freedom of Information Act (FOIA) function from the Office of the Assistant Secretary, Office of the Executive Secretariat, to the Division of Public Information, Office of Public Affairs) and at 71 FR 71549, December 11, 2006 (this notice inadvertently published the transfer of the FOIA Officer and Office of Inspector General hotline functions from the Office of the Assistant Secretary to the Office of Public Affairs), and Chapter KN, Office of Public Affairs (OPA), as previously amended 69 FR 76949, December 23, 2004, and at 71 FR 71549, 71550, December 11, 2006. This notice announces the transfer of the FOIA functions from the Division of Public Information, Office of Public Affairs, and places them in the Office of the Assistant Secretary for Children and Families. Because of the error in 2006 we are republishing the affected organizational structures of the Office of the Assistant Secretary and the Office of Public Affairs in their entirety. The changes are as follows:

I. Under Chapter KA, Office of the Assistant Secretary for Children and Families, delete in its entirety and replace with the following:

KA.00 Mission. The Office of the Assistant Secretary for Children and Families (OAS) provides executive direction, leadership, and guidance for all ACF programs. OAS provides national leadership to develop and coordinate public and private initiatives

for carrying out programs that promote permanency placement planning, family stability, and self-sufficiency. OAS advises the Secretary on issues affecting America's children and families, including Native Americans, persons with developmental disabilities, refugees, and legalized aliens. OAS provides leadership on human service issues and conducts emergency preparedness and response operations during a nationally declared emergency. OAS handles Freedom of Information Act requests and inquiries and coordinates hotline calls received by the Office of Inspector General and the Government Accountability Office relating to ACF operations and personnel.

KA.10 Organization. The Office of the Assistant Secretary for Children and Families is headed by the Assistant Secretary for Children and Families who reports directly to the Secretary and consists of:

- Office of the Assistant Secretary for Children and Families (KA)
- President's Committee for People with Intellectual Disabilities Staff (KAD)
- Executive Secretariat Office (KAF)
- Office of Human Services Emergency Preparedness and Response (KAG)

KA.20 Functions A. Office of the Assistant Secretary for Children and Families (KA): The Office of the Assistant Secretary for Children and Families is responsible to the Secretary for carrying out ACF's mission and provides executive supervision of the major components of ACF. These responsibilities include providing executive leadership and direction to plan and coordinate ACF program activities to ensure their effectiveness, approving instructions, policies, publications, and grant awards issued by ACF, and representing ACF in relationships with governmental and non-governmental organizations. The Assistant Secretary for Children and Families also serves as the Director of the Office of Child Support Enforcement, and signs official child support enforcement documents as the Assistant Secretary for Children and Families. The Principal Deputy

Assistant Secretary serves as an alter ego to the Assistant Secretary for Children and Families on program matters and acts in the absence of the Assistant Secretary for Children and Families. The Office coordinates hotline calls received by the Office of Inspector General and the Government Accountability Office relating to ACF operations and personnel and assists the ACF FOIA Officer in processing FOIA inquiries and requests relating to ACF programs and activities.

B. President's Committee for People With Intellectual Disabilities Staff (KAD): The President's Committee for People with Intellectual Disabilities (PCPID) staff provides general staff support for a Presidential-level advisory body. It coordinates all meetings and Congressional hearing arrangements; provides such advice and assistance in the areas of intellectual disabilities as the President or the Secretary may request; prepares and issues an annual report to the President concerning intellectual disabilities and such additional reports or recommendations as the President may require or as PCPID may deem appropriate; and evaluates the national effort to prevent and ameliorate intellectual disabilities. It works with other Federal, State, local governments, and private-sector organizations to achieve Presidential goals vis-à-vis intellectual disabilities, and develops and disseminates information to increase public awareness of intellectual disabilities to reduce its incidence and to alleviate its effects. The staff supporting PCPID reports to the Deputy Assistant Secretary for Policy and External Affairs.

C. The Executive Secretariat Office (KAF): The Executive Secretariat Office (ExecSec) ensures that issues requiring the attention of the Assistant Secretary, Deputy Assistant Secretaries and/or executive staff are addressed on a timely and coordinated basis and facilitates decisions on matters requiring immediate action, including White House, Congressional, and Secretarial assignments. ExecSec serves as the ACF liaison with the HHS Executive Secretariat. ExecSec receives, assesses, and controls incoming correspondence and assignments to the appropriate ACF component(s) for response and action and provides assistance and advice to ACF staff on the development of responses to correspondence. ExecSec provides assistance to ACF staff on the use of the controlled correspondence system. ExecSec coordinates and/or prepares Congressional correspondence; tracks development of periodic reports; and facilitates Departmental clearances.

ExecSec is headed by a Director who reports to the Principal Deputy Assistant Secretary.

D. The Office of Human Services Emergency Preparedness and Response (KAG): The Office of Human Services Emergency Preparedness and Response (OHSEPR) provides general staff support for the implementation and coordination of ACF program and human services emergency planning, preparedness, and response during nationally declared emergencies. OHSEPR oversees disaster assessment, response operations and asset-management protocols. OHSEPR coordinates with ACF Central and Regional Offices, ACF State- and local grantee-funded programs, ACF program partner organizations, and the Office of the Secretary, Office of the Assistant Secretary for Preparedness and Response (ASPR). OHSEPR coordinates, through ASPR, with the Department of Homeland Security Federal Emergency Management Agency on human services emergency planning as part of the National Emergency Plan. The staff supporting OHSEPR reports to the Director of OHSEPR who reports to the Principal Deputy Assistant Secretary.

II. Under Chapter KN, Office of Public Affairs, Delete in Its Entirety and Replace With the Following:

KN.00 Mission. The Office of Public Affairs (OPA) develops, directs, and coordinates public affairs and communications services for ACF. OPA provides leadership, direction, and oversight in promoting ACF's public affairs policies, programs, and initiatives. OPA provides printing and distribution services for ACF.

KN.10 Organization. The Office of Public Affairs is headed by a Director who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

Office of the Director (KNA)
Division of Public Information (KNB)
Division of Publications Services (KNC)

KN.20 Functions. A. Office of the Director (KNA): The Office of the Director provides leadership and direction to OPA in administering OPA's responsibilities. The Office provides direction and leadership in the areas of public relations policy and communications services. The Office serves as an advisor to the Assistant Secretary for Children and Families in the areas of public affairs; provides advice on strategies and approaches to be used to improve public understanding of and access to ACF programs and policies; and coordinates and serves as ACF liaison with the

Assistant Secretary for Public Affairs. The Office serves as Regional Liaison on public affairs issues. The Deputy Director assists the Director in carrying out the responsibilities of the Office.

B. Division of Public Information (KNB): The Division of Public Information develops and implements public affairs strategies to achieve ACF program objectives in coordination with other ACF components. The Division coordinates news media relations strategy; responds to all media inquiries concerning ACF programs and related issues; develops fact sheets, news releases, feature articles for magazines and other publications on ACF programs and initiatives; and manages preparation and clearance of speeches and official statements on ACF programs. The Division coordinates regional public affairs policies and public affairs activities pertaining to ACF programs and initiatives.

C. Division of Publications Services (KNC): The Division of Publications Services directs the audio-visual, publication and printing management services for ACF. The Division manages preparation and clearance of all ACF audio-visual products, publications, and graphic designs, including planning, budget oversight, and technical support. The Division provides centralized graphics design services to ACF. The Division reviews requests for proposals for contracts and grants that involve publications, audio-visual materials and/or public information and education activity. The Division also provides technical leadership and services in public information, printing, and mail distribution. The Division recommends approaches for meeting internal and external communications needs of ACF. The Division acts as focal point for clearance of all publications and audio-visual projects whether produced in-house or by contract or grant.

Dated: May 30, 2007.

Daniel C. Schneider,

Acting Assistant Secretary for Children and Families.

[FR Doc. E7-10777 Filed 6-4-07; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. 2006N-0202]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002**AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezuto, Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 20, 2006 (71 FR 76344), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910-0520. The approval expires on May 31, 2010. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

Dated: May 29, 2007.

Jeffrey Shuren,*Assistant Commissioner for Policy.*

[FR Doc. E7-10785 Filed 6-4-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****Request for Nominations for Voting Members on a Public Advisory Committee; Risk Communication Advisory Committee****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Risk Communication Advisory Committee in the Office of Planning, Office of the Commissioner. Elsewhere in this issue of the **Federal Register**, FDA is publishing a document announcing the establishment of this committee.

FDA has special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Nominations received on or before July 20, 2007 will be given first consideration for membership on the Risk Communication Advisory Committee. Nominations received after July 20, 2007 will be considered for nomination to the Risk Communication Advisory Committee should nominees still be needed.

ADDRESSES: All nominations for membership should be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

FOR FURTHER INFORMATION CONTACT: Regarding all nomination questions for membership, the primary contact is Lee Zwanziger, Office of Planning, Office of the Commissioner (HFP-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-2895, FAX: 301-827-5260, e-mail: rcac@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members on the Risk Communication Advisory Committee.

I. Function of the Risk Communication Advisory Committee

The committee advises the Commissioner of Food and Drugs on strategies and programs designed to communicate with the public about both the risks and benefits of FDA-regulated products so as to facilitate optimal use of these products. The

committee also reviews and evaluates research relevant to such communication to the public by both FDA and other entities. It also facilitates interactively sharing risk and benefit information with the public to enable people to make informed independent judgments about use of FDA-regulated products.

II. Criteria for Voting Members*A. Experts*

Persons nominated for membership must have scientific expertise or extensive experience in one or more of the following fields: Risk communication; risk perception; social marketing; communications; cognitive, social, health, behavioral, or other relevant specialties of psychology or sociology; decision analysis; qualitative or quantitative research methodology; health literacy; cultural competency; journalism; and/or biomedical ethics.

B. Public Members

Persons nominated for membership on the committee to provide a perspective from real-world experience on the communication needs of the various groups who use FDA-regulated products must have the following skills: (1) Ability to communicate the interests and perspectives of consumers, patients, patient-caregivers, or health professionals; (2) ability to discuss benefits and risks; and (3) ability to understand the results of research studies. In addition, preference will be given to nominees who have one or more of the following qualifications: (1) Ability to analyze technical data; (2) understanding of research design; (3) ability to disseminate information about the advisory committee experience to the community; and (4) ties to a consumer, patient, and/or community-based organization. As a member of the Risk Communication Advisory Committee, these individuals will serve in their individual capacities. However, we expect that they can also serve as conduits between FDA and the general public. Nominated individuals may include patients and patients' family members, health professionals, communicators in health, medicine, and science, and persons affiliated with consumer, specific disease, or patient safety advocacy groups.

III. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the advisory committee. Self-nominations are also accepted. Nominations must include a current resume or curriculum vitae of each

nominee, including current business address, telephone number, and e-mail address if available. Nominations must also acknowledge that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning matters related to financial holdings, employment, and research grants and/or contracts.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: May 28, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E7-10737 Filed 6-4-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Risk Communication Advisory Committee; Establishment

AGENCY: Food and Drug Administration
ACTION: Notice of establishment.

Under the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Commissioner of Food and Drugs (the Commissioner), announces the establishment of the Risk Communication Advisory Committee. The Commissioner has determined that it is in the public interest to establish such a committee.

The Risk Communication Advisory Committee shall provide advice to the Commissioner or designee on strategies and programs designed to communicate with the public about both the risks and benefits of Food and Drug Administration (FDA)-regulated products so as to facilitate optimal use of these products. The committee also reviews and evaluates research relevant to such communication to the public by both FDA and other entities. It also facilitates interactively sharing risk and benefit information with the public to enable people to make informed independent judgments about use of FDA-regulated products. Duration of this committee is 2 years from the date the Charter is filed, unless the Commissioner formally determines that renewal is in the public interest.

The Risk Communication Advisory Committee will be composed of a core of 15 voting members including the

Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of risk communication, social marketing, health literacy, cultural competency, journalism, bioethics, and other relevant behavioral and social sciences. Some members will be selected to provide experience-based insights on the communications needs of the various groups who use FDA-regulated products. The latter may include patients and patients' family members, health professional, communicators in health, medicine and science, persons affiliated with consumer, specific disease, or patient safety advocacy groups. Depending on the meeting topic(s), at least one nonvoting member identified with relevant industry interests may be invited from existing members of other FDA Advisory Committees.

FOR FURTHER INFORMATION CONTACT: Lee Zwanziger, Office of Planning, Office of the Commissioner (HFP-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-2895, FAX: 301-827-5260, or rcac@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, FDA is publishing a request for nominations for advisory committee members and notice of a change to the advisory committee telephone information line adding the establishment of the Risk Communication Advisory Committee. FDA plans to publish in the near future a final rule adding the Risk Communication Advisory Committee to the list of FDA standing advisory committees in 21 CFR 14.100.

Dated: May 28, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E7-10740 Filed 6-4-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2006E-0332 and 2006E-0333]

Determination of Regulatory Review Period for Purposes of Patent Extension; NAMENDA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for NAMENDA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of two applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD-007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product, NAMENDA

(memantine hydrochloride). NAMENDA is indicated for the treatment of moderate to severe dementia of the Alzheimer's type. Subsequent to this approval, the Patent and Trademark Office received two patent term restoration applications for NAMENDA (U.S. Patent Nos. 5,061,703 and 5,614,560) from Forest Laboratories, Inc., acting as agent for Merz Pharma GmbH & Co. KGaA, and the Patent and Trademark Office requested FDA's assistance in determining these patents' eligibilities for patent term restoration. In a letter dated January 26, 2007, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of NAMENDA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for NAMENDA is 5,001 days. Of this time, 4,699 days occurred during the testing phase of the regulatory review period, while 302 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* February 7, 1990. The applicant claims October 9, 1997, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the original IND effective date was February 7, 1990, which was the date the original IND was removed from clinical hold.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* December 19, 2002. FDA has verified the applicant's claim that the new drug application (NDA) (NDA 21-487) was initially submitted on December 19, 2002.

3. *The date the application was approved:* October 16, 2003. FDA has verified the applicant's claim that NDA 21-487 was approved on October 16, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,250 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 6, 2007. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 3, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 2, 2007.

Jane A. Axelrad,
Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E7-10730 Filed 6-4-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee Information Hotline

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that we have revised the Advisory Committee Information Hotline (the hotline). The hotline provides the public with access to the most current information available on FDA advisory committee meetings. This notice supersedes all previously published announcements of the hotline.

FOR FURTHER INFORMATION CONTACT: Theresa L. Green, Committee Management Officer (HF-4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1220.

SUPPLEMENTARY INFORMATION: The hotline can be accessed by dialing 1-800-741-8138 or 301-443-0572. The advisory committee meeting information and information updates can also be accessed via FDA's advisory committee calendar at <http://www.fda.gov/oc/advisory/accalendar/2007/default.htm>.

Each advisory committee is assigned a 10-digit number. This 10-digit number will appear in each individual notice of meeting. The public can obtain information about a particular advisory committee meeting by using the committee's 10-digit number. Information on the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made. The following is a list of each advisory committee's 10-digit number to be used when accessing the hotline.

Advisory Committee	10-Digit Access Number
Office of the Commissioner	
Pediatric Advisory Committee	8732310001
Risk Communication Advisory Committee	8732112560
Science Board to the FDA	3014512603
Center for Biologics Evaluation and Research	
Allergenic Products Advisory Committee	3014512388
Blood Products Advisory Committee	3014519516

Advisory Committee	10-Digit Access Number
Cellular, Tissue & Gene Therapies Advisory Committee	3014512389
Transmissible Spongiform Encephalopathies Advisory Committee	3014512392
Vaccines and Related Biological Products Advisory Committee	3014512391
Center for Drug Evaluation and Research	
Anesthetic and Life Support Drugs Advisory Committee	3014512529
Anti-Infective Drugs Advisory Committee	3014512530
Antiviral Drugs Advisory Committee	3014512531
Arthritis Advisory Committee	3014512532
Cardiovascular and Renal Drugs Advisory Committee	3014512533
Dermatologic and Ophthalmic Drugs Advisory Committee	3014512534
Drug Safety and Risk Management Advisory Committee	3014512535
Endocrinologic and Metabolic Drugs Advisory Committee	3014512536
Gastrointestinal Drugs Advisory Committee	3014512538
Nonprescription Drugs Advisory Committee	3014512541
Oncologic Drugs Advisory Committee	3014512542
Peripheral and Central Nervous System Drugs Advisory Committee	3014512543
Pharmaceutical Science & Clinical Pharmacology, Advisory Committee for (formerly Advisory Committee for Pharmaceutical Science)	3014512539
Psychopharmacologic Drugs Advisory Committee	3014512544
Pulmonary-Allergy Drugs Advisory Committee	3014512545
Reproductive Health Drugs, Advisory Committee for	3014512537
Center for Food Safety and Applied Nutrition	
Food Advisory Committee	3014510564
Center for Devices and Radiological Health	
Device Good Manufacturing Practice Advisory Committee	3014512398
Medical Devices Advisory Committee (composed of 18 panels)	
Anesthesiology and Respiratory Therapy Devices Panel	3014512624
Circulatory System Devices Panel	3014512625
Clinical Chemistry and Clinical Toxicology Devices Panel	3014512514
Dental Products Panel	3014512518
Ear, Nose, and Throat Devices Panel	3014512522
Gastroenterology-Urology Devices Panel	3014512523
General and Plastic Surgery Devices Panel	3014512519
General Hospital and Personal Use Devices Panel	3014512520
Hematology and Pathology Devices Panel	3014512515
Immunology Devices Panel	3014512516
Medical Devices Dispute Resolution Panel	3014510232
Microbiology Devices Panel	3014512517

Advisory Committee	10-Digit Access Number
Molecular and Clinical Genetics Panel	3014510231
Neurological Devices Panel	3014512513
Obstetrics-Gynecology Devices	3014512524
Ophthalmic Devices Panel	3014512396
Orthopaedic and Rehabilitation Devices Panel	3014512521
Radiological Devices Panel	3014512526
National Mammography Quality Assurance Advisory Committee	3014512397
Technical Electronic Product Radiation Safety Standards Committee	3014512399
Center for Veterinary Medicine	
Veterinary Medicine Advisory Committee	3014512548
National Center for Toxicological Research (NCTR)	
Science Advisory Board to NCTR	3014512559

The hotline will provide the most recent information available on upcoming advisory committee meetings, guidance for making an oral presentation during the open public hearing portion of a meeting, and procedures on obtaining copies of transcripts of advisory committee meetings. Because the hotline will communicate the most current information available about any particular advisory committee meeting, this system will provide interested parties with timely and equal access to such information. The hotline should also conserve agency resources by reducing the current volume of inquiries individual FDA offices and employees must handle concerning advisory committee schedules and procedures.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: May 28, 2007.

Randall W. Lutter,

Associate Commissioner for Policy.

[FR Doc. E7-10738 Filed 6-4-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D-0206]

Guidance for Industry: Refrigerated Carrot Juice and Other Refrigerated Low-Acid Juices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance for Industry: Refrigerated Carrot Juice and Other Refrigerated Low-Acid Juices." The guidance sets forth the agency's recommendations for ensuring the safety of refrigerated carrot juice and other low-acid refrigerated juices. The guidance is in response to six recent cases of botulism poisoning linked to refrigerated carrot juice that occurred in the United States and Canada.

DATES: This guidance is final June 5, 2007. Submit written or electronic comments on the guidance document at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Food Safety (HFS-317), Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-2022, FAX: 301-436-2651. Send one self-addressed adhesive label to assist the office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS-305), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park,

MD 20740, 301-436-2022, or e-mail: michael.kashtock@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document entitled "Guidance for Industry: Refrigerated Carrot Juice and Other Refrigerated Low-Acid Juices." The purpose of the document is to provide guidance that will assist industry in processing and labeling refrigerated carrot juice and other refrigerated low-acid juices, which are subject to the pathogen reduction provisions of the Hazardous Analysis and Critical Control Point regulation for juice (21 CFR part 120) (the juice HACCP regulation), in a manner intended to provide for the safety of the juice when offered for sale by the processor and during handling by the consumer after purchase. This guidance is in response to six cases of botulism poisoning linked to refrigerated carrot juice that occurred in the United States and Canada in September and October 2006. *Clostridium botulinum* is a bacterium commonly found in soil. Botulism is a rare but serious paralytic illness caused by botulinum toxin, a nerve poison that under certain conditions is produced by *C. botulinum*. Botulism can be fatal and is considered a medical emergency. Foodborne botulism is not common in the United States.

FDA is issuing this guidance as level 1 guidance consistent with FDA's good guidance practices regulation (§ 10.115 (21 CFR 10.115)). Consistent with FDA's good guidance practices regulation, the agency will accept comment, but is implementing the guidance document

immediately in accordance with § 10.115(g)(2) because the agency has determined that prior public participation is not feasible or appropriate in light of the need to respond expeditiously to the recent cases of botulism linked to refrigerated carrot juice. This guidance represents the agency's current thinking on important practices for ensuring the safety of refrigerated carrot juice and other low-acid refrigerated juices subject to the juice HACCP regulation. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. You may use an alternative approach if such approach satisfies the requirements of the applicable statutes and regulations. If you want to discuss an alternative approach, contact the FDA staff responsible for implementing this guidance (see **FOR FURTHER INFORMATION CONTACT**).

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this guidance at any time. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance document at <http://www.cfsan.fda.gov/guidance.html>.

Dated: May 25, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7-10792 Filed 6-4-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D-0213]

Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—Receipt Date; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—Receipt Date." This draft guidance provides information on what FDA will consider to be the receipt date for certain submissions provided in electronic format to the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER). The receipt date of these submissions has a number of important regulatory implications. Under the draft guidance, FDA will not consider a submission to be received until it has passed a technical validation check to ensure that the submission can be opened, processed, and archived.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by August 6, 2007.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 301-827-1800. Submit written comments on the guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Gary Gensinger, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 1112, Silver Spring, MD 20993-0002, 301-796-0589; or

Michael Fauntleroy, Center for Biologics Evaluation and Research (HFM-25), 11400 Rockville Pike, Rockville, MD 20852, 301-827-5132.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—Receipt Date." This draft guidance provides information on what FDA will consider to be the receipt date for submissions provided in electronic format to CDER and CBER. When FDA receives a submission, the receipt date is used to determine important regulatory milestones (e.g., 30-day safety review cycle for an investigational new drug application, review performance goal date for a new drug application or biologics license application). Occasionally, however, submissions in electronic format have technical deficiencies that prevent FDA from being able to open, process, and archive them. When this occurs, FDA's review cannot begin until these technical deficiencies are corrected. To encourage sponsors to ensure that electronic submissions are free of technical deficiencies that can delay FDA review of the submission, FDA is changing its policy on the receipt date for submissions provided in an electronic format. The guidance provides that FDA will not consider a submission to be received until it has passed a technical validation check to ensure that the submission can be opened, processed, and archived.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on determining the receipt date for submissions in electronic format. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/cder/guidance/index.htm>, <http://www.fda.gov/cber/guidelines.htm>, or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: May 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7-10780 Filed 6-4-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA)

publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Scholarships for Disadvantaged Students Program—(OMB No. 0915-0149)—Reinstatement

The Scholarships for Disadvantaged Students (SDS) Program has as its purpose the provision of funds to eligible schools to provide scholarships to full-time, financially needy students from disadvantaged backgrounds enrolled in health professions and nursing programs.

To qualify for participation in the SDS program, a school must be carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minority groups (section 737(d)(1)(B) of the Public Health Service Act). A school must meet the eligibility criteria to demonstrate that the program has achieved success based on the number and/or percentage of disadvantaged students who graduate from the school. In awarding SDS funds to eligible schools, funding priorities must be given to schools based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities (section 737(c) of the PHS Act).

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Application	500	1	20	10,000
Report	500	1	1	500
Total	500	10,500

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Karen Matsuoka, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 24, 2007.

Caroline Lewis,

Associate Administrator for Management.

[FR Doc. E7-10749 Filed 6-4-07; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2007-0027]

Privacy Act; IDENT System of Records

AGENCY: Privacy Office, Office of the Secretary, Department of Homeland Security.

ACTION: Notice of updated Privacy Act system of records notice.

SUMMARY: The Department of Homeland Security is republishing the Privacy Act

system of records notice for the Automated Biometric Identification System in order (1) to add a category of records that comprises unique personal identifiers that links individuals with their encounters, biometrics, records, and other data elements and (2) to add a new routine use consistent with Office of Management and Budget Memorandum M-07-16, Attachment 2 that permits DHS to be in the best position to respond in a timely and effective manner in the event of a data breach. This republished system of records notice will replace the previously published system of records notice for the Automated Biometric Identification System, **Federal Register** on July 27, 2006 (71 FR 42651).

DATES: Written comments must be submitted on or before July 5, 2007.

ADDRESSES: You may submit comments, identified by DOCKET NUMBER DHS-2007-0027 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 1-866-466-5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of

Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Claire Miller, US-VISIT Acting Privacy Officer, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Hugo Teufel III, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) is publishing a revision to an existing Privacy Act system of records known as Automated Biometric Identification System (IDENT). The notice for these systems of records was last published in the **Federal Register** on July 27, 2006 (71 FR 42651).

DHS is republishing IDENT in order (1) to add a category of records that comprises unique personal identifiers that links individuals with their encounters, biometrics, records, and other data elements and (2) to add a new routine use consistent with Office of Management and Budget Memorandum M-07-16, Attachment 2 that permits DHS to be in the best position to respond in a timely and effective

manner in the event of a data breach. This republished system of records notice will replace the previously published system of records notice for the Automated Biometric Identification System, **Federal Register** on July 27, 2006 (71 FR 42651).

IDENT is the primary repository of biometric information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws (including the immigration and customs laws), including investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. IDENT is a centralized and dynamic DHS-wide biometric database that also contains limited biographic and encounter history information needed to place the biometric information in proper context. The information is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, and international agencies. As part of an effort to more accurately identify individuals and ensure that all encounters are appropriately linked, IDENT will generate, store, and retrieve data by unique numbers or sequence of numbers and characters. This SORN update adds a category of records to IDENT to include these unique numbers or sequence of numbers and characters, also known as enumerators that link individuals with their encounters, biometrics, records, and other data elements. Additionally, this SORN adds a new routine consistent with Office of Management and Budget Memorandum M-07-16, Attachment 2 that permits DHS to be in the best position to respond in a timely and effective manner in the event of a data breach.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system change to the Office of Management and Budget and to Congress.

DHS/US-VISIT-001

SYSTEM NAME:

DHS Automated Biometric Identification System (IDENT).

SYSTEM LOCATION:

US-VISIT, Department of Homeland Security (DHS), Washington, DC 20528.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this notice consist of:

A. Individuals whose biometrics are collected by, on behalf of, in support of,

or in cooperation with DHS concerning operations that implement and/or enforce laws, regulations, treaties, or orders related to the mission of DHS.

B. Individuals whose biometrics are collected by, on behalf of, in support of, or in cooperation with DHS as part of a background check or security screening in connection with their hiring, retention, performance of a job function, or the issuance of a license or credential.

C. Individuals whose biometrics are collected by federal, state, local, tribal, foreign, or international agencies for national security, law enforcement, immigration, intelligence, or other DHS mission-related functions, and who are the subjects of wants, warrants, or lookouts or any other subject of interest.

CATEGORIES OF RECORDS IN THE SYSTEM:

IDENT contains biometric, biographic, unique machine-generated identifiers, and encounter-related data for operation/production, testing, and training environments. Biometric data includes, but is not limited to, fingerprints and photographs. Biographical data includes, but is not limited to, name, date of birth, nationality, and other personal descriptive data. The encounter data provides the context of the interaction with an individual including, but not limited to, location, document numbers, and reason fingerprinted. Unique machine-generated identifiers are identifiers that link individuals with their encounters, biometrics, records, and other data elements. Test data may be real or simulated biometric, biographic, encounter, or identifiers related data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 U.S.C. 202, 8 U.S.C. 1103, 1158, 1201, 1225, 1324, 1357, 1360, 1365a, 1365b, 1379, and 1732; 19 U.S.C. 1589a.

PURPOSE(S):

This system of records is established and maintained to provide a DHS-wide repository of biometrics captures in DHS or law enforcement encounters. This will enable DHS to carry out its DHS national security, law enforcement, immigration, intelligence, and other mission-related functions, and to provide associated testing, training, management reporting, planning and analysis, and other administrative uses, by allowing DHS to positively identify an individual whether the name information is the same or different based on biometrics.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3), as follows:

A. To appropriate federal, state, local, tribal, foreign, or international agencies seeking information on the subjects of wants, warrants, or lookouts, or any other subject of interest, for purpose related to administering or enforcing the law, national security, immigration, or intelligence, where consistent with a DHS mission-related function as determined by DHS.

B. To appropriate federal, state, local tribal, foreign, or international government agencies charged with national security, law enforcement, immigration, intelligence, or other DHS mission-related functions in connection with the hiring or retention by such an agency of an employee, the issuance of a security clearance, the reporting of an investigation of that employee (but only if the System of Records in which the investigatory files are maintained allows such disclosure), the letting of a contract, or the issuance of a license, grant, loan, or other benefit by the requesting agency.

C. To an actual or potential party or to his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or discovery proceedings.

D. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains.

E. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. Sections 2904 and 2906.

F. To individual who are obligors or representatives of obligors of bonds posted.

G. To contractors, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish a DHS mission function related to this system of records. Such recipients are required to comply with the Privacy Act, 5 U.S.C. 552a, as amended.

H. To the Department of Justice (DOJ) or other Federal agency for purposes of conducting litigation or proceedings

before any court, adjudicative, or administrative body when (1) DHS; or (2) Any employee of DHS in his/her official capacity; or (3) Any employee of DHS in his/her individual capacity, where DOJ or DHS has agreed to represent the employee; or (4) The United States or any agency thereof is a party to the litigation or proceeding, or has an interest in such litigation or proceeding.

I. To appropriate agencies, entities, and persons when (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) DHS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or ham to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons when reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information can be stored in case file folders, cabinets, safes, or a variety of electronic or computer databases and storage media.

RETRIEVABILITY:

Records may be retrieved by biometrics or select personal identifiers, including but not limited to names, identification numbers, date of birth, nationality, document number, and address.

SAFEGUARDS:

The system is protected through multi-layer security mechanisms. The protective strategies are physical, technical, administrative, and environmental in nature, and provide access to control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

RETENTION AND DISPOSAL:

The following proposal for retention and disposal is pending approval with

National Archives and Records Administration (NARA):

Records that are stored in an individual's file will be purged according to the retention and disposition guidelines that relate to the individual's file in DHS/US-VISIT-001, IDENT.

Testing and training data will be purged when the data is no longer required (GRS 20). Electronic records for which the statute of limitations has expired for all criminal violations or that are older than 75 years will be purged. Fingerprint cards, created for the purpose of entering records in the database, will be destroyed after data entry. Work Measurement Reports and Statistical Reports will be maintained within the guidelines set forth in NCI-95-78-5/2 and NCI-85-78-1/2 respectively.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager, IDENT Program Management Office, US-VISIT Program, U.S. Department of Homeland Security, Washington, DC 20528, USA.

NOTIFICATION PROCEDURE:

To determine whether this system contains records relating to you, write to the US-VISIT Privacy Officer, US-VISIT Program, U.S. Department of Homeland Security, 245 Murray Lane, SW., Washington, DC 20528, USA.

RECORD ACCESS PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). A determination as to the granting or denial of access shall be made at the time a request is received. Requests for access to records in this system must be in writing, and should be addressed to the US-VISIT Privacy Officer at the address in the Notification procedure section above. Such request may be submitted either by mail or in person. The envelope and letter shall be clearly marked "Privacy Officer—Access/Redress Request." To identify a record, the record subject should provide his or her full name, date and place of birth; if appropriate, the date and place of entry into or departure from the United States; verification of identity by submitting a copy of fingerprints if appropriate (in accordance with 8 CFR 103.21(b) and/or pursuant to 28 U.S.C. 1746, make a dated statement under penalty of perjury as a substitute for notarization), and any other identifying information that may be of assistance in locating the record. The requestor shall also provide a return address for transmitting the records to be released.

CONTESTING RECORD PROCEDURES:

The major part of this system is exempted from this requirement pursuant to U.S.C. 552a(j)(2) and (k)(2). A determination as to the granting or denial of a request shall be made at the time a request is received. An individual requesting amendment of records maintained in this system should direct his or her request to the System Manager noted above. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Basic information contained in this system is supplied by individuals covered by this system, and from Federal, State, local, tribal, or foreign governments; private citizens; and public and private organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f)(2) through (5); and (g) pursuant to 5 U.S.C. 552a(j)(2). In addition, the Secretary of Homeland Security has exempted portions of this system from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), and (e)(4)(H) pursuant to 5 U.S.C. 552a(k)(2). These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

Dated: May 25, 2007.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. 07-2781 Filed 5-31-07; 1:24 pm]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2007-0039]

Privacy Act; Background Check Services System of Records

AGENCY: Privacy Office, Office of the Secretary, Department of Homeland Security.

ACTION: Notice of Updated Privacy Act system of records notice.

SUMMARY: Pursuant to Updated Privacy Act of 1974, the Department of Homeland Security, U.S. Citizenship and Immigration Services, is updating the Background Check Service system of records to include a new category of

individuals, which is other individuals over the age of 18 residing in a prospective adoptive parent's household pursuant to 8 CFR 204.3 (herein referred to as "other individuals"). Additionally, DHS is adding a new routine use consistent with Office of Management and Budget Memorandum M-07-16, Attachment 2 that permits DHS to be in the best position to respond in a timely and effective manner in the event of a data breach. This republished system of records notice will replace the previously published system of records notice for the Background Check System, **Federal Register** on December 4, 2006 (71 FR 070413).

DATES: The established system of records will be effective July 5, 2007.

ADDRESSES: You may submit comments, identified by Docket Number DHS-2007-0039 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 1-866-466-5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: For system related questions please contact: Greg Collett, Branch Chief of Application Support for Office of Field Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20520. For privacy issues please contact: Hugo Teufel III, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) is congressionally tasked with processing all immigration benefit applications and petitions. In order to assist in this tasks, USCIS established a system of records that consolidates all background check requests and results on immigration benefit applicants/petitioners. This system of records is called the Background Check Service (BCS). At this time, USCIS is updating this system of records notice to add the following category of individuals to the Background Check System: Other individuals over the age of 18 residing in a prospective adoptive parent's household pursuant to 8 CFR 204.3 (herein referred to as "other individuals"). Additionally, USCIS is adding a new routine use consistent with Office of Management and Budget Memorandum M-07-16, Attachment 2

that permits DHS to be in the best position to respond in a timely and effective manner in the event of a data breach.

USCIS conducts four different background checks on applicants/petitioners applying for USCIS benefits: (1) A Federal Bureau of Investigation (FBI) fingerprint check, (2) a FBI name check, (3) a Customs and Border Protection (CBP) Treasury Enforcement Communication System/Interagency Border Inspection System (TECS/IBIS) name check, and (4) US-VISIT IDENT fingerprint check. BCS will maintain the requests and results of all background check activity for USCIS.

As a centralized repository containing all background check activity, BCS provides the status and results of background checks required for completion of immigration eligibility petitions and application determinations from one web-based system to geographically dispersed field offices. This system supports USCIS's initiatives to reduce immigration benefit/petition case backlog and provide significant efficiencies in vetting and resolving the background checks that are required for USCIS benefits. Prior to BCS, information relating to the US-VISIT IDENT fingerprint checks, FBI fingerprint checks and the FBI name checks were stored in the FD-258 system and FBI Query system respectively. Information relating to the TECS/IBIS name checks was not stored in any system.

The information maintained in BCS is initially collected and maintained in one of the following USCIS case management systems and then it is transferred to BCS:

- Computer-Linked Application Information Management System (CLAIMS) 3, which is used to process applications including, but not limited to, an Adjustment of Status (Green Card) and Temporary Protective Status (TPS);
- CLAIMS 4, which is used to process applications for Naturalization;
- Refugee Asylum Parole System (RAPS), which is used to process Asylum applications; and
- Marriage Fraud Assurance System (MFAS), which is used for processing information relating to investigations of marriage fraud.

The benefit applicant/petitioner and other individuals do not have direct interaction with BCS.

The above systems will send necessary and relevant information to BCS in order to generate a Name Check Request for both the FBI name check and TECS/IBIS name check. Both the requests and results will be stored in BCS.

Applicants and other individuals submit information at the time the fingerprints are taken in order to conduct the FBI fingerprint check and the US-VISIT IDENT fingerprint check. Fingerprints are taken electronically at USCIS Application Support Centers (ASC) or taken from hard copy fingerprint cards (FD-258) that are submitted for those applicants and other individuals who are unable to go to an ASC. The fingerprints are currently stored in the Benefit Biometric Support System (BBSS), which interfaces directly with FBI's Integrated Automated Fingerprint Identification System (IAFIS). The FBI provides responses to the FBI fingerprint check electronically and responses are stored in BCS. US-VISIT IDENT fingerprint check provides responses to BCS.

All information is currently collected as part of the established USCIS application/petition process and is required to verify the applicant/petitioner's eligibility for the benefit being sought. The FBI fingerprint check consists of a search of the FBI's Criminal Master File via IAFIS. This search will identify applicants/petitioners and other individuals who have an arrest record. The FBI Name Check consists of a search of the FBI's Universal Index that includes administrative, applicant, criminal, personnel, and other files compiled for law enforcement purposes. The TECS/IBIS Name Check consists of a search of a multi-agency database containing information from 26 different agencies. The information in TECS/IBIS includes records of known and suspected terrorists, sex offenders, and other individuals that may be of interest to the law enforcement community. USCIS will use TECS/IBIS to access National Crime Information Center (NCIC) records on wanted persons, criminal histories, and previous federal inspections. The information in US-VISIT IDENT links information on individuals with their encounters, biometrics, records, and other data elements.

The information collected in BCS as part of the background check process provides USCIS with information about an applicant/petitioner and other individuals that have national security or public safety implications or indicia of fraud. Collecting this information and taking action to prevent potentially undesirable and often dangerous people from staying in this country clearly supports two primary missions of DHS: Preventing terrorist attacks within the United States and reducing America's vulnerability to terrorism, while facilitating the adjudication of lawful benefit applications.

USCIS will use the results of these background checks to make eligibility determinations, which will result in the approval or denial of a benefit. If fraudulent or criminal activity is detected as a result of the background check, USCIS will forward the information to appropriate law enforcement agencies including Immigration and Customs Enforcement (ICE), FBI, CBP, and/or local law enforcement.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system to make agency recordkeeping practices transparent, to notify individuals of the uses to which personally identifiable information is put, and to assist the individual in more easily finding such files within the agency.

In accordance with 5 U.S.C. 552a(r), a report on this system has been sent to Congress and to the Office of Management and Budget.

DHS-USCIS-002

SYSTEM NAME:

Background Check Service (BCS). Security Classification: Sensitive but Unclassified.

SYSTEM LOCATION:

The primary BCS system is located at a Department of Homeland Security (DHS) approved data center in the Washington, DC, metropolitan area. Backups are maintained offsite. BCS will be accessible world-wide from all USCIS field offices, service centers, and ASC that are part of the DHS Network.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this notice consist of:

A. All individuals who are applying for benefits and or who are petitioning on behalf of individuals applying/petitioning for benefits pursuant to the Immigration and Nationality Act of

1952, as amended, 101 [8 U.S.C. 1101] (a)(b).

B. All individuals over the age of 18 residing in a prospective adoptive parent's household whose principal or only residence is the home of the prospective adoptive parents pursuant to 8 CFR 204.3 (herein referred to as "other individuals").

CATEGORIES OF RECORDS IN THE SYSTEM:

BCS maintains four general categories of records: Applicant/petitioner identification information, other individual identification information, Background Check Request information, and Background Check Result information.

A. Applicant/Petitioner information includes biographic information associated with each applicant/petitioner including, but not limited to: Name, date of birth, country of birth, address, and employment status. The applicant/petitioner information also includes uniquely identifiable numbers, including but not limited to: Alien number, z-number, receipt number, social security number, armed forces identification number, etc. This information would be derived from newly created benefit applications in USCIS Systems of Records or an update to previously submitted benefit applications.

B. Information related to other individuals over the age of 18 residing in a prospective adoptive parent's household would be derived from newly created inter-country adoption applications pursuant to 8 CFR 204.3. The information collected about these individuals includes: Full name and date of birth.

C. Background Check Request information contains data necessary to perform a background check through the US-VISIT IDENT fingerprint check, FBI fingerprint check, FI name check, and CBP IBIS name check services. This data may include: Transaction control numbers associated with FBI fingerprint checks, receipt numbers, date/time of submission, physical description of subject, and a reason for the submission of the application (i.e. USCIS form code). This category also covers logs associated with the requests of background checks, which may include: Requesting location and requesting person.

D. Background Check Result information encompasses data received from FBI and DHS. This data may include: Identifying transactional information (i.e. transaction control number), biographical information, a subject's FBI information sheet (informally known as a RAP Sheet) as a

result of an FBI fingerprint check, an FBI name check report, information from the CBP IBIS database, and information from US-VISIT IDENT fingerprint check. The CBP IBIS database includes data from TECS and NCIC databases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
8 U.S.C. 1103(a).

PURPOSE(S):

BCS is a single, centralized system that records, reconciles, and stores Background Check Requests and Results of applicants and petitioners seeking USCIS benefits. The following types of background checks will be recorded by BCS: FBI Name Checks, TECS/IBIS Name Checks, and FBI Fingerprint Checks. The collection of information is required to verify the applicant/petitioner's eligibility for USCIS benefits. A background check of varying degree, determined by the benefit/petition, is required for any individual applying for USCIS benefits. In order to seek USCIS benefits, the applicant/petitioner must provide USCIS with all requested information.

In the case of other individuals over the age of 18 residing in a prospective adoptive parent's household, USCIS collects their information to facilitate the appropriate USVISIT IDENT, FBI Name Checks, TECS/IBIS Name Checks, and FBI Fingerprint Checks. This check is conducted in order to assess whether the child will be placed in a safe environment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the United States Department of Justice (DOJ) (including United States Attorney offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation: (a) DHS, or (b) any employee of DHS in his/her official capacity, or (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent said employee, or (d) the United States or any agency thereof;

B. To another Federal agency (including the Merit Systems Protection

Board and the Equal Employment Opportunity Commission), or to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

C. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law.

D. To a Congressional office, for the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains.

E. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To contractors, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish a DHS mission function related to this system of records, in compliance with the Privacy Act of 1974, as amended.

G. To appropriate Federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where USCIS believes the information would assist enforcement of civil or criminal laws;

H. To Federal and foreign government intelligence or counterterrorism agencies or components where USCIS becomes aware of an indication of a threat or potential threat to national or international security, or where such use is to assist in anti-terrorism efforts and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure;

I. To a Federal, state, local, tribal, territorial, foreign, or international agency, if necessary to obtain information relevant to a Department of Homeland Security decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit.

J. To appropriate agencies, entities, and persons when (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) DHS has determined

that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons when reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the system will be stored in a central computer database.

RETRIEVABILITY:

A combination of the following BCS data elements may be used to initiate a query in order to retrieve data from the BCS User Interface. These data elements include, an individual's alien file number, name and date of birth; and receipt number.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws and policies, including the DHS Information Technology Security Program Handbook. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks, and password protection identification features. The system is also protected through a multi-layer security approach. The protective strategies are physical, technical, administrative and environmental in nature and provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

RETENTION AND DISPOSAL:

The following USCIS proposal for retention and disposal is pending approval by the National Archives and Records Administration. Records are stored and retained in the BCS Repository for 75 years, during which time the records will be archived. The

75-year retention rate is based on the length of time USCIS may interact with a customer. For example, background checks are conducted on individuals/petitioners from the age of 14 and up. Retaining the data for this period of time also will enable USCIS to fight identify fraud and misappropriated benefits.

SYSTEM MANAGER(S) AND ADDRESS:

Greg Collett, Branch Chief of Application Support for Office of Field Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529.

NOTIFICATION PROCEDURE:

All individuals applying for immigration benefits are presented on the USCIS form, a Privacy Act Statements and a Signature and Authorization for Release of personally identifiable information. All forms must be signed by the individual. These two notices supply individuals with information regarding uses of the data.

RECORD ACCESS PROCEDURES:

To determine whether this system contains records relating to you, write the USCIS Freedom of Information Act/Privacy Act officer. Mail request to: Elizabeth S. Gaffin, Privacy Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue, NW., Room 4210, Washington, DC 20529.

CONTESTING RECORD PROCEDURES:

See the "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is obtained from USCIS systems including: CLAIMS3, CLAIMS4, RAPS, and MFAS. Information contained in the system is also obtained from the FBI and DHS. All information contained in BCS is derived from the above systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: May 25, 2007.

Hugo Teufel, III,

Chief Privacy Officer.

[FR Doc. 07-2782 Filed 5-31-07; 1:24 pm]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2007-0019]

Privacy Act; Inter-Country Adoptions

AGENCY: Privacy Office, Department of Homeland Security (DHS).

ACTION: Notice of Privacy Act system of records notice.

SUMMARY: Pursuant to the Privacy Act of 1974, the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) is updating and re-issuing a legacy system of records, Department of Justice DOJ/ Immigration and Naturalization (INS)—007 SORN known as Orphan Petitioner Index and Files that was published on July 27, 2001, 66 FR 39199. This system of records will now be referred to as DHS/USCIS-005 Inter-Country Adoptions.

DATES: Written comments must be submitted on or before July 5, 2007.

ADDRESSES:

You may submit comments, identified by DOCKET NUMBER DHS-2007-0019 by one of the following methods:

- *Federal e-Rulemaking portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number DHS 2007-0019. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.
- *Fax:* 1-866-466-5370.
- *Mail:* Hugo Teufel III, DHS Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528.
- *Docket:* For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Patrick Kernan, 20 Massachusetts Avenue, NW., Washington, DC 20529, by telephone (202) 272-9522. For privacy issues, please contact: Hugo Teufel III (571-227-3813), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

DHS implements United States immigration law and policy through the USCIS's processing and adjudication of applications and petitions submitted for citizenship, asylum, and other immigration benefits. USCIS also

supports national security by preventing individuals from fraudulently obtaining immigration benefits and by denying applications from individuals who pose national security or public safety threats. United States Immigration policy and law is also implemented through Immigration and Customs Enforcement's (ICE) law enforcement activities and Customs and Border Protection's (CBP) inspection process and protection of our borders.

USCIS is embarking on an enterprise-wide "Transformation Program" that will transition the agency from a fragmented, form-centric, and paper-based operational environment to a centralized, person-centric, consolidated environment utilizing electronic adjudication. The new operational environment will employ the types of online customer accounts used in the private sector. This "person-centric" model will link information related to an individual in a single account in order to facilitate customer friendly transactions, track activities, and reduce identity fraud.

The Secure Information Management Service (SIMS) is a web-based, information and case management service that enables authorized USCIS representatives to perform end-to-end processing of applications while providing the agency with the ability to better associate and manage relationships with those seeking immigration related benefits.

To support this effort, USCIS is deploying a series of pilots to validate key concepts of the program's mission. One of the key functions of the SIMS deployment is to demonstrate the overall benefits of the USCIS Transformation Project. Using the inter-country adoption caseload as a "proof-of-concept" of the SIMS, this pilot will demonstrate the case processing capability of the case management system, verify that an enumerator (unique identifier based on biometrics) supports the USCIS person-centric business process, and verify that the case management system can be used to view digitized files.

The SIMS will utilize the Enumeration Services of DHS's US-VISIT Program, when deployed, to establish a unique identity for each individual interacting with USCIS. Enumeration Services will establish an enterprise-wide unique personal identifier, known as the enumerator, based on 10 fingerprints and limited biographic information of an individual. An enumerator is a randomly generated alphanumeric unique identifier that is used to link disparate records associated with an individual for the purpose of

identification. Enumeration will allow USCIS to consolidate information on an individual and facilitate identity verification, risk evaluation, and benefit eligibility.

In addition, the SIMS will utilize digitized Alien Registration Files (A-Files) generated through USCIS's Integrated Digitization Document Management Program (IDDMP). System of Records Notice for A-Files and the Central Index System was published on January 16, 2007, 72 FR 1755. IDDMP enables USCIS to scan, store and view immigration paper files and related documents while integrating to person-centric records, making them electronically available to USCIS and other agencies.

Current Adoption Process

The current adoption process is a form-centric approach that focuses on a series of forms and independent processes, rather than a consolidated set of transactions focusing on the customer's primary request. Currently, a customer must file multiple applications to, (1) obtain parent qualification and approval, (2) adopt a child, and (3) obtain citizenship for a child.

Generally, customers residing in the U.S. must file adoption applications with the local USCIS office with jurisdiction over their place of residence in the U.S. Customers residing outside of the U.S. must contact the nearest American consulate or embassy that will take action on their application. Should a customer move during the adoption process, USCIS must transfer his case to a different jurisdiction, resulting in longer processing times and limiting access to the file to a single adjudicator. Utilizing paper-based files results in high transmittal costs and requires a complex record management system.

Customers may be engaged in the adoption process over a multi-year period depending upon the country from which they seek to adopt because of the differences in legal requirements in each foreign country. USCIS regulations dictate that applications expire in 18 months in order to ensure that home studies are current. As a result, customers may be required to re-file their applications. Currently, re-filing is the same as starting the process all over again. This process results in additional cost and time to complete the filing requirements.

New Operational Concept

The new operational concept will facilitate interactions between USCIS and adoptive parents or their

representatives. Each adoption application request will link to an existing SIMS account or trigger the creation of a new SIMS account that contains personally identifiable information. All adoption requests related to an individual will be contained in a SIMS case that tracks the actions required to adjudicate the adoption or naturalization request. The priorities of the new concept are as follows:

- Establish a person-centric view for individuals associated with a case, utilizing the Enumeration Service of the US-VISIT program to establish a unique identity for each individual that is required by USCIS to be fingerprinted.
- Provide a centralized, web-based repository for the data that provides access to all the documents related to a case, thereby eliminating the need for a paper application or a case file. However, for purposes of this pilot and to ensure continuity of operations, USCIS will maintain the paper file as a backup to the newly created electronic file.

If it is determined that this new operational concept is valid, USCIS will consider adding additional application types and functionality to the SIMS and as appropriate, update the relevant system of records notices for those programs that use this new technology. As part of DHS's ongoing efforts to increase transparency and update legacy system of records notices, USCIS reviewed and is updating and re-issuing Department of Justice DOJ/Immigration and Naturalization (INS)-007 SORN, known as Orphan Petitioner Index and Files that was published on July 27, 2001, 66 FR 39199 to account for the new capabilities that SIMS offers that were not previously covered by the legacy SORN. The legacy SORN will be retired and replaced with the DHS/USCIS-005 Inter-country Adoptions system of records.

Consistent with DHS's information sharing mission, information stored in the Adoptions portion of SIMS may be shared with other DHS components, as well as appropriate federal, state, local, tribal, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

Types of information sharing that may result from the routine uses outlined in this notice include: (1) Disclosure to social worker or federal, state, or local

government agency to determine the applicants' suitability for adopting a child; (2) disclosure to individuals who are working as a contractor or with a similar relationship working on behalf of DHS; (3) sharing when there appears to be a specific violation or potential violation of law, or identified threat or potential threat to national or international security, such as criminal or terrorist activities, based on individual records in this system; (4) sharing with the National Archives and Records Administration (NARA) for proper handling of government records; (5) sharing when relevant to litigation associated with the Federal government; and (6) sharing to protect the individual who is the subject of the record from the harm of identity theft in the case of a data breach affecting this system.

II. The Privacy Act

The Privacy Act embodies Fair Information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR 5.21.

The Privacy Act requires that each agency publish in the **Federal Register** a description denoting the type and character of each system of records in order to make agency recordkeeping practices transparent, to notify individuals about the use to which personally identifiable information is put, and to assist the individual to more easily find files within the agency.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this revised system of records to the Office of Management and Budget and to the Congress.

System of Records: DHS-USCIS-005

SYSTEM NAME:

THE DEPARTMENT OF HOMELAND SECURITY (DHS), INTER-COUNTRY ADOPTIONS SECURITY CLASSIFICATION:

Sensitive; Unclassified.

SYSTEM LOCATION:

The Inter-country Adoptions information is maintained in the SIMS

database, which is physically located within USCIS's data center in the Washington, DC metropolitan area. Backups are maintained in an undisclosed offsite location. Inter-country Adoptions will be accessible world-wide from designated USCIS domestic and international field offices and service centers that are part of the DHS Network.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. All individuals seeking an inter-country adoption pursuant to the Immigration and Nationality Act, 8 U.S.C. Section 1101(b)(1)(F);

B. All individuals over the age of 18 residing in a prospective adoptive parent's household whose principal or only residence is the home of the prospective adoptive parents pursuant to 8 CFR Section 204.3.

C. Representatives of the adoptive parents may be contained in this system of records;

D. Minors being adopted pursuant to the Immigration and Nationality Act, 8 U.S.C. Section 1101(b)(1)(F); and

E. Biological mothers, fathers, or custodians of adopted minors.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Applicant/Petitioner information includes biographic information associated with each applicant/petitioner including, but not limited to; name, date of birth, country of birth, address, phone numbers, family member names, citizenship status, marital status, employment status, gender, height, biometrics, and results of background investigations (inclusive of home study checks, Federal Bureau of Investigation (FBI) checks, Treasury Enforcement Communication System (TECS)/Interagency Border Inspection System (IBIS) Name Checks, and FBI Fingerprint Checks). The applicant/petitioner information also includes uniquely identifiable numbers, including but not limited to: Alien Number, Receipt Number, and Social Security Number.

B. Information related to other individuals over the age of 18 residing in a prospective adoptive parent's household would be derived from newly created inter-country adoption applications. The information collected about these individuals includes: full name and date of birth.

C. Information related to the representatives of the adoptive parents may include: full name, date of birth, and place of birth.

D. Information related to the minor(s) being adopted may include full name, date of birth, country of birth, and Social Security Number.

E. Information related to the minor's biological mother, father, or custodian may include full name, date of birth, and country of birth.

AUTHORITY OF MAINTENANCE FOR THE SYSTEM:

Sections 103 and 290 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1360), and the regulations issued pursuant thereto; and section 451 of the Homeland Security Act of 2002 (Pub. L. 107-296).

PURPOSE(S):

USCIS collects the information on adoptive parents and other associated individuals in order to assess the physical, mental, and emotional capabilities of the prospective adoptive parents and those residing in the house. USCIS also collects information pertaining to the minor to be adopted so that he or she can complete the naturalization process. Information will be collected on organizations that have facilitated the adoption process to include law firms, adoption home study providers, adoption placement agencies and adoption non-profit organizations so that USCIS will be able to track and verify those entities that are authorized to participate in the adoption process. Finally, where available USCIS collects biographic information relating to the biological parents and the custodians of the minor being adopted so that USCIS will be able to identify potential incidence of fraud.

The Inter-country Adoptions SORN stores information on individuals and organizations associated with the following activities:

- Filing of the Office and Management and Budget (OMB)-approved versions of USCIS adoption related forms and applications:
 - Form I-600, *Petition to Classify Orphan as an Immediate Relative*.
 - Form I-600A, *Application for Advance Processing of Orphan Petition*.
 - Form N-600, *Application for Certificate of Citizenship*.
 - Form N-600K, *Application for Citizenship and Issuance of Certificate under Section 322*.
- Account setup data for each individual seeking to adopt and organization involved in an adoption case.
- FBI Name Checks, TECS/IBIS Name Checks, and FBI Fingerprint Checks on other individuals over the age of 18 residing in a prospective adoptive parent's household.

Consistent with DHS's information sharing mission, information stored in SIMS may be shared with other DHS components, as well as appropriate federal, state, local, tribal, foreign, or

international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. Section 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside DHS as a routine use pursuant to 5 U.S.C. Section 552a(b)(3) as follows:

A. To clerks and judges of courts exercising naturalization jurisdiction for the purpose of filing petitions for naturalization and to enable such courts to determine eligibility for naturalization or grounds for revocation of naturalization.

B. To the Department of State (DoS) in the processing of visas, applications, or petitions for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws including treaties and reciprocal agreements.

C. To appropriate federal, state, tribal, and local government law enforcement and regulatory agencies, foreign governments, and international organizations, for example the Department of Defense, the DoS, the Department of the Treasury, the Central Intelligence Agency, the Selective Service System, the United Nations, and INTERPOL, and individuals and organizations during the course of an investigation by DHS or the processing of a matter under DHS's jurisdiction, or during a proceeding within the purview of the immigration and nationality laws, when necessary to elicit information required by DHS to carry out its functions and statutory mandates.

D. To an appropriate federal, state, tribal, local, or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence, whether civil or criminal, or charged with investigating, prosecuting, enforcing or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence and the

disclosure is appropriate to the proper performance of the official duties of the person receiving the disclosure.

E. To the United States Department of Justice (DOJ) (including United States Attorneys' offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, or to the court or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation: (1) Any employee of DHS in his/her official capacity; (2) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent said employee; or (3) the United States or any agency thereof.

F. To an appropriate federal, state, local, tribal, territorial, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

G. To an attorney or representative (as defined in 8 CFR 1.1(j)) who is acting on behalf of an individual covered by this system of records in connection with any proceeding before USCIS or the Executive Office for Immigration Review.

H. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of that individual.

I. To NARA or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. Sections 2904 and 2906.

J. To a Federal, state or local government agency seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law.

K. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Those provided information under this routine use are subject to the

same Privacy Act limitations as are applicable to DHS officers and employees.

L. To the appropriate federal, state, local, tribal, territorial, or foreign, or international agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where DHS becomes aware of, or in conjunction with other information determines, that a violation or potential violation of civil or criminal law has occurred.

M. To the Social Security Administration (SSA) for the purpose of issuing a Social Security number and card to an alien who has made a request for a Social Security number as part of the immigration process and in accordance with any related agreements in effect between the SSA, DHS, and the DoS entered into pursuant to 20 CFR 422.103(b) (3); 422.103(c); and 422.106(a), or other relevant laws and regulations.

N. To Federal and foreign government intelligence or counterterrorism agencies or components where DHS becomes aware of an indication of a threat or potential threat to national or international security, or when the information is needed to assist in anti-terrorism efforts and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure;

O. To appropriate agencies, entities, and persons when:

(1) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised;

(2) It is determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

(3) The disclosure is made to such agencies, entities, and persons when reasonably necessary to assist in connection with efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

P. To officials of other federal, state, and local government agencies and adoption agencies and social workers to elicit information required for making a final determination of the petitioner's ability to care for a beneficiary.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records in the system will be stored in an electronic database repository housed in USCIS's data center.

RETRIEVABILITY:

The following data elements may be used to initiate a query in order to retrieve data from the Inter-country Adoptions System of Records within SIMS. These data elements include an individual's Name and Date of Birth, Enumerator, SIMS Account Number, and SIMS Case Number.

SAFEGUARDS:

USCIS offices are located in secure, guarded buildings and access to premises requires official identification. Information in this system is also safeguarded in accordance with applicable laws, rules and policies including the DHS Information Technology Security Programs Handbook. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards including restricting access to authorized personnel who require information in the records for the performance of their official authorized duties, using locks, and password protection identification features.

Information in this system is safeguarded in accordance with applicable laws and policies, including the DHS information technology security policies and the Federal Information Security Management Act (FISMA). All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know through the use of locks and password protection features. The system is also protected through a multi-layer security approach. The protective strategies are physical, technical, administrative and environmental in nature, which provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

RETENTION AND DISPOSAL:

USCIS is working with NARA to develop a retention and disposal

schedule for data contained within SIMS. USCIS's proposal for retention and disposal of these records is to store and retain adoption related records for 75 years, during which time the records will be archived. The 75 year retention period is derived from the length of time USCIS may interact with a customer. The proposed retention and disposal schedule is based upon a holistic adoption "case" which will contain each of the USCIS adoption related applications and supporting documentation. It should be noted that for purposes of the SIMS pilot a hardcopy record of all adoption related applications and supporting documentation will be maintained by USCIS. The SIMS retention and disposal schedule will be reviewed and updated accordingly as additional USCIS applications and system functionalities are added to SIMS.

SYSTEM MANAGER(S) AND ADDRESS:

Robert Genesoni, Pilot Branch Chief, Transformation Program Office, U.S. Citizenship and Immigration Services (USCIS) Transformation Program Office, Department of Homeland Security, 111 Massachusetts Avenue, NW., Fifth Floor, Washington, DC 20529.

NOTIFICATION PROCEDURE:

In order to gain access to one's information stored in the Inter-country Adoptions portion of the SIMS database, a request for access must be made in writing and addressed to the Freedom of Information Act/Privacy Act (FOIA/PA) officer at USCIS. Individuals who are seeking information pertaining to themselves are directed to clearly mark the envelope and letter "Privacy Act Request." Within the text of the request, the subject of the record must provide his/her account number and/or the full name, date and place of birth, and notarized signature, and any other information which may assist in identifying and locating the record, and a return address. For convenience, individuals may obtain Form G-639, FOIA/PA Request, from the nearest DHS office and used to submit a request for access. The procedures for making a request for access to one's records can also be found on the USCIS Web site, located at www.uscis.gov.

An individual who would like to file a FOIA/PA request to view their USCIS record may do so by sending the request to the following address:

U.S. Citizenship and Immigration Services, National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064-8010.

RECORD ACCESS PROCEDURES:

See procedures as stated in the "Notification procedure" section above.

CONTESTING RECORDS PROCEDURES:

See procedures as stated in the "Notification procedure" section above.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is primarily supplied by individuals, seeking to adopt, on the OMB-approved versions of the following USCIS applications and forms:

- Form I-600, *Petition to Classify Orphan as an Immediate Relative.*
- Form I-600A, *Application for Advance Processing of Orphan Petition.*
- Form N-600, *Application for Certificate of Citizenship.*
- Form N-600K, *Application for Citizenship and Issuance of Certificate under Section 322.*

Information contained in this system of records is also obtained from:

- SIMS account registration data obtained from each individual seeking to adopt, representatives of prospective adoptive parents and other organizations involved in an adoption case;
- Home study reports prepared by State-certified home study providers submitted to USCIS in furtherance of the adoption process;
- Memorializations of interviews performed by authorized USCIS personnel of individuals seeking to adopt; and
- Data obtained from other DHS and non-DHS Federal agency's systems and databases including the FBI, DoS, ICE, and CBP.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: May 25, 2007.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. 07-2783 Filed 5-31-07; 1:24 pm]

BILLING CODE 4410-10-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Receipt of Applications for Permit**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by July 5, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358-2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358-2104.

SUPPLEMENTARY INFORMATION:**Endangered Species**

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Gibbon Conservation Center, Santa Clarita, CA, PRT-154527.

The applicant requests a permit to import one male captive-born capped gibbon (*Hylobates pileatus*) from the Japan Monkey Centre, Inuyama City, Japan for the purpose of enhancement of the species through captive propagation and conservation education.

Applicant: Richard B. Dubin, La Canada, CA, PRT-152721.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these

applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Ritchie G. Studer, Addison, TX, PRT-152748.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Donill J. Kenney, Lake Worth, FL, PRT-153378.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Casey P. Brooks, Lacerter, WA, PRT-152993.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Daniel A. Hoffer, Virginia Beach, VA, PRT-152688.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Melville Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Rip D. Miller, Austin, TX, PRT-153363.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Mark A. Watson, Franklin, TN, PRT-153380.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: May 11, 2007.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7-10761 Filed 6-4-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Receipt of Applications for Permit**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species or marine mammals.

DATES: Written data, comments or requests must be received by July 5, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358-2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358-2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Robert J. Lange, Benson, MN, PRT-152668.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Wayne F. Farnsworth Jr., Granville, OH, PRT-152072.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Thomas P. Wittmann, Dallas, TX, PRT-152182.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Leslie J. Naisbitt, Sparks, NV, PRT-152244.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Michael P. Litwin, Appleton, WI, PRT-152186.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Gary D. Young, Scott Depot, WV, PRT-152402.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Matt Ward, Santa Monica, CA, PRT-152907.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Danny Z. Donaldson, Palmer, AK, PRT-152239.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Viscount Melville Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Myers R. Delaney, Greenwich, CT, PRT-153379.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Clifford C. Neuse, Creue Coeur, MO, PRT-153451.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: May 4, 2007.

Amy Brisendine,

Acting Senior Permit Biologist, Branch of Permits, Division of Management Authority.
[FR Doc. E7-10763 Filed 6-4-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-030-07-1610-DQ]

Notice of Availability of Supplemental Information on Proposed Areas of Critical Environmental Concern (ACEC) and Associated Resource Use Limitations for Public Lands for the Draft Rawlins Resource Management Plan/Environmental Impact Statement (Draft RMP/EIS), Laramie, Albany, Carbon, and Eastern Sweetwater Counties, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: On December 17, 2004, the Bureau of Land Management (BLM) published a Notice of Availability (Vol. 69, No. 242) of the Draft Rawlins Resource Management Plan/Environmental Impact Statement for public review and comment in the **Federal Register**. BLM planning regulations at 43 CFR 1610.7-2 require the BLM to notify the public of proposed ACECs in a **Federal Register** Notice. The proposed ACECs and resource use limitations that are identified in the Draft RMP/EIS were not specifically identified in the original notice. This notice fulfills the regulatory requirements. (Supplemental information can be found in the original Notice of Availability (NOA) published in the **Federal Register**.)

DATES: Consistent with 43 Code of Federal Regulations (CFR) 1610.7-2, a 60-day public review of the ACEC information and comment submittal period will start on the date that this notice appears in the **Federal Register**.

ADDRESSES: Comments must be received by or before the end of the 60-day comment period and written comments must be submitted as follows:

1. Comments may be provided via the Rawlins RMP Revision Web site at: <http://www.blm.gov/rmp/wy/rawlins/>; the Web site is designed to allow commenters to submit comments electronically by resource subject directly onto a comment form posted on the Web site. Comments may be uploaded in an electronic file directly to the above Web site.

2. Written comments may be mailed or delivered to the BLM at: Rawlins RMP/EIS, Bureau of Land Management Rawlins Field Office, 1300 North Third Street, P.O. Box 2407, Rawlins, Wyoming 82301.

3. Comments may be sent by facsimile to (307) 328-4224.

The BLM will only accept comments if they are submitted in the methods described above. To be given consideration by the BLM, comment submittals must include the commenter's name and street address. Whenever possible, please include reference to either the page or section in the Draft RMP/EIS to which the ACEC related comment applies. To facilitate analysis of comments and information submitted, BLM encourages commenters to submit comments in an electronic format through the Web site.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, will be available for public inspection in their entirety.

Copies of the Draft RMP/EIS were sent to affected Federal, State, and local government agencies and interested parties when the document first became available. Additional copies have been supplied to interested parties on request. There are a limited number of hard copies available upon request. The document was posted electronically, and is still available for public review on the following Web site: <http://www.blm.gov/rmp/wy/rawlins/>. Copies of Draft RMP/EIS are also available for public inspection at the following locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82003

- Bureau of Land Management, Rawlins Field Office, 1300 N. Third Street, Rawlins, Wyoming 82301

FOR FURTHER INFORMATION CONTACT:

Mark Storzer, Field Manager, or John Spehar, Rawlins RMP Team Leader, BLM Rawlins Field Office, 1300 N. Third Street, Rawlins, Wyoming 82303; or by telephone at (307) 328-4200.

SUPPLEMENTARY INFORMATION: The following description of alternatives considered in the Draft RMP/EIS is to

provide context for reviewing the proposed ACECs. The Draft RMP/EIS documents the direct, indirect, and cumulative environmental impacts of four alternatives for management of BLM-administered public lands within the Rawlins Field Office. When completed, the revised RMP will fulfill the obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act, and associated Federal regulations. Four alternatives are analyzed in detail:

1. Alternative 1 (No Action Alternative): Continues existing management direction;

2. Alternative 2: Encourages development and use opportunities while minimizing impacts to cultural and natural resources;

3. Alternative 3: Fosters conservation of natural and cultural resources while providing for compatible development and use; and

4. Alternative 4: Provides development opportunities while protecting sensitive resources (Agency Preferred Alternative).

There are four ACECs in the existing land use plan, the Great Divide RMP (1990): Como Bluff National Natural Landmark/ACEC (1,690 acres); Sand Hills ACEC (7,960 acres); Jep Canyon ACEC (13,810 acres); and the Shamrock Hills ACEC (18,400 acres). There are 11 potential new ACECs proposed in the Draft RMP/EIS and one proposed expansion of the Sand Hills ACEC. The ACECs are:

- *Stratton Sagebrush Steppe Research Area ACEC* (5,530 acres): Values of Concern—continuous 30 year historic watershed study and infrastructure. Use Limitations—closed to locatable mineral entry, mineral material disposal, and land tenure adjustments, including sales.

- *Chain Lakes ACEC* (30,560 acres): Values of Concern—unique, alkaline desert lake system and wildlife habitat. Use Limitations—may include use limitations to protect the desert lake system and its wetlands.

- *Laramie Peak ACEC* (18,940 acres): Values of Concern—crucial winter habitat for big game and habitat for federally-listed threatened and endangered and BLM sensitive species. Use Limitations—proposed locatable mineral use, exploration and development when five or more acres of surface disturbance require a plan of operation.

- *Red Rim Daley ACEC* (11,100 acres): Values of Concern—crucial winter habitat for pronghorn antelope. Use Limitations—plans of operations requirement for locatable mineral

exploration and development for disturbance of 5 or more acres.

- *Cave Creek ACEC* (name changed from Shirley Mountain Bat Cave, 240 acres): Values of Concern—cave resources including hibernaculum for several species of bats. Use Limitations—seasonal closure of the Cave Creek cave gate from October 15 through April 30.

- *Laramie Plains Lakes ACEC* (1,600 acres): Values of Concern—potential habitat and reintroduction sites for the endangered Wyoming toad. Use Limitations—activities may be limited to protect or avoid Wyoming toad habitat.

- *Historic Trails ACEC* (40,990 acres): Values of Concern—the Overland and Cherokee Trails and the Rawlins-to-Baggs and Rawlins-to-Fort Washakie Freight Roads. Use Limitations—use/activities limited to maintain visual integrity from the trails; also includes minimizing the extent of surface disturbance, oil and gas lease stipulations regarding occupancy and closure of some areas near or including the trails, and closure to locatable mineral entry and operations.

- *Blowout Penstemon ACEC* (17,050 acres): Values of Concern—occupied and potential sand dune habitat for the endangered blowout penstemon. Use Limitations—closure to mineral entry and mineral material disposals.

- *Upper Muddy Creek Watershed/Grizzly ACEC* (35,200 acres): Values of Concern—unique fish habitats that support a rare community of native Colorado River Basin fish (bluehead sucker, flannelmouth sucker, roundtail chub, mountain sucker, speckled dace), reintroduction area for the Colorado River cutthroat trout and big game crucial winter range. Use Limitations—motorized vehicle use limited to designated roads and vehicle routes and seasonal closures.

- *White-Tailed Prairie Dog ACEC* (109,650 acres): Values of Concern—white tailed prairie dog complexes (element of the sagebrush steppe ecosystem). Use Limitations—motorized vehicle use limited to designated roads/vehicle routes.

- *High Savery Dam ACEC* (530 acres): Values of Concern—Colorado River cutthroat trout fishery and potential for reintroduction. Use Limitations—public access restricted to foot travel only.

- *JO Ranch expansion of Sand Hills ACEC* (4,740 acres): Values of Concern—same as Sand Hills with historic cultural properties through land exchange. Use Limitations—potential mineral resources use limitations dependent on surface ownership and use limitations may include those

needed to protect and preserve the historical and cultural resources including the JO Ranch buildings and irrigation system and the stage stop along the historical Rawlins-to-Baggs Freight Road.

Alternative 1 proposes to maintain the status of the four existing ACECs identified in the Great Divide RMP.

Alternative 2 proposes to eliminate the four ACECs established in the Great Divide RMP to areas of general management. No new ACECs are proposed. Alternative 3 proposes to continue to maintain the status of two existing ACECs, Sand Hills and Como Bluffs, and establish all of the new (11) ACECs listed above. (Alternative 3 does not include the *JO Ranch expansion of the Sand Hills ACEC*.)

As a result of public scoping and the alternative development process, Alternative 4 (Agency Preferred Alternative), proposes the following ACECs: Maintain the status of one existing ACEC, Sand Hills (7,960 acres) and include the JO Ranch expansion (4,740 acres), and establish two new ACECs: Cave Creek Cave (240 acres) and Blowout Penstemon (17,050 acres).

Donald A. Simpson,

Associate State Director.

[FR Doc. E7-10735 Filed 6-4-07; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-810 and CO-130 1060-JJ]

Notice of Public Hearings Addressing the Use of Helicopter and Motorized Vehicles During the Capture of Wild Horses and Burros; Public Hearings (43 CFR 4740.1)

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public hearings.

SUMMARY: A public hearing addressing the use of motorized vehicles and helicopters during the capture of wild horses from the Spring Creek Basin Wild Horse Herd Management Area has been scheduled in Dolores, Colorado. A public hearing addressing the use of motorized vehicles and helicopters during the capture of wild horses from the Little Book Cliffs Wild Horse Range has been scheduled in Grand Junction, Colorado.

DATES: The hearing dates are scheduled as follows: August 2, 2007; 1 p.m.; Dolores, Colorado and August 9, 2007; 7 p.m.; at the Grand Junction Field Office.

ADDRESSES: The Spring Creek Basin Herd Management Area hearing will be held at the following location: Dolores Public Lands Office, 29211 Highway 184, Dolores, Colorado. The Little Book Cliffs Wild Horse Range hearing will be held at the Grand Junction Field Office; 2815 H Road; Grand Junction, Colorado.

Additional Information: The Dolores Public Land Office hearing will be immediately followed by a public meeting to serve as a platform for discussion of the proposed wild horse gather. The Spring Creek Basin wild horse gather is scheduled to begin in late August, 2007. For additional information on the Spring Creek Basin gather contact Bob Ball, Natural Resource Specialist at 970-882-6847. The Grand Junction Field Office hearing will be immediately followed by a public meeting to discuss the proposed wild horse gather. The Little Book Cliffs Wild Horse Range gather is scheduled for mid-September 2007. For additional information regarding the public hearing or gather please contact Jim Dollerschell, Rangeland Management Specialist at 970-244-3016.

Dated: May 10, 2007.

Steven K. Beverlin,

Dolores Field Office Manager.

Catherine Robertson,

Grand Junction Field Office Manager.

[FR Doc. E7-10743 Filed 6-4-07; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-923-1310-FI; WYW172904]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Aspect Energy LLC and G & H Production Company, LLC for competitive oil and gas lease WYW172904 for land in Weston County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J.

Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775-6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of \$10 per acre or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively. The lessees have paid the required \$500 administrative fee and \$163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW172904 effective February 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E7-10759 Filed 6-4-07; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 19, 2007. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by June 20, 2007.

J. Paul Loether,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

ARKANSAS

Ouachita County

Camden Water Battery, Address Restricted,
Camden, 07000615

DISTRICT OF COLUMBIA**District of Columbia**

Engine Company No. 21, (Firehouses in Washington DC MPS) 1763 Lanier Place, NW., Washington, 07000594
 Engine Company No. 25, (Firehouses in Washington DC MPS) 3203 Martin Luther King Jr., Ave., SE., Washington, 07000593
 Newton Theater, 3601-3611 12th St., NE., Washington, 07000592

KANSAS**Chase County**

Strong City Atchison, Topeka, & Santa Fe Depot, (Railroad Resources of Kansas MPS) 102 W. Topeka Ave., Strong City, 07000607

Chautauqua County

Hewins Park Pavilion, 101 Salebarn Rd., Cedar Vale, 07000602

Dickinson County

Berger House, (Lustron Houses of Kansas MPS) 208 NE 12th St., Abilene, 07000606

Douglas County

Double Hyperbolic Paraboloid House, 934 W. 21st St., Lawrence, 07000605

Kearny County

Deerfield Texaco Service Station, 105 W. 6th, Deerfield, 07000603

Mitchell County

Cather Farm, 4 mi. N of jct. of KS 15 and 24, Beloit, 07000611

Ness County

Indian Village on Pawnee Fork, Address Restricted, Bazine, 07000609

Riley County

Hulse-Daughters House, 617 Colorado St., Manhattan, 07000601

Shawnee County

Hard Chief's Village, Address Restricted, Silver Lake, 07000610

Sumner County

Downtown Wellington Historic District, Roughly bounded by 19th St., 4th St., Jefferson Ave. and the alley behind the Washington Ave. facing buildings, Wellington, 07000600

Washington County

Mahaska Rural High School #3, (Public Schools of Kansas MPS) S. School St., Mahaska, 07000604

Wyandotte County

Fairfax Hills Historic District, (Historic Residential Suburbs in the United States, 1830-1960 MPS) Bounded by Esplanade Ave., Brown Ave. and 12th St., inc. both side of Parkwood Blvd., Coronado Rd. and Hilltop Rd., Kansas City, 07000608

MAINE**Aroostook County**

Roosevelt School, E side of ME 1A, Hamlin, 07000598

Cumberland County

Scarborough High School, 272 ME 1, Scarborough, 07000595

Franklin County

Weld Town Hall, 17 School St., Weld, 07000597

Hancock County

Blackwoods Campground, (Acadia National Park MPS) ME 233, Eagle Lake Rd., Bar Harbor, 07000612
 Schoodic Peninsula Historic District, (Acadia National Park MPS) 1.5 mi. S of ME 186, Winter Harbor, 07000614
 Seawall Campground, (Acadia National Park MPS) Me 233, Eagle Lake Rd., Bar Harbor, 07000613

Penobscot County

Harmony Hall, 24 Kennebec Rd., Hampden, 07000596

MINNESOTA**Cook County**

Chik Wauk Lodge, 28 Moose Pond Rd., Grand Marais, 07000599

MISSOURI**St. Louis County**

Garrett, Louisa, House, (St. Ferdinand City MRA (AD)) 280 Washington St., Florissant, 07000618

St. Louis Independent City

Roberts Chevrolet, (Auto-Related Resources of St. Louis, Missouri MPS) 5875-91 Delmar Blvd., St. Louis (Independent City), 07000617
 Royal Tire Service Inc. Building, (Auto-Related Resources of St. Louis, Missouri MPS) 3229 Washington Ave., St. Louis (Independent City), 07000616
 Steelcote Manufacturing Company Paint Factory, 801 Edwin, St. Louis (Independent City), 07000620
 United Shoe Machinery Building, 2200-2208 Washington Ave., St. Louis (Independent City), 07000619

MONTANA**Lewis and Clark County**

Pope, Francis and Hannah, House, 327 N. Rodney, Helena, 07000591

NEW YORK**Columbia County**

Copake United Methodist Church and Copake Cemetery, Church St., Copake, 07000624

Erie County

Corpus Christi R.C. Church Complex, 199 Clark St., Buffalo, 07000630

Greene County

Twilight Park Historic District, Ledge End. Rd., Spray Falls Rd., Upper Level Rd. and vic., Haines Falls, 07000626

Herkimer County

Norway Baptist Church (former), 1067 Newport-Gray Rd., Norway, 07000622

Kings County

Austin, Nichols and Company Warehouse, 184 Kent Ave., Brooklyn, 07000629

Lewis County

Lowville Presbyterian Church, 7707 North State St., Lowville, 07000623
 Pines, The, 3998-4000 Lyons Falls Rd., Lyons Falls, 07000621

Onondaga County

Crego, Mrs. I.L., House, 7979 Crego Rd., Baldwinsville, 07000631

Suffolk County

Coltrane House, 247 Candlewood Path, Dix Hills, 07000628
 Sisters of St. Dominic Motherhouse Complex, 555 Albany Ave., North Amityville, 07000625

Wyoming County

Smith, Augustus A., House, 125 Main St., Attica, 07000627

OHIO**Cuyahoga County**

Birdtown Historic District, Roughly bounded by Magee Rd., Plover Rd., Halstead Rd., and Madison Ave., Lakewood, 07000634

Franklin County

Green Lawn Abbey, 700 Greenlawn Ave., Columbia, 07000632

Summit County

First National Bank Tower, 106 S. Main St., Akron, 07000633

A request for a MOVE has been made for the following resource: (Palmer-Lewis Octagon)

WISCONSIN**La Crosse County**

Palmer Brother's Octagons, 358 N. Leonard St. and W1 16 West Salem vicinity, 79000092

[FR Doc. E7-10728 Filed 6-4-07; 8:45 am]

BILLING CODE 4312-51-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-551]

In the Matter of Certain Laser Bar Code Scanners and Scan Engines, Components Thereof, and Products Containing Same; Notice of Commission Final Determination of Violation of Section 337; Termination of Investigation; Issuance of Limited Exclusion Order and Cease and Desist Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there

is a violation of 19 U.S.C. 1337 by Metrologic Instruments, Inc. and Metro (Suzhou) Technologies Co., Ltd. in the above-captioned investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708-5432. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on October 26, 2005, based on a complaint filed by Symbol Technologies Inc. ("Symbol") of Holtzville, New York. The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laser bar code scanners or scan engines, components thereof, or products containing the same, by reason of infringement of various claims of United States Patent Nos. 5,457,308 ("the '308 patent"); 5,545,889 ("the '889 patent"); 6,220,514 ("the '514 patent"); 5,262,627 ("the '627 patent"); and 5,917,173 ("the '173 patent"). The complaint named two respondents: Metro Technologies Co., Ltd. of Suzhou, China; and Metrologic Instruments, Inc. of Blackwood, New Jersey (collectively, "Metrologic").

On January 29, 2007, the ALJ issued an initial determination ("ID") finding a violation of Section 337 in the importation of certain laser bar code scanners and scan engines, components thereof, and products containing the same, in connection with certain asserted claims. The ID also issued monetary sanctions against Respondents for discovery abuses. Complainant, Respondents, and the Commission investigative attorney (IA) each filed petitions for review of the ID on February 8, 2007. They each filed

responses to each other's petitions on February 16, 2007.

On February 21, 2007, the Commission extended the deadline for determining whether to review the subject ID by fifteen (15) days, to March 30, 2007. On March 30, 2007, the Commission determined to review the final ID in part. Specifically, the Commission determined to review: (1) The construction of "single, unitary, flexural component" in the '173 patent, and related issues of infringement, domestic industry, and validity; (2) the construction of "oscillatory support means" in the '627 patent, and related issues of infringement, domestic industry, and validity; (3) the construction of claims containing the so-called "central area" limitations in the '889 patent, and related issues of infringement, domestic industry, and validity; (4) the construction of the "scan fragment" limitation in the '308 patent; and (5) the construction of the term "plurality" in the '308 patent.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined to make the following modifications to the claim constructions set forth in the final ID: (1) The "single, unitary, flexural component" in the '173 patent must include "portions integral with each other;" (2) in the '627 patent, the "oscillatory support means" must oscillate; (3) limitations in the '889 patent containing requirements that the folding mirror be "near" or "adjacent" the central area of the collecting mirror allow for the folding mirror to be positioned close to, and either in front of or behind, the central area of the collecting mirror, but not mounted to the collecting mirror outside of the central area; (4) "scan fragment," as used in the '308 patent, means "a scan that reads less than all of a bar code symbol and that would have been discarded before the advent of scan-stitching techniques;" and (5) the term "plurality" in the '308 patent means "two or more." These changes do not affect the ALJ's findings on validity, infringement, or domestic industry. The Commission therefore affirms those findings, as well as the finding of a violation of section 337 by Metrologic with regard to certain asserted claims of the '627 and '173 patents.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.45).

Issued: May 30, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7-10739 Filed 6-4-07; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-07-010]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 6, 2007 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: 1. Agenda for future meetings: None.

2. Minutes.

3. Ratification List.

4. Inv. No. 731-TA-894 (Review) (Certain Ammonium Nitrate from Ukraine)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 19, 2007.)

5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier notice of this meeting was not possible.

Issued: May 31, 2007.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E7-10793 Filed 6-4-07; 8:45 am]

BILLING CODE 7020-02-P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting Agenda

TIME AND DATE: 9:30 a.m., Thursday, June 14, 2007.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The two items are open to the public.

MATTERS TO BE CONSIDERED:

7896 Pipeline Accident Brief and Safety Recommendation Letters—Anhydrous Ammonia Pipeline Rupture Near Kingman, Kansas, October 27, 2004.

7856 *A Marine Accident Report—Fire Aboard Construction Barge Athena* 106, West Cote Blanche Bay, Louisiana, October 12, 2006.

News Media Contact

Telephone: (202) 314-6100.

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314-6305 by Friday, June 8, 2007.

The public may view the meeting via a live or archived webcast by accessing a link under “News & Events” on the NTSB home page at www.nts.gov.

FOR FURTHER INFORMATION CONTACT: Vicky D’Onofrio, (202) 314-6410.

Dated: June 1, 2007.

Vicky D’Onofrio,

Federal Register Liaison Officer.

[FR Doc. 07-2820 Filed 6-1-07; 3:05 pm]

BILLING CODE 7533-07-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-498 and 50-499]

STP Nuclear Operating Company; Notice of Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has denied a request by STP Nuclear Operating Company (licensee) for amendments to Facility Operating Licenses, which are numbered NPF-76 and NPF-80, issued to the licensee for operation of the South Texas Project, Unit 1 and Unit 2, respectively, located in Matagorda County, Texas.

Notice of Consideration of Issuance of these amendments was not published in the **Federal Register**.

The licensee requested the amendments by letter dated February 28, 2006. The purpose of the licensee’s amendment request was to revise the Technical Specifications to allow extension of the integrated leakage rate (Type A) test interval from 15 years to 20 years, while adequately testing the impact of the aging degradation of the containment pressure boundary components.

The NRC staff has concluded that the licensee’s request cannot be granted. The licensee was notified of the Commission’s denial of the proposed change by a letter dated May 29, 2007.

By 30 days from the date of publication of this notice in the **Federal Register**, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this

proceeding may file a written petition for leave to intervene pursuant to the requirements of 10 CFR 2.309.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission’s Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of potential disruptions in delivery to mail to U.S. Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov. A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and because of potential disruptions in delivery of mail to the U.S. Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. A copy of any petitions should also be sent to A. H. Gutterman, Esq., Morgan, Lewis, & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004, attorney for the licensee.

For further details with respect to this action, see (1) The application for amendment dated February 28, 2006, and (2) the Commission’s letter to the licensee dated May 29, 2007.

Documents may be examined, and/or copied for a fee, at the NRC’s PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System’s Public Electronic Reading Room link at the NRC Web site <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 29th day of May, 2007.

For the Nuclear Regulatory Commission.

Timothy J. McGinty,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7-10787 Filed 6-4-07; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice; Agency Holding the Meetings: Nuclear Regulatory Commission

DATES: Weeks of June 4, 11, 18, 25, July 2, 9, 2007.

PLACE: Commissioners’ Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 4, 2007.

Thursday, June 7, 2007

1:30 p.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: Frank Gillespie, 301-415-7360)

This meeting will be webcast live at the Web address—www.nrc.gov.

Week of June 11, 2007—Tentative

There are no meetings scheduled for the Week of June 11, 2007.

Week of June 18, 2007—Tentative

There are no meetings scheduled for the Week of June 18, 2007.

Week of June 25, 2007—Tentative

There are no meetings scheduled for the Week of June 25, 2007.

Week of July 2, 2007—Tentative

There are no meetings scheduled for the Week of July 2, 2007.

Week of July 9, 2007—Tentative

There are no meetings scheduled for the Week of July 9, 2007.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: Michelle Schroll, (301) 415-1662.

* * * * *

ADDITIONAL INFORMATION: Affirmation of “USEC Inc. (American Centrifuge Plant), LBP-07-06 (Initial Decision Authorizing License), Geoffrey Sea Letter ‘in preparation of late-filed contentions’” tentatively scheduled on May 30, 2007, was cancelled.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: www.nrc.gov/about-nrc/policy-making/schedule.html

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301-492-2279, TDD: 301-415-2100, or by e-mail at REB3@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: May 31, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07-2802 Filed 6-1-07; 11:43 pm]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or

proposed to be issued from May 11, 2007, to May 23, 2007. The last biweekly notice was published on May 22, 2007 (72 FR 28717).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination,

any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and

how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may

issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, *Attention: Rulemaking and Adjudications Staff*; (2) *courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff*; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, *Attention: Rulemakings and Adjudications Staff* at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415-3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)-(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact

the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by e-mail to pdr@nrc.gov.

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Units 1 and 2 (ANO-1 and ANO-2), Pope County, Arkansas

Date of amendment request: April 24, 2007.

Description of amendment request: The proposed amendment will delete the Fuel Handling Area Ventilation System (FHAVS) and associated Ventilation Filter Testing Program (VFTP) requirements that are included in the ANO-1 Technical Specifications (TSs) 3.7.12 and 5.5.11 and the ANO-2 TSs 3.9.11 and 6.5.11. These requirements will be relocated to a licensee-controlled document, the unit-specific Technical Requirements Manuals (TRM), which are controlled under 10 CFR 50.59, "Changes, tests, and experiments."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [Do] the proposed change[s] involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The FHAVS is not involved in the initiation of any accidents. The system maintains a suitable environment for equipment operation and personnel access. They are also designed to filter any gaseous radioactivity that may occur during normal or accident conditions (i.e., a fuel handling accident). On this basis, the system is currently classified and designed as an Engineered Safety Features (ESF) air cleanup system. The FHAVS is used during movement of irradiated fuel, crane operation with loads over the Spent Fuel Pool (SFP), fuel shipments, and spent resin transfer to pull possible airborne radioactivity from the Train Bay by re-positioning manual dampers.

Revised ANO-1 and ANO-2 analysis of the dose consequences of a[n] FHA, to both the public and to the control room operator, demonstrate that doses remain well within regulatory acceptance limits without crediting filtration.

Thus there is no required safety function for the ANO-1 or ANO-2 FHAVS.

Therefore, the proposed change[s] [do] not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. [Do] the proposed change[s] create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The FHAVS is not involved in the initiation of any accidents. It was designed to

filter any gaseous radioactivity that may occur during normal or accident conditions (i.e., a fuel handling accident). No physical modifications are planned to the ANO-1 or ANO-2 FHA VS.

Revised ANO-1 and ANO-2 analysis of the dose consequences of a[n] FHA, to both the public and to the control room operator, demonstrate that doses remain well within regulatory acceptance limits without crediting filtration. Thus, there is no required safety function for the ANO-1 or ANO-2 FHA VS.

Therefore, the proposed change[s] [do] not create the possibility of a new or different kind of accident from any previously evaluated.

3. [Do] the proposed change[s] involve a significant reduction in a margin of safety?

Response: No.

The FHA VS was designed to filter any gaseous radioactivity that may occur during normal or accident conditions (i.e., a fuel handling accident). No physical modifications are planned to the ANO-1 or ANO-2 FHA VS.

Revised ANO-1 and ANO-2 analysis of the dose consequences of a[n] FHA, to both the public and to the control room operator, demonstrate that doses remain well within regulatory acceptance limits without crediting filtration. The margin of safety, as defined in Standard Review Plan 15.7.4, Revision 1, and GDC [General Design Criterion] 19 has not been significantly reduced.

Therefore, the proposed change[s] [do] not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Thomas G. Hiltz.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: April 24, 2007.

Description of amendment request: The proposed amendment will revise Arkansas Nuclear One, Unit 2 (ANO-2) Technical Specification (TS) 5.2.1, "Fuel Assemblies," to add Optimized ZIRLO™ as an acceptable fuel rod cladding material.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [Does] the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The NRC approved topical report WCAP-12610-P-A and CENPD-404-P-A, Addendum 1-A "Optimized ZIRLO™," prepared by Westinghouse Electric Company, LLC (Westinghouse), addresses Optimized ZIRLO™ and demonstrates that Optimized ZIRLO™ has essentially the same properties as currently licensed ZIRLO™. The fuel cladding itself is not an accident initiator and does not affect accident probability. Use of Optimized ZIRLO™ fuel cladding has been shown to meet all 10 CFR 50.46 design criteria and, therefore, will not increase the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Use of Optimized ZIRLO™ clad fuel will not result in changes in the operation or configuration of the facility. Topical report WCAP-12610-P-A and CENPD-404-P-A demonstrated that the material properties of Optimized ZIRLO™ are similar to those of standard ZIRLO™. Therefore, Optimized ZIRLO™ fuel rod cladding will perform similarly to those fabricated from standard ZIRLO™, thus precluding the possibility of the fuel becoming an accident initiator and causing a new or different type of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not involve a significant reduction in the margin of safety because it has been demonstrated that the material properties of the Optimized ZIRLO™ are not significantly different from those of standard ZIRLO™. Optimized ZIRLO™ is expected to perform similarly to standard ZIRLO™ for all normal operating and accident scenarios, including both loss-of-coolant accident (LOCA) and non-LOCA scenarios. For LOCA scenarios, where the slight difference in Optimized ZIRLO™ material properties relative to standard ZIRLO™ could have some impact on the overall accident scenario, plant-specific LOCA analyses using Optimized ZIRLO™ properties will be performed prior to the use of fuel assemblies with fuel rods containing Optimized ZIRLO™. These LOCA analyses will demonstrate that the acceptance criteria of 10 CFR 50.46 will be satisfied when Optimized ZIRLO™ fuel rod cladding is implemented.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Thomas G. Hiltz.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 8, 2007.

Description of amendment request: The proposed amendment will revise Arkansas Nuclear One, Unit 2 (ANO-2) Technical Specification (TS) 3.1.1.4, "Moderator Temperature Coefficient (MTC)," to change the surveillance frequency to be based on effective full-power days instead of boron concentration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change continues to perform the SRs [surveillance requirements] to determine MTC at test intervals associated with the beginning and middle of the cycle. The results of the test[s] will continue to verify that the predicted MTC is consistent with the measured [MTC].

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not result in any plant modifications or changes in the way the plant is operated. The revised SRs for confirming the MTC predicted values will continue to be performed at intervals associated with the beginning and middle of the cycle.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not result in any changes to the test method or to the frequency of the test. The change of the test interval to use EFPD [effective full-power

days] instead of RCS [reactor coolant system] boron concentration still provides assurance that the predicted MTC is consistent with the measured [MTC].

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Energy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Thomas G. Hiltz.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois.

Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois.

Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois.

Docket No. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania.

Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois.

Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey.

Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania.

Date of amendment request: April 12, 2007.

Description of amendment request: The proposed amendment would modify technical specification (TS) requirements related to control room envelope (CRE) habitability in accordance with Technical Specification Task Force (TSTF) Traveler TSTF–448, Revision 3, "Control Room Habitability."

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.
NRC Branch Chief: Russell Gibbs.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois.

Date of amendment request: April 4, 2007.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.5.16, "Containment Leakage Rate Testing Program," to reflect a one-time deferral of the containment Type A, integrated leak rate test from once in 10 years to once in 15 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will revise Braidwood Station and Byron Station TS 5.5.16, "Containment Leakage Rate Testing Program" to reflect a one-time, five-year extension of the containment Type A test date to enable the implementation of a 15-year test interval.

The containment is designed to contain radioactive material that may be released from the reactor core following a design basis

Loss of Coolant Accident (LOCA). The test interval associated with Type A testing is not a precursor of any accident previously evaluated. Type A testing does provide assurance that the containment will not exceed allowable leakage rate criteria specified in the TS and will continue to perform its design function following an accident. A risk assessment of the proposed changes has concluded that there is an insignificant increase in total population dose rate and an insignificant increase in the conditional containment failure probability.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes for a one-time, five-year extension of the Type A tests for Braidwood Station and Byron Station will not affect the control parameters governing unit operation or the response of plant equipment to transient and accident conditions. The proposed changes do not introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The Braidwood Station and Byron Station containment consists of the concrete containment building, its steel liner, and the penetrations through this structure. The structure is designed to contain radioactive material that may be released from the reactor core following a design basis LOCA. Additionally, this structure provides shielding from the fission products that may be present in the containment atmosphere following accident conditions.

The containment is a reinforced concrete structure with a cylindrical wall, a flat foundation mat, and a shallow dome roof. The inside surface of the containment is lined with a carbon steel liner to ensure a high degree of leak tightness during operating and accident conditions. The cylinder wall is pre-stressed with a post[-] tensioning system in the vertical and horizontal directions, and the dome roof is pre-stressed utilizing a three way post-tensioning system.

The concrete containment building is required for structural integrity of the containment under Design Basis Accident (DBA) conditions. The steel liner and its penetrations establish the leakage limiting boundary of the containment. Maintaining the containment OPERABLE limits the leakage of fission product radioactivity from the containment to the environment.

The integrity of the containment penetrations and isolation valves is verified through Type B and Type C local leak rate tests (LLRTs) and the overall leak tight integrity of the containment is verified by a Type A integrated leak rate test (ILRT) as required by 10 CFR 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." These tests

are performed to verify the essentially leak tight characteristics of the containment at the design basis accident pressure.

The existing 10-year Type A test interval is based on past performance. Previous Type A leakage tests conducted at Braidwood Station Units 1 and 2, and Byron Station Units 1 and 2 indicate that leakage from containment has been less than the 10 CFR 50 Appendix J leakage limit.

The proposed changes for a one-time extension of the Type A tests do not affect the method for Type A, B or C testing or the test acceptance criteria. Type B and C testing will continue to be performed at the frequency required by the Braidwood Station and Byron Station Technical Specifications. The containment inspections that are performed in accordance with the requirements of the ASME Boiler and Pressure Vessel Code, Section XI and 10 CFR 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants," provide a high degree of assurance that the containment will not degrade in a manner that is only detectable by Type A testing.

In NUREG-1493, "Performance-Based Containment Leak-Test Program," the NRC indicated that a 20-year extension for Type A testing resulted in an imperceptible increase in risk to the public. The NUREG-1493 study also concluded that, generically, the design containment leak rate contributes a very small amount to the individual risk [and] have a minimal affect on this risk. EGC has conducted risk assessments to determine the impact of a change to the Braidwood Station and Byron Station Type A test schedule from a baseline value of once in 10 years to once in 15 years for the risk measures of Large Early Release Frequency (LERF), Total Population Dose, and Conditional Containment Failure Probability (CCFP). The results of the risk assessments indicate that the proposed changes to the Braidwood Station and Byron Station Type A test schedule has a minimal impact on public risk.

Therefore, based on previous Type A test results for the Braidwood Station and Byron Station containments, the current containment surveillance programs at each station, and the results of the EGC risk assessments, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrentonville, IL 60555.

NRC Branch Chief: Russell Gibbs.

FPL Energy Seabrook LLC, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: August 7, 2006, as supplemented by letters dated January 22, and May 14, 2007, which included a revised no significant hazards consideration determination (NSHCD). This NSHCD is from the May 14, 2007, supplement.

Description of amendment request: The proposed amendment would revise the Seabrook Station Unit No. 1 (Seabrook) Facility Operating License (FOL) and Technical Specifications (TSs). The proposed changes would correct a joint-owner name in the operating license, remove a license condition from Appendix C to the FOL that is no longer applicable, and remove the list of Bases sections from the TS Index. Additionally, the proposed amendment would remove two manual valves from TS table 3.3.9, "Remote Shutdown System," and add the requirement that only one charging pump is permitted to be aligned for injection into the reactor coolant system (RCS) in Modes 4, 5, and 6 to TS 3.4.9.3, "Overpressure Protection Systems." The additional requirement proposed for TS 3.4.9.3 would allow for two pumps to be aligned for injection under administrative controls for up to one hour to permit swap over operations. The proposed changes would also remove a 1-hour reporting requirement for portable makeup pump system storage from TS 3.7.4, "Service Water System/Ultimate Heat Sink," correct an error in TS 4.7.4.3, related to the service water pumphouse water level and delete a footnote from TS 3.7.6.2, "Air Conditioning," that was only applicable to Cycle 7. The proposed changes would also delete a redundant reporting requirement in TS 6.6, "Safety Limit Violation." Lastly, the proposed amendment would modify TS 6.7.6, "Radioactive Effluent Controls Program," to clarify the TS with respect to the performance of dose projections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability or consequences of accidents previously evaluated in the UFSAR [Updated Final Safety Analysis Report] are unaffected by this proposed change. There is no change to any equipment response or accident mitigation scenario, and this change

results in no additional challenges to fission product barrier integrity. The proposed change does not alter the design, configuration, operation, or function of any plant system, structure, or component. As a result, the outcomes of previously evaluated accidents are unaffected.

This change limits availability of the charging pumps to one pump when in Mode 4 with the temperature of any RCS cold leg is less than or equal to 290 °F, in Mode 5, and in Mode 6 with the reactor vessel head on and the vessel head closure bolts not fully de-tensioned. Nonetheless, imposing this limitation does not alter the configuration or operation of the charging pumps from that specified in current administrative controls. Technical Specification (TS) 3/4.5.3, ECCS [Emergency Core Cooling System] Subsystems—Tavg Less Than 350 °F, presently stipulates that only one charging pump is maintained operable in Mode 4. Similarly, Technical Requirement 26, Boration Systems, requires that all but one operable charging pump be demonstrated inoperable in Modes 4, 5, and 6. Also, the Seabrook Station Updated Final Safety Analysis Report (UFSAR) describes the configuration of the charging pumps during shutdown conditions: Prior to decreasing RCS temperature below 350 °F, the safety injection pumps and the non-operating charging pumps are made inoperable. Consequently, the change does not alter the configuration or operation of the charging pumps from the procedures presently described in the UFSAR; rather, it only relocates an existing limitation from the UFSAR to the technical specifications. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change also revises the minimum water level in the service water system pump house required for operability of the service water system. The value currently specified in the technical specifications has been in error since 1986 and will be corrected with this change. Increasing the minimum required water level from five feet to 25.1 feet does not alter the configuration or operation of the service water system. Following discovery of this discrepancy, administrative controls established a minimum water level of approximately 25 feet. Moreover, monitoring of the service water pump house level during 2005 observed that the level, which is controlled by the ocean tides, is normally greater than 26 feet. During this period the minimum and maximum pump house water levels were 26.3 and 48.57 feet, respectively. This administrative change has no effect on the actual operation or configuration of the service water system. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to TS Table 3.3–9, Remote Shutdown System, eliminates valves MS–V127 and MS–V128 from the table. Located in the main steam supply line to the turbine-driven emergency feedwater (TDEFW) pump, these are locked open, manually operated, valves. Supplement 4 of

NUREG 0896, Safety Evaluation Report, discusses the modifications made to the Emergency Feedwater System (EFW) to address problems experienced with the EFW steam supply lines during hot functional testing. A design change, installed in 1991, changed MS–V127 and MS–V128 to normally open valves, replaced the valves' pneumatic actuators with gear-operated manual operators, and re-assigned the EFW actuation and containment isolation functions of these valves to new automatic isolation valves (MS–V393 and MS–V394) in the TDEFW pump steam supply line. As a result, the elimination of MS–V127 and MS–V128 from TS Table 3.3–9 does not alter the design, configuration, operation, or function of these valves with regard to operation of the EFW system because in the existing design these normally open valves are not required to re-position to support operation of the TDEFW pump. Automatic valves MS–V393 and MS–V394, which actuate to initiate operation of the TDEFW pump, are appropriately under the control of TS Table 3.3–9. This proposed change does not alter the design, configuration, operation, or function of the EFW steam supply valves. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The other changes in this proposed amendment correct errors, remove an outdated license condition, remove an inconsistency between indexes, and revise a reporting requirement. These changes are administrative in nature and do not impact the design, configuration, operation, or function of any plant system, structure, or component. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes (1) relocate an existing limitation from the UFSAR to the technical specifications regarding availability of the charging pumps, (2) revise the minimum water level in the service water system pump house required for operability of the service water system, (3) eliminate valves MS–V127 and MS–V128 from TS Table 3.3–9, and (4) make administrative changes to the TS that correct errors, remove an outdated license condition and an inconsistency between indexes and revises a reporting requirement. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related system. The ability of any operable structure, system, or component to perform its designated safety function is unaffected by this change. The proposed change neither installs or removes any plant equipment, nor alters the design, physical configuration, or mode of operation of any plant structure, system, or component. No physical changes are being made to the plant, so no new accident causal mechanisms are being introduced. Therefore, the proposed change does not create the

possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The margin of safety associated with the acceptance criteria of any accident is unchanged. The proposed change will have no effect on the availability, operability, or performance of safety-related systems and components. The proposed change relocates an existing limitation from the UFSAR to the technical specifications regarding availability of the charging pumps during operation in Mode 4 with the temperature of any RCS cold leg is less than or equal to 290 °F, in Mode 5, and in Mode 6 with the reactor vessel head on and the vessel head closure bolts not fully de-tensioned. Nonetheless, imposing this limitation does not alter the configuration or operation of the charging pumps from those specified in current administrative controls and the UFSAR. The proposed change includes revising the minimum water level in the service water system pump house required for operability of the service water system. This change replaces a non-conservative, incorrect value in the TS with a minimum required water level that is consistent with the design basis for the system. The elimination of MS–V127 and MS–V128 from TS Table 3.3–9 does not alter the design, configuration, operation, or function of these valves with regard to operation of the EFW system because in the existing design these normally open valves are not required to re-position to support operation of the TDEFW pump. Automatic valves MS–V393 and MS–V394, which actuate to initiate operation of the TDEFW pump, are appropriately under the control of TS Table 3.3–9. Last, the proposed amendment makes administrative changes to the TS that correct errors, remove an outdated license condition and an inconsistency between indexes and revises a reporting requirement.

The proposed changes do not alter the design, configuration, operation, or function of any plant system, structure, or component. The ability of any operable structure, system, or component to perform its designated safety function is unaffected by this change. Therefore, the margin of safety as defined in the TS is not reduced and the proposed change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.
NRC Branch Chief: Harold K. Chernoff.

Pacific Gas and Electric Co., Docket No. 50–133, Humboldt Bay Power Plant (HBPP), Unit 3 Humboldt County, California.

Date of amendment request: April 4, 2007.

Description of amendment request:

The licensee has proposed amending the existing license to allow the results of near-term surveys, performed on a portion of the plant site, to be included in the eventual Final Status Survey (FSS) for license termination.

*Basis for proposed no significant**hazards consideration determination:*

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would allow survey results for a specific area within the licensed site area, performed prior to Humboldt Bay Power Plant (HBPP) Unit 3 decommissioning and dismantlement activities, to be used in the overall licensed site area Final Status Survey (FSS) for license termination. The FSS will be performed following completion of HBPP Unit 3 decommissioning and dismantlement activities. This proposed change would not change plant systems or accident analysis, and as such, would not affect initiators of analyzed events or assumed mitigation of accidents. Therefore, the proposed change does not increase the probability or consequences of an accident previously evaluated.

(2) Does the change create the possibility of a new or different kind of accident from any accident evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant or require existing equipment to be operated in a manner different from the present design. Implementation of a cross contamination prevention and monitoring plan will be done in accordance with plant procedures and licensing bases documents.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident evaluated.

(3) Does the change involve a significant reduction in a margin of safety?

Response: No.

The proposed change has no effect on existing plant equipment, operating practices, or safety analysis assumptions. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Antonio Fernandez, Esquire, Pacific Gas & Electric Company, Post Office Box 7442, San Francisco, CA 94120.

NRC Acting Branch Chief: Kristina Banovac.

PSEG Nuclear LLC, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 17, 2007.

Description of amendment request:

The proposed amendment would modify the Technical Specifications (TSs) and license to establish more effective and appropriate action, surveillance, and administrative requirements related to ensuring the habitability of the control room envelop (CRE) in accordance with Nuclear Regulatory Commission (NRC) approved TS Task Force (TSTF) Standard Technical Specification change traveler TSTF-448, Revision 3, "Control Room Habitability." The NRC staff issued a "Notice of Availability of Technical Specification Improvement to Modify Requirements Regarding Control Room Envelope Habitability Using the Consolidated Line Item Improvement Process" associated with TSTF-448, Revision 3, in the **Federal Register** on January 17, 2007 (72 FR 2022). The notice included a model safety evaluation, a model no significant hazards consideration (NSHC) determination, and a model license amendment request. In its application dated April 17, 2007, the licensee affirmed the applicability of the model NSHC determination which is presented below.

Basis for proposed no significant

hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and

maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: April 15, 2007.

Description of amendment request: The proposed amendments would modify the Technical Specifications (TSs) and license to establish more effective and appropriate action, surveillance, and administrative requirements related to ensuring the habitability of the control room envelope (CRE) in accordance with Nuclear Regulatory Commission (NRC) approved TS Task Force (TSTF) Standard Technical Specification change traveler TSTF–448, Revision 3, “Control Room Habitability.” The NRC staff issued a “Notice of Availability of Technical Specification Improvement to Modify Requirements Regarding Control Room Envelope Habitability Using the Consolidated Line Item Improvement Process” associated with TSTF–448, Revision 3, in the **Federal Register** on January 17, 2007 (72 FR 2022). The notice included a model safety evaluation, a model no significant hazards consideration (NSHC) determination, and a model license amendment request. In its application dated April 15, 2007, the licensee affirmed the applicability of the model NSHC determination which is presented below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and

implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee’s analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: March 30, 2007.

Description of amendment requests: The proposed amendment revises Technical Specifications (TSs) 3.8.1, “AC [alternating current] Sources—Operating,” 3.8.4, “DC [direct current] Sources—Operating,” 3.8.5, “DC Sources—Shutdown,” 3.8.6, “Battery Cell Parameters,” 3.8.7, “Inverters—Operating,” and 3.8.9, “Distribution Systems—Operating.” This change will also add a new Battery Monitoring and Maintenance Program, Section 5.5.2.16. The proposed TS changes will provide operational flexibility supported by DC electrical subsystem design upgrades that are in progress. These upgrades will provide increased capacity batteries, additional battery chargers, and the means to cross-connect DC subsystems while meeting all design battery loading requirements. With these modifications in place, it will be feasible to perform routine surveillances as well as battery replacements online.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to Technical Specifications (TS) 3.8.4 and 3.8.6 would allow extension of the Completion Time (CT) for inoperable Direct Current (DC) distribution subsystems to manually cross-connect DC distribution buses of the same safety train of the operating unit for a period of 30 days. Currently the CT only allows for 2 hours to ascertain the source of the problem before a controlled shutdown is initiated. Loss of a DC subsystem is not an initiator of an event. However, complete loss of a Train A (subsystems A and C) or Train B (subsystems B and D) DC system would initiate a plant transient/plant trip.

Operation of a DC Train in cross-connected configuration does not affect the quality of DC control and motive power to any system. Therefore, allowing the cross-connect of DC distribution systems does not significantly increase the probability of an accident previously evaluated in Chapter 15 of the Updated Final Safety Analysis Report (UFSAR).

The above conclusion is supported by Probabilistic Risk Assessment (PRA) evaluation which encompasses all accidents,

including UFSAR Chapter 15. The Frequency for Surveillance Requirements in TS 3.8.4.3 is changed from 24 months to 30 months. San Onofre Nuclear Generating Station (SONGS) experience has indicated that there have been no battery failures using the 24-month test frequency for battery service tests, and extending the interval to 30 months is not expected to affect SONGS' capability to detect battery health and capacity. Also, the routine test frequency of 30 months will better dovetail with the scheduling of the more rigorous 60-month interval battery performance of modified performance discharge tests.

Enhancements from TSTF-360, Rev. 1 and IEEE 450 have been incorporated into Limiting Conditions for Operation (LCOs) 3.8.4, 3.8.5, and 3.8.6. These changes do not impact the probability or consequences of an accident previously evaluated.

Further changes are made of an editorial nature or provide clarification only. For example, discussions regarding electrical 'Trains' and 'Subsystems' will be in more conventional terminology. LCOs affected by editorial changes include 3.8.1, 3.8.4, 3.8.5, 3.8.6, 3.8.7, and 3.8.9.

The changes being proposed in the TS do not affect assumptions contained in other safety analyses or the physical design of the plant, nor do they affect other Technical Specifications that preserve safety analysis assumptions.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Will operation of the facility in accordance with this proposed change create the possibility of [a] new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change modifies surveillances and LCOs for batteries and chargers to meet the requirements of IEEE 450-2002 whose intent is to maintain the same equipment capability as previously assumed in our commitment to IEEE 450-1980.

The proposed change will allow the cross-tie of DC subsystems and allow extension of the CT for an inoperable subsystem to 30 days. Failure of the cross-tied DC buses and/or associated battery(ies) is bounded by existing evaluations for the failure of an entire electrical train.

Swing battery chargers are added to increase the overall DC system reliability. Administrative and mechanical controls will be in place to ensure the design and operation of the DC systems continue to meet the UFSAR design basis.

LCOs 3.8.1, 3.8.4, 3.8.5, 3.8.6, 3.8.7, and 3.8.9 revisions are editorial clarifications and do not affect plant design.

Therefore, operation of the facility in accordance with this proposed change will not create the possibility of [a] new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

Changes in accordance with IEEE 450 and TSTF-360, Rev. 1 maintain the same level of equipment performance stated in the UFSAR and the current Technical Specifications.

Swing battery chargers are added to increase the overall DC system reliability. Administrative and mechanical controls will be in place to ensure the design and operation of the DC systems continue to meet the UFSAR design basis.

The addition of the DC cross-tie capability proposed for LCO 3.8.4 has been evaluated, as described previously, using PRA and determined to be of acceptable risk as long as the duration while cross-tied is limited to 30 days. An LCO has been included as part of this proposed change to ensure that plant operation, with DC buses cross-tied, will not exceed 30 days.

All remaining changes are editorial.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.
NRC Branch Chief: Thomas G. Hiltz.

Tennessee Valley Authority, Docket No. 50-390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: April 25, 2007.

Description of amendment request: The proposed amendment would revise the technical specifications to increase the maximum number of tritium producing burnable absorber rods (TPBARs) that can be irradiated in the reactor from 240 to 400.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change modifies the maximum number of TPBARs in the core. The required boron concentration for the cold leg accumulators (CLAs) and RWST [Refueling Water Storage Tank] remains unchanged. The current boron concentration has been demonstrated to maintain the required accident mitigation safety function for the CLAs and RWST with the higher

number of TPBARs and this will be verified for each core that contains TPBARs as part of the normal reload analysis. The CLAs and RWST safety function is to mitigate accidents that require the injection of boric acid to cool the core and to control reactivity. These functions are not potential sources for accident generation and the modification of the number of TPBARs will not increase the potential for an accident. Therefore, the possibility of an accident is not increased by the proposed changes. The current boron concentration levels are supported by the proposed number of TPBARs in the core. Since the current boron concentration levels will continue to maintain the safety function of the CLAs and RWST in the same manner as currently approved, the consequences of an accident are not increased by the proposed changes.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change only modifies the maximum number of TPBARs in the core. The boron concentrations for accident mitigation functions of the CLAs and RWST remain unchanged. These functions do not have a potential to generate accidents as they only serve to perform mitigation functions associated with an accident. The proposed modification will maintain the mitigation function in an identical manner as currently approved. There are no plant equipment or operational changes associated with the proposed revision. Therefore, since the CLA and RWST functions are not altered and the plant will continue to operate without change, the possibility of a new or different kind of an accident is not created.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This change proposes a change to the maximum number of TPBARs in the core. The boron concentration requirements that support the accident mitigation functions of the CLAs and RWST remain unchanged. The proposed change does not alter any plant equipment or components and does not alter any setpoints utilized for the actuation of accident mitigation system or control functions. The proposed number of TPBARs, in conjunction with the current boron concentration values, has been demonstrated to provide an adequate level of reactivity control for accident mitigation and this will be verified for each core that contains TPBARs as part of the normal reload analysis. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority,

400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Thomas H. Boyce.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by e-mail to pdr@nrc.gov.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: August 16, 2006, as supplemented by letters dated January 25 and March 8, 2007.

Brief description of amendments: The amendments revised Technical Specifications (TS) requirements in Surveillance Requirements (SRs) to allow for surveillances to be performed in modes that are not currently allowed in TS and to require certain SRs to be performed at a power factor of ≤ 0.89 if performed with the emergency diesel generators synchronized to the grid unless grid conditions do not permit.

Date of issuance: May 16, 2007.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: Unit 1—167, Unit 2—167, Unit 3—167.

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Operating License and Technical Specifications.

Date of initial notice in Federal Register: October 24, 2006 (71 FR 62307). The supplements dated January 25 and March 8, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on October 24, 2006 (71 FR 62307).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 2007.

No significant hazards consideration comments received: No.

Dominion Energy Kewaunee, Inc. Docket No. 50-305, Kewaunee Power Station, Kewaunee County, Wisconsin

Date of application for amendment: June 28, 2006, as supplemented by letter dated November 2, 2006.

Brief description of amendment: The amendment changes Kewaunee Power Station Technical Specifications 3.3.b.3.B and 3.3.b.4.A to increase the minimum required boron concentration in the refueling water storage tank from 2400 parts per million (ppm) to 2500 ppm.

Date of issuance: May 18, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 192.

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 1, 2006 (71 FR 43530). The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 2007.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: January 26, 2006, as supplemented by letter dated December 21, 2006.

Brief description of amendment: The amendment will allow additional startup and operating flexibility and an expanded operating domain resulting from the proposed implementation of the Average Power Monitor, Rod Block Monitor Technical Specification improvement program concurrently with the proposed implementation of the Maximum Extended Operating Domain Analysis, which is the combination of the power/flow operating map expansion with Maximum Extended Load Line Limit Analysis and increased core flow.

Date of issuance: May 17, 2007.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 287.

Facility Operating License No. DPR-59: The amendment revised the License and the Technical Specifications.

Date of initial notice in Federal Register: March 14, 2006 (71 FR 13171). The supplemental letter dated December 21, 2006, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 2007.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: November 2, 2006.

Description of amendment request: The proposed amendment revised Technical Specifications requirements for inoperable snubbers consistent with the Technical Specification Task Force 372, Revision 4.

Date of issuance: May 14, 2007.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 229.

Facility Operating License No. DPR-35: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in Federal Register: January 30, 2007 (72 FR 4307). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 14, 2007.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: August 31, 2006, as supplemented by letter dated January 31, 2007.

Brief description of amendment: The amendment relocated TS 3.8.7 requirements associated with 120 volt (V) inverter Y-28 and TS 3.8.9 requirements associated with the 120 V alternating current electrical power distribution subsystem panel C-540 to the Technical Requirements Manual.

Date of issuance: May 15, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 230.

Renewed Facility Operating License No. DPR-51: Amendment revised the Technical Specifications/license.

Date of initial notice in Federal Register: November 7, 2006 (71 FR 65142). The supplement dated January 31, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2007.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 2, 2006.

Brief description of amendment: The amendment change deletes the augmented testing requirement for containment purge supply and exhaust isolation valves with resilient seal materials and allows the surveillance intervals to be set in accordance with the Containment Leakage Rate Testing Program.

Date of issuance: May 23, 2007.

Effective date: As of the date of issuance and shall be implemented 120 days from the date of issuance.

Amendment No.: 213.

Facility Operating License No. NPF-38: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in Federal Register: September 26, 2006 (71 FR 56191). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 2007.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: June 6, 2006.

Brief description of amendment: This amendment revised the Ventilation Filter Test Program (VFTP) in Technical Specification 5.5.7, to correct the flow rate units specified in the VFTP, from standard cubic feet per minute to cubic feet per minute.

Date of issuance: May 9, 2007.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 143.

Facility Operating License No. NPF-58: This amendment revised the Technical Specifications and License.

Date of initial notice in Federal Register: August 29, 2006 (71 FR 51228).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 2007.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: May 25, 2006, as supplemented by letters dated December 21, 2006, March 14, 2007, and March 30, 2007.

Brief description of amendment: The amendment revises the Technical Specification Steam Generator tube Surveillance Program to one modeled

after Technical Specification Task Force (TSTF) Traveler TSTF-449, "Steam Generator Tube Integrity."

Date of issuance: May 16, 2007.

Effective date: Date of issuance, to be implemented within 90 days.

Amendment No.: 223.

Facility Operating License No. DPR-72: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: August 29, 2006 (71 FR 51229). The supplements dated December 21, 2006, March 14 and 30, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 2006.

No significant hazards consideration comments received: No.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50-244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: September 29, 2006, as supplemented by letter dated December 7, 2006, and February 12, 2007.

Brief description of amendment: The amendment revises Technical Specification 3.7.8, "Service Water (SW) System," from an electrical train-based specification to a pump-based specification. Revisions to the Limiting Conditions for Operation, Required Actions, Completion Times, and Surveillance Requirements have been made to require a specific number of SW water pumps to be operable rather than SW trains.

Date of issuance: May 16, 2007.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 102.

Renewed Facility Operating License No. DPR-18: Amendment revised the License and Technical Specifications.

Date of initial notice in Federal Register: November 7, 2006 (71 FR 65144).

The letters dated December 7, 2006, and February 12, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 2007.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: May 24, 2006, as supplemented on February 15, 2007.

Brief description of amendment: The amendment revises the Virgil C. Summer Nuclear Station Technical Specifications and provides associated Bases that are modeled after Technical Specification Task Force (TSTF) traveler, TSTF-449, Revision 4, "Steam Generator Tube Integrity." A notice of availability for this TS improvement using the consolidated line item improvement process was published in the **Federal Register** on May 6, 2005 (70 FR 24126).

Date of issuance: May 15, 2007.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 179.

Renewed Facility Operating License No. NPF-12: Amendment revises the TSs.

Date of initial notice in Federal Register: June 20, 2006 (71 FR 35458). The supplemental letter provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a safety evaluation dated May 15, 2007.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: February 2, 2007.

Brief description of amendments: The amendments revised the Technical Specifications Limiting Condition for Operation (LCO) 3.10.1 to be consistent with TSTF-484, Revision 0, "Use of Technical Specification 3.10.1 for Scram Time Testing Activities."

Date of issuance: May 17, 2007.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 251, 195.

Renewed Facility Operating License Nos. DPR-57 and NPF-5: Amendments

revised the licenses and the technical specifications.

Date of initial notice in Federal Register: March 13, 2007 (72 FR 11395).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 2007.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 25th day of May 2007.

For the Nuclear Regulatory Commission.

Timothy J. McGinty,

Acting Director, Division of Operating Reactor Licensing Office of Nuclear Reactor Regulation.

[FR Doc. E7-10590 Filed 6-4-07; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Safety Evaluation and Model License Amendment Request on Technical Specification Improvement Regarding Relocation of Departure From Nucleate Boiling Parameters to the Core Operating Limits Report for Combustion Engineering Pressurized Water Reactors Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the staff of the U.S. Nuclear Regulatory Commission (NRC) has prepared a model license amendment request (LAR), model safety evaluation (SE), and model proposed no significant hazards consideration (NSHC) determination related to changes to Standard Technical Specifications (STSs) for Combustion Engineering Pressurized Water Reactors (PWRs), NUREG-1432, Revision 3.1. This change allows the numerical limits located in technical specification (TS) 3.4.1, "RCS Pressure, Temperature, and Flow [Departure from Nucleate Boiling (DNB)] Limits" to be replaced with references to the Core Operating Limits Report (COLR). Associated changes are also included for the TS 3.4.1 Bases, and TS 5.6.3 "Core Operating Limits Report (COLR)." The Technical Specifications Task Force (TSTF) proposed these changes to the TS in TSTF-487 Revision 0, "Relocate DNB Parameters to the COLR." This request was slightly modified in TSTF-487 Revision 1 on May 4, 2007.

The purpose of the model SE, LAR, and NSHC is to permit the NRC to

efficiently process amendments to incorporate these changes into plant-specific TSs for Combustion Engineering PWRs. Licensees of nuclear power reactors to which the models apply can request amendments conforming to the models. In such a request, a licensee should confirm the applicability of the model LAR, model SE and NSHC determination to its plant.

DATES: The NRC staff issued a **Federal Register** Notice (72 FR 12223, March 15, 2007) which provided a model LAR, model SE, and model NSHC for comment related to replacing the DNB parameters in TS 3.4.1 with references to the COLR. The revised model LAR, revised model SE, and unchanged NSHC associated with this change are provided in this notice. The NRC can most efficiently consider applications based upon the model LAR, which references the model SE, if the application is submitted within one year of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: William Cartwright, Mail Stop: O-12H2, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-8345.

SUPPLEMENTARY INFORMATION:

Background

This change was made using the Consolidated Line Item Improvement Process [CLIIIP] for STS Changes for Power Reactors, issued on March 20, 2000 as Regulatory Information Summary 2000-006. This document can be viewed on the NRC's public Web page at <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/reg-issues/2000/ri00006.html>. The CLIIIP is intended to improve the efficiency and transparency of NRC licensing processes by processing proposed changes to the STS in a manner that supports subsequent license amendment applications. Those licensees opting to apply for the subject change to TSs are responsible for reviewing the NRC staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. This notice finalizes the model LAR and model SE. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable NRC rules and procedures.

The purpose of this change is to allow Combustion Engineering PWR licensees to recalculate cycle specific departure from nucleate boiling (DNB) parameter limits in the COLR using NRC-approved

methodologies. With this alternative, reload license amendments for the sole purpose of updating the cycle specific DNB parameter limits will be unnecessary. By letter dated June 20, 2005, the TSTF proposed these changes for incorporation into the STSs as TSTF-487 Revision 0 (ADAMS Accession No. ML051860302), followed by TSTF-487 Revision 1 on May 4, 2007 (ADAMS Accession No. ML071240259). These changes are based on the NRC Generic Letter 88-16 "Removal of Cycle-Specific Parameter Limits from Technical Specifications" (ADAMS Accession No. ML041830597).

ADAMS documents are accessible electronically from the Agency-wide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

Applicability

These proposed changes will revise the limiting condition for operation (LCO) 3.4.1, surveillance requirement (SR) 3.4.1, and TS 5.6.3 for Combustion Engineering PWRs. Licensees adopting this change may also have to change the bases associated with TS 3.4.1 under their bases control program. To efficiently process incoming license amendment applications, the NRC staff requests that each licensee using the CLIIP to adopt the changes addressed by TSTF-487 Revision 1, submit a LAR that adheres to the following model. Any variations from the model LAR should be explained in the licensee's submittal. Variations from the approach recommended in this notice may require additional time and resources by the NRC staff for review. Significant variations from the approach, or inclusion of additional changes to the license, will result in NRC staff rejection of the submittal. Instead, licensees desiring significant variations and/or additional changes should submit a LAR that does not request to adopt TSTF-487.

Public Notices

The staff issued a **Federal Register** Notice (72 FR 12223, March 15, 2007) that requested public comment on the NRC's pending action to allow relocation of DNB parameters to the COLR for Combustion Engineering PWRs using the CLIIP. One response

was received from the TSTF (ADAMS Accession No. ML071030076). The comments are summarized and discussed below:

1. *Comment:* A statement did not need to be added to TS section 5.6.3 regarding the requirement to perform the COLR calculations at rated thermal power (RTP). The justification for this was that it was a restatement of existing regulatory requirements. In addition, the wording proposed by the NRC staff was unclear to licensees. It was proposed in the comment that licensees make a commitment as part of their amendment request instead of making changes to the TS administrative controls section 5.6.3.

Response: The NRC staff discussed this issue at a public meeting held on March 22, 2007. In response to that meeting, the TSTF provided modified wording that was acceptable to the NRC staff for TS section 5.6.3 in TSTF-487 Revision 1, on May 4, 2007 (ADAMS Accession No. ML071240259). The modified wording has been incorporated into the model SE.

2. *Comment:* References to the TS bases should be removed from the model application as the bases are under the licensee's control, not required to be approved by the NRC, and not required as part of TS amendments.

Response: The Code of Federal Regulations (10 CFR 50.36 (a)) states "A summary of the basis or reasons for such specifications, other than those covering administrative controls, shall also be included in the application, but shall not become part of the technical specifications." The regulations supporting inclusion of the bases into TS amendments are described in 10 CFR 50.90, which states that applications for amendments should be made "fully describing the changes desired, and following as far as applicable, the form prescribed for original applications." Providing the bases changes with the amendment assists in assuring a common understanding of the changed TS requirements between the licensee and the NRC staff. As the licensee is required to maintain and update the TS bases, providing the updated changes to the NRC as part of an amendment request does not constitute an additional burden. This comment was not incorporated.

3. *Comment:* The oath or affirmation statement in the model application was not consistent with RIS 2001-18, "Requirements for Oath or Affirmation."

Response: The model application was revised to be consistent with RIS 2001-18.

4. *Comment:* The last portion of the applicability section discussed the

consequences of a licensee submitting variations from the approach described in the model application. The last sentence published in the notice for comment reads "Instead, licensees desiring significant variations and/or additional changes should submit a LAR that does not claim to adopt TSTF-487." The comment requested to revise that sentence to "Instead, licensees desiring significant variations and/or additional changes should submit a LAR that does not claim to adopt TSTF-487 under the CLIIP." The purpose of this change would be to allow licensees to adopt model applications to facilitate NRC staff review as part other amendment processes (for example, a license amendment to adopt standard technical specifications).

Response: The CLIIP allows licensees to submit amendment requests that closely adopt model applications developed under a streamlined process. Amendments proposing to adopt TSTF's that substantially deviate from model applications are not appropriate for a streamlined review process. For amendments that substantially deviate from a model application, licensees can reference or follow approved TSTF model applications to support their amendment requests. These requests will receive the normal NRC staff review process. This comment was not incorporated.

The NRC staff has proceeded with announcing the availability of the change in this notice with some minor changes to the model LAR and model SE as a result of public comments. Licensees wishing to adopt the change will submit an application in accordance with applicable rules and other regulatory requirements. The NRC staff will, in turn, issue for each application a notice of consideration of issuance of amendment to facility operating license(s), a proposed NSHC determination, and an opportunity for a hearing. A notice of issuance of an amendment to operating license(s) will also be issued to announce the revised requirements for each plant that applies for and receives the requested change.

Dated at Rockville, Maryland, this 29th day of May, 2007.

For the Nuclear Regulatory Commission.

Timothy J. Kobetz,

*Chief, Technical Specifications Branch,
Division of Inspection and Regional Support,
Office of Nuclear Reactor Regulation.*

For inclusion on the technical specification Web page the following example of an application was prepared by the NRC staff to facilitate the adoption of Technical Specifications Task Force (TSTF) Traveler TSTF-487,

Revision 1 "relocate DNB parameters to the COLR." The model provides the expected level of detail and content for an application to adopt TSTF-487, Revision 1. Licensees remain responsible for ensuring that their actual application fulfills their administrative requirements as well as NRC regulations.

U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555.

SUBJECT: Plant name, Docket No. 50- [xxx.] Re: Application for technical specification improvement to adopt TSTF-487, Revision 1, "relocate DNB parameters to the COLR"

Dear Sir or Madam: In accordance with the provisions of Section 50.90 of Title 10 of the Code of Federal Regulations (10 CFR), [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.]. The proposed changes would allow [PLANT NAME] to replace the DNB numeric limits in TS with references to the core operating limits report (COLR).

The changes are consistent with NRC-approved Industry Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF-487 Revision 1. The availability of this TS improvement was announced in the **Federal Register** on [DATE] [] FR [] as part of the consolidated line item improvement process (CLIIP).

Enclosure 1 provides a description and assessment of the proposed changes, as well as confirmation of applicability. Enclosure 2 provides the existing TS pages and TS Bases marked-up to show the proposed changes. Enclosure 3 provides final TS pages and TS Bases pages. [LICENSEE] requests approval of the proposed license amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS]. In accordance with 10 CFR 50.91, a copy of this application, with enclosures, is being provided to the designated [STATE] Official.

I declare [or certify, verify, state] under penalty of perjury that the foregoing is true and correct. Executed on [date] [Signature].

[Note that request may be notarized in lieu of using this oath or affirmation statement].

If you should have any questions regarding this submittal, please contact [].

Sincerely,

Name, Title

Enclosures:

1. Description and Assessment of Proposed Changes.

2. Proposed Technical Specification Changes and Technical Specification Bases Changes.

3. Final Technical Specification and Bases pages.

cc: NRR Project Manager, Regional Office, Resident Inspector, State Contact, ITSB Branch Chief.

1.0 Description

This letter is a request to amend Operating License(s) [LICENSE NUMBER(S)] for [PLANT/UNIT NAME(S)]. The proposed changes would revise Technical Specification (TS) 3.4.1, "RCS Pressure, Temperature, and Flow [Departure from Nucleate Boiling (DNB)] Limits," the bases for TS 3.4.1, and TS 5.6.3 "Core Operating Limits Report (COLR)," to allow [PLANT NAME] to place the DNB numeric limits with references to the COLR.

Technical Specification Task Force (TSTF) change traveler TSTF-487, Revision 1 "Relocate DNB Parameters to the COLR" was announced for availability in the **Federal Register** on [DATE] as part of the consolidated line item improvement process (CLIIP).

2.0 Proposed Changes

Consistent with NRC-approved TSTF-487 Revision 1, the following changes are proposed:

- Revise the limiting conditions for operation and surveillance requirements in TS 3.4.1 to replace the DNB numeric limits for reactor coolant pressure, temperature, and flow with references to limits for those parameters calculated in the COLR.

- Revise the bases associated with TS 3.4.1 to reflect that the DNB numeric limits are contained in the COLR.

- Revise TS 5.6.3 to add the methodology requirements for calculating the DNB numeric limits in the COLR.

3.0 Background

The background for this application is as stated in the model SE in NRC's Notice of Availability published on [DATE] [] FR [], and TSTF-487, Revision 1.

4.0 Technical Analysis

[LICENSEE] has reviewed Generic Letter 88-16, and the model SE published on [DATE] [] FR [] as part of the CLIIP Notice for Comment. [LICENSEE] has applied the methodology in Generic Letter 88-16 to develop the proposed TS changes. [LICENSEE] has also concluded that the justifications presented in TSTF-487,

Revision 1 and the model SE prepared by the NRC staff are applicable to [PLANT, UNIT NOS.], and justify this amendment for the incorporation of the changes to the [PLANT] TS.

5.0 Regulatory Analysis

A description of this proposed change and its relationship to applicable regulatory requirements and guidance was provided in the NRC Notice of Availability published on [DATE] [] FR [], the NRC Notice for Comment published on [DATE] [] FR [], and TSTF-487, Revision 1.

6.0 No Significant Hazards Consideration

[LICENSEE] has reviewed the proposed no significant hazards consideration determination published in the **Federal Register** on [DATE] [] FR [] as part of the CLIIP. [LICENSEE] has concluded that the proposed determination presented in the notice is applicable to [PLANT] and the determination is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

7.0 Environmental Evaluation

[LICENSEE] has reviewed the environmental consideration included in the model SE published in the **Federal Register** on [DATE] [] FR [] as part of the CLIIP. [LICENSEE] has concluded that the staff's findings presented therein are applicable to [PLANT] and the determination is hereby incorporated by reference for this application.

Proposed Safety Evaluation, U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation.

Consolidated Line Item Improvement Technical Specification Task Force (TSTF)

Change TSTF-487, Revision 1, RELOCATE DNB PARAMETERS TO THE COLR

1.0 Introduction

By application dated [Date], (Ref. 7.1), the [Name of Licensee] (the licensee) requested changes to the Technical Specifications (TS) for the [Name of Facility].

The proposed changes would revise TS 3.4.1, the associated bases of TS 3.4.1, and TS 5.6.3 to replace the departure from nucleate boiling (DNB) parameters limits in Technical Specifications (TSs) with references to the Core Operating Limits Report (COLR). These changes would allow the licensee to recalculate the DNB parameter limits using NRC-approved methodologies without the need for a license amendment request (LAR).

The proposed changes include the following:

- Change TS 3.4.1, “RCS Pressure, Temperature, and Flow [Departure from Nucleate Boiling (DNB)] Limits,” Limiting Conditions for Operation (LCO) 3.4.1 and the associated Surveillance Requirements (SRs) to replace the specific limit values of RCS pressurizer pressure, cold leg temperature, and RCS total flow rate with “the limits specified in the COLR.”

- Change the bases for LCO 3.4.1 to reflect that the DNB limits are specified in the COLR.

- Change Section 5.6.3 of TS, “Core Operating Limits Report (COLR)” to include the NRC approved methodologies and requirements used to calculate the DNB limits.

Generic Letter (GL) 88–16 titled “Removal of Cycle-Specific Parameter Limits from Technical Specifications” (Ref. 7.2) is the regulatory guidance for this change.

2.0 Regulatory Evaluation

The Commission’s regulatory requirements related to the content of Technical Specifications are specified in Title 10 CFR (Code of Federal Regulations), Section 50.36, “Technical Specifications.” 10 CFR 50.36(c)(2)(i) defines that limiting conditions for operation are the lowest functional capability or performance levels of equipment required for safe operation of the facility. For the DNB parameters, 10 CFR 50.36(c)(2)(ii)(B) Criterion 2 applies, which requires that TS LCOs be established for each process variable, design feature, or operating restriction that is an initial condition of a design basis accident or transient analysis that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.

LARs are required for each fuel cycle design that results in changes to parameter limits specified in TS. To meet 10 CFR 50.36(c)(2)(ii) requirements and alleviate the need for LARs to update parameter limits every fuel cycle, the NRC issued GL 88–16 with specific guidance for replacing the limit values for cycle-specific parameters in the TSs with references to an owner-controlled document, namely, the COLR. The guidance in GL 88–16 includes the following three actions:

1. The addition of the definition of a named formal report (i.e., Core Operating Limits Report) in TS that includes the values of cycle-specific parameter limits that have been established using an NRC-approved methodology and consistent with all applicable limits of the safety analyses.

2. The addition of an administrative reporting requirement (in TS 5.6.3) to submit the formal report on cycle-specific parameter limits to the Commission for information.

3. The modification of individual TS to note that the specific parameters shall be maintained within the limits provided in the defined formal report (COLR).

The proposed change has been evaluated against GL 88–16 and found to be consistent with that regulatory guidance.

3.0 Technical Evaluation

TS LCO 3.4.1 specifies the limit values of the DNB parameters to assure that the pressurizer pressure, the RCS cold leg temperature, and RCS flow rate during operation at rated thermal power (RTP) will be maintained within the limits assumed in the safety analyses in the final safety analysis report (FSAR). The safety analyses of anticipated operational occurrences (AOOs) and accidents assume initial conditions within the envelope of normal steady state operation at the RTP to demonstrate that the applicable acceptance criteria, including the specified acceptable fuel design limits (such as DNB ratio) and RCS pressure boundary design conditions, are met for each event analyzed. The TS limits placed on the DNB-related parameters ensure that these parameters, when appropriate measurement uncertainties are applied, will be bounded by those assumed in the safety analyses, and thereby provide assurance that the applicable acceptance criteria will not be violated should a transient or accident occur while operating at the RTP.

It is essential to safety that the plant is operated within the DNB parameter limits. This change retains the requirement to maintain the plant within the DNB parameter limits in LCO 3.4.1 along with the SR verification for each of the DNB parameters. As these parameter limits are calculated using NRC-approved methodologies and are consistent with all applicable limits of the plant safety analyses, this change does not affect nuclear safety.

TS 5.6.3, “Core Operating Limits Report (COLR),” specifies that the core operating limits shall be determined such that all applicable limits of the safety analyses are met, and that the analytical methods used to determine the core operating limits shall be those previously reviewed and approved by the NRC. This change modifies the list of NRC approved methodologies in TS 5.6.3 to include those used to calculate the DNB limits on pressurizer pressure,

RCS cold leg temperature, and RCS total flow rate. The limit values of these parameters in the COLR will comply with existing operating fuel cycle analysis requirements, and are initial conditions assumed in safety analyses. Replacing of the DNB parameter values with references to the COLR does not lessen the requirement for compliance with all applicable limits.

Any revisions to the safety analyses that require prior NRC approval will be identified by the 10 CFR 50.59 review process. TS 5.6.3 also specifies that the COLR, including any midcycle revisions or supplements, shall be provided upon issuance for each reload cycle to the NRC. This will allow NRC staff to continue trending the information even though prior NRC approval of the changes to these limits will not be required.

10 CFR 50.36 requires LCOs to contain the lowest functional capability or performance levels of equipment for safe operation of the facility. The NRC staff finds that the proposed change to LCO 3.4.1 referencing the specific values of the DNB parameter limits in TS in the COLR continues to meet the regulatory requirement of 10 CFR 50.36(c)(2)(ii)(B) (Criterion 2), and follows the guidance described in GL 88–16. The NRC staff, therefore, concludes that this change is acceptable.

For safety analyses of transients or accidents, various sections of Chapter 15 of the Standard Review Plan (Ref. 7.3) specify that the reactor is initially at the RTP plus uncertainty, and the RCS flow is at nominal design flow including the measurement uncertainty. If one or more DNB parameter limits change, and these changes do not support the RTP, a license amendment would be required to either reduce the RTP or limit the plant operation at a level below the RTP. 10 CFR 50 Appendix K requires that the loss of coolant accident analysis be performed at 102% of the RTP. Other plant-specific analyses can contain an initial condition to be performed at RTP. To insure a clear understanding of this requirement TS 5.6.3.c. has been reworded to add the underlined text: “The core operating limits shall be determined *assuming operation at RATED THERMAL POWER* such that all applicable limits * * *.”

4.0 State Consultation

In accordance with the Commission’s regulations, the [] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendment[s] change[s] a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20 or surveillance requirements. The NRC staff has determined that the amendment involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendment involves no significant hazards consideration and there has been no public comment on this finding published [DATE] ([] FR []). Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

6.0 Conclusion

The NRC staff has reviewed this proposed change to replace the values of the DNB parameters in TS with references to the COLR. This change will allow the licensee the flexibility to manage operating and core design margins associated with the DNB parameters without the need for cycle-specific LARs. Any future revisions to safety analyses that require prior NRC approval will be identified by the 10 CFR 50.59 review process. Based on this evaluation the NRC staff concludes that this change meets the regulatory requirements of 10 CFR 50.36, follows the guidance described in GL 88-16, and is acceptable.

7.0 References

7.1 License Amendment Request dated [MMM, DD, YYYY], [Title of Amendment Request], ADAMS Accession No. [MLXXXXXXXXXX]

7.2 Generic Letter 88-16 dated October 4, 1988, "Removal of Cycle-Specific Parameter Limits from Technical Specifications," ADAMS Accession No. ML041830597

7.3 NUREG-0800, "Standard Review Plan."

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: [Plant name] requests adoption of an approved change to the standard technical specifications (STS) for Combustion Engineering Pressurized

Water Reactor (PWR) Plants (NUREG-1432) and plant-specific technical specifications (TS), to allow replacing the departure from nucleate boiling (DNB) parameter limits with references to the core operating limits report (COLR) in accordance with Generic Letter 88-16, "Removal of Cycle Specific Parameter Limits from Technical Specifications," dated October 4, 1988. The changes are consistent with NRC approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF-487, Revision 1.

Basis for proposed no-significant-hazards-consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no-significant-hazards-consideration is presented below:

Criterion 1: Does the Proposed Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

Response: No.

The proposed amendment replaces the limit values of the reactor coolant system (RCS) DNB parameters (*i.e.*, pressurizer pressure, RCS cold leg temperature, and RCS flow rate) in TS with references to the COLR, in accordance with the guidance of Generic Letter 88-16, to allow these parameter limit values to be recalculated without a license amendment. The proposed amendment does not involve operation of any required structures, systems, or components (SSCs) in a manner or configuration different from those previously recognized or evaluated. The cycle-specific values in the COLR must be calculated using the NRC-approved methodologies listed in TS 5.6.3, "Core Operating Limits Report (COLR)." Replacing the RCS DNB parameter limits in TS with references to the COLR will maintain existing operating fuel cycle analysis requirements. Because these parameter limits are determined using the NRC-approved methodologies, the acceptance criteria established for the safety analyses of various transients and accidents will continue to be met. Therefore, neither the probability nor consequences of any accident previously evaluated will be increased by the proposed change.

Therefore, operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: Does the Proposed Change Create the Possibility of a New or

Different Kind of Accident from any Previously Evaluated?

Response: No.

The proposed amendment to replace the RCS DNB parameter limits in TS with references to the COLR does not involve a physical alteration of the plant, nor a change or addition of a system function. The proposed amendment does not involve operation of any required SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the proposed change.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: Does the Proposed Change Involve a Significant Reduction in the Margin of Safety?

Response: No.

The proposed amendment to replace the RCS DNB parameter limits in TS with references to the COLR will continue to maintain the margin of safety. The DNB parameter limits specified in the COLR will be determined based on the safety analyses of transients and accidents, performed using the NRC-approved methodologies that show that, with appropriate measurement uncertainties of these parameters accounted for, the acceptance criteria for each of the analyzed transients are met. This provides the same margin of safety as the limit values currently specified in the TS. Any future revisions to the safety analyses that require prior NRC approval are identified per the 10 CFR 50.59 review process.

Therefore, the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the staff's review of the licensee's analysis, the staff concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c) and, accordingly, a finding of "no significant hazards consideration" is justified.

Dated at Rockville, Maryland, this __ day of ____, 2007.

For the Nuclear Regulatory Commission,
Project Manager, Plant Licensing Branch [],
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.

[FR Doc. E7-10786 Filed 6-4-07; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27847; 812-13332]

Ameristock ETF Trust, et al.; Notice of Application

May 30, 2007.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit: (a) Open-end management investment companies, the series of which will be based on certain fixed-income securities indices, to issue shares ("Fund Shares") that can be redeemed only in large aggregations ("Creation Units"); (b) secondary market transactions in Fund Shares to occur at negotiated prices on the American Stock Exchange, LLC ("Amex") or a national securities exchange, as defined in section 2(a)(26) of the Act (each, an "Other Exchange," and together with Amex, the "Exchanges"); (c) dealers to sell Fund Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 ("Securities Act"); and (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units.

APPLICANTS: Ameristock ETF Trust ("Trust"); Ameristock Corporation ("Adviser"); and ALPS Distributors, Inc. ("Distributor").

FILING DATES: The application was filed on October 5, 2006 and amended on May 29, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 25, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state

the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants, Ameristock ETF Trust and Ameristock Corporation, c/o Ameristock Corporation, 1320 Harbor Bay Parkway, Suite 145, Alameda, CA 94502, and ALPS Distributors, Inc., 1290 Broadway, Suite 1100, Denver, CO 80203.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551-6915, or Julia Kim Gilmer, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549-0102 (telephone (202) 551-5850).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware business trust. Initially, the Trust intends to offer five series (the "Initial Index Funds") and may establish additional series in the future ("Future Index Funds," and together with the Initial Funds, "Index Funds" or "Funds").¹ The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and will serve as the investment adviser to each of the Initial Index Funds. The Adviser may in the future retain one or more subadvisers ("Subadvisers") to manage the Index Funds' portfolios. Any Subadviser will be registered under the Advisers Act or exempt from registration. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act"), will serve as the principal underwriter and distributor of Fund Shares.

2. Each Index Fund will invest in a portfolio of securities ("Portfolio Securities") selected to correspond generally, before fees and expenses, to the price and yield performance of a specified fixed income securities index

(each, an "Underlying Index" and collectively, the "Underlying Indices"). A Future Index Fund is an open-end management investment company registered under the Act, or a series thereof (including series of the Trust established in the future), that will: (a) Be designed to track the price and yield performance of a specified domestic fixed-income securities index; (b) have shares listed on an Exchange; (c) be advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (included in the defined term Adviser); and (d) comply with the terms and conditions of the application and any order granted pursuant to the application. No entity that creates, compiles, sponsors or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, Adviser, Subadviser, Distributor, or promoter of an Index Fund.

3. An Initial Index Fund and certain Future Index Funds will invest at least 90% of their total assets in debt securities issued by the U.S. Treasury ("Treasury Securities"). Future Index Funds that seek to correspond generally to the price and yield performance of Underlying Indices that are not exclusively composed of Treasury Securities will invest at least 90% of their total assets in the component securities of their Underlying Indices (except as set forth below). Each Index Fund may also invest up to 10% of its total assets in repurchase agreements and other cash items and futures contracts, options and other derivative instruments, only in furtherance of the objective of seeking results that correspond generally to the price and yield performance, before fees and expenses, of the Fund's Underlying Index.

4. Applicants may also seek to introduce a Future Index Fund that would track the performance of an Underlying Index that holds government mortgage-backed securities ("MBS"). To the extent that an Underlying Index contains MBS, the Future Index Fund may seek to track that portion of the Underlying Index by investing either in MBS included in the Underlying Index or in to-be-announced ("TBA") transactions on MBS (and would treat the TBAs as index securities). A "TBA transaction" essentially is a purchase or sale of a pass-through security for future settlement at an agreed-upon date. Applicants state that most mortgage pass-through securities trades are executed as TBA transactions.

¹ The underlying indices for the Initial Index Funds will be: The Ryan Adjusted 1 Year Treasury Index, the Ryan 2 Year Treasury Index, the Ryan 5 Year Treasury Index, the Ryan 10 Year Treasury Index, and the Ryan 20 Year Treasury Index.

Applicants state that TBA transactions increase liquidity and pricing efficiency of transactions in MBS because they permit similar MBS to be traded interchangeably pursuant to commonly observed settlement and delivery requirements.

5. For Index Funds seeking to provide investment results that generally correspond, before fees and expenses, to the price and yield performance of an Underlying Index composed of a single Treasury Security, the Adviser will construct the portfolios of those Index Funds to provide a duration and cash flow profile similar to that of the Underlying Index. Other Index Funds will utilize either a replication strategy or a representative sampling strategy which will be disclosed with regard to each Index Fund in its prospectus ("Prospectus"). An Index Fund using a replication strategy will invest in the component securities in its Underlying Index in the same approximate proportions as in the Underlying Index. An Index Fund using a representative strategy will hold some, but not necessarily all of the component securities of its Underlying Index. Values for each Underlying Index will be disseminated once each Business Day.² Applicants expect that each Index Fund will have an annual tracking error relative to the performance of its respective Underlying Index of less than 5 percent.

6. Fund Shares will be sold in large aggregations, at least 100,000 shares, as specified in the relevant Prospectus. The price of a Creation Unit will range from \$1,000,000 to \$10,000,000. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Index Funds' administrator and the Distributor ("Authorized Participant"). An Authorized Participant must be a participant in the Depository Trust Company ("DTC," and such participant, "DTC Participant"). Creation Units generally will be issued in exchange for an in-kind deposit of securities and cash, though an Index Fund may sell Creation Units on a cash-only basis in limited circumstances. An investor wishing to purchase a Creation Unit from an Index Fund will have to transfer to the Index Fund a "Portfolio Deposit" consisting of: (a) A portfolio of securities that has been selected by the Adviser or Subadviser to correspond generally to the performance of the relevant Underlying Index ("Deposit

Securities"³); and (b) a cash payment to equalize any differences between the market value per Creation Unit of the Deposit Securities and the net asset value ("NAV") per Creation Unit ("Balancing Amount").⁴ An investor purchasing or redeeming a Creation Unit from an Index Fund will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from the Index Fund incurring costs in connection with the purchase and redemption of the Creation Units.⁵ Each Index Fund will disclose the maximum Transaction Fee charged by the Fund in its Prospectus and the method of calculating the Transaction Fees in its Prospectus or statement of additional information ("SAI").

7. Orders to purchase Creation Units of an Index Fund will be placed with the Distributor who will be responsible for transmitting orders to the Index Funds. The Distributor will issue confirmations of acceptance to purchasers of Creation Units and delivery instructions to the Trust (to implement the delivery of Creation Units), and will maintain records of the orders and confirmations. The Distributor will also be responsible for

³ The Index Funds will comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Redemption Securities (as defined below), including that the Deposit Securities and Redemption Securities are sold in transactions that would be exempt from registration under the Securities Act. In accepting Deposit Securities and satisfying redemptions with Redemption Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Index Funds will comply with the conditions of rule 144A, including in satisfying redemptions with such rule 144A eligible restricted Index Fund Portfolio Securities. The Prospectus for the Index Funds will also state that "An Authorized Participant that is not a Qualified Institutional Buyer ("QIB") will not be able to receive, as part of a redemption, securities that are restricted securities eligible for resale under Rule 144A."

⁴ On each Business Day, prior to the opening of trading on the Exchange, the Fund's custodian will make available the list of the names and the required number of shares of each Deposit Security required for the Portfolio Deposit for the Index Fund. That Portfolio Deposit will apply to all purchases of Creation Units until a new Portfolio Deposit for the Index Fund is announced. Each Index Fund reserves the right to permit or require the substitution of an amount of cash in lieu of depositing some or all of the Deposit Securities in certain circumstances. The Exchange will disseminate every 15 seconds throughout the trading day via the facilities of the Consolidated Tape Association an amount representing, on a per Fund Share basis, the sum of the current value of the Deposit Securities and the estimated Balancing Amount.

⁵ When an Index Fund permits a purchaser to substitute cash for Deposit Securities, the purchaser may be assessed a higher Transaction Fee to offset the brokerage and other transaction costs incurred by the Index Fund to purchase the requisite Deposit Securities.

delivering Prospectuses to purchasers of Creation Units.

8. Persons purchasing Creation Units from an Index Fund may hold the Fund Shares or sell some or all of them in the secondary market. Fund Shares will be listed on an Exchange, and traded in the secondary market in the same manner as other Exchange-listed equity securities. It is expected that one or more members of the listing Exchange will act as a specialist ("Specialist"), and maintain a market on the Exchange for the Fund Shares, or, with respect to The NASDAQ Stock Market, Inc. ("NASDAQ"), the member firm will act as the "Market Maker" and maintain a market on the NASDAQ. The price of Fund Shares traded on an Exchange will be based on a current bid/offer market. Purchases and sales of Fund Shares in the secondary market will be subject to customary brokerage commissions and charges.

9. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). In providing for a fair and orderly secondary market for Fund Shares on the Exchange, the Specialist or Market Maker also may purchase Creation Units. Applicants expect that secondary market purchasers of Fund Shares will include both institutional and retail investors.⁶ Applicants expect that the price at which the Fund Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that the Fund Shares will not trade at a material discount or premium in relation to their NAV.

10. Fund Shares will not be individually redeemable. Fund Shares will only be redeemable in Creation Units from an Index Fund. To redeem, an investor will have to accumulate enough Fund Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit generally will receive (a) A portfolio of securities designated to be delivered for Creation Unit redemptions on the date that the request for redemption is submitted ("Redemption Securities"), which may not be identical to the Deposit Securities required to purchase Creation Units on that date, and (b) a "Cash Redemption Payment," consisting of an amount calculated in the same manner as the Balancing

⁶ Fund Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Fund Shares. DTC or DTC Participants will maintain records reflecting the beneficial owners of Fund Shares.

² A "Business Day" is defined as any day that an Index Fund is open for business, including as required by section 22(e) of the Act.

Amount, although the actual amount of the Cash Redemption Payment may differ from the Balancing Amount if the Redemption Securities are not identical to the Deposit Securities on that day. An investor may receive the cash equivalent of a Redemption Security in certain circumstances.

11. Applicants state that neither the Trust nor any Index Fund will be marketed or otherwise held out as a traditional open-end investment company or mutual fund. Rather, applicants state that each Index Fund will be marketed as an "exchange-traded fund," "ETF," "investment company," "fund" and "trust." All marketing materials that refer to redeemability or describe the method of obtaining, buying or selling Fund Shares will prominently disclose that Fund Shares are not individually redeemable and that Fund Shares may be acquired or redeemed from the Index Fund in Creation Units only. The same type of disclosure will be provided in the Prospectus, SAI, shareholder reports and investor educational materials issued or circulated in connection with Fund Shares. The Index Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Fund Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets,

or the cash equivalent. Because Fund Shares will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and issue Fund Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Fund Shares in Creation Units and redeem Creation Units from each Index Fund. Applicants further state that because the market price of Fund Shares will be disciplined by arbitrage opportunities, investors should be able to sell Fund Shares in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c-1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Fund Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Fund Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Fund Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Fund Shares to trade in the secondary market at negotiated prices. Applicants state that (a) Secondary

market trading in Fund Shares does not involve the Index Funds as parties and cannot result in dilution of an investment in Fund Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Fund Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Fund Shares and their NAV remains narrow.

Section 24(d) of the Act

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants request an exemption from section 24(d) to permit dealers selling Fund Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.⁷

8. Applicants state that Fund Shares will be listed on an Exchange and will be traded in a manner similar to equity securities, including the shares of closed-end investment companies. Applicants note that dealers selling shares of closed-end investment companies in the secondary market generally are not required to deliver a

⁷ Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, such as purchases of Fund Shares from the Index Fund or an underwriter. Applicants state that persons purchasing Creation Units will be cautioned in the Prospectus that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent Fund Shares and sells them directly to its customers, or if it chooses to couple the purchase of a supply of new Fund Shares with an active selling effort involving solicitation of secondary market demand for Fund Shares. The Prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The Prospectus also will state that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Fund Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

prospectus to the purchaser. Applicants contend that Fund Shares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because Fund Shares will be exchange-listed, prospective investors will have access to several types of market information about Fund Shares. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. In addition, the Web site maintained for each Trust will include, for each Index Fund, the prior Business Day's NAV, the mid-point of the bid-ask spread at the time of calculation of the NAV ("Bid/Ask Price"), a calculation of the premium or discount of the Bid/Ask Price against such NAV, and data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.⁸

9. Investors also will receive a short product description ("Product Description"), describing an Index Fund and its Fund Shares. Applicants state that, while not intended as a substitute for a Prospectus, the Product Description will contain information about Fund Shares that is tailored to meet the needs of investors purchasing Fund Shares in the secondary market.

Section 17(a)(1) and (2) of the Act

10. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Applicants state that because the definition of "affiliated person" includes any person owning 5% or more of an issuer's outstanding voting securities there exists a

possibility that, with respect to one or more Index Funds, a large institutional investor, including an Authorized Participant acquiring Creation Units, could own 5% or more, or in excess of 25%, of the outstanding Fund Shares of an Index Fund, making that investor an affiliate of the Fund under section 2(a)(3)(A) or section 2(a)(3)(C).⁹ Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit persons that are affiliated persons of the Funds solely by virtue of holding 5% or more, or more than 25%, of the outstanding Fund Shares of one or more Index Funds (and affiliated persons of such affiliated persons and Second-Tier Affiliates that are not otherwise affiliated with the Trust or the Index Funds) to purchase and redeem Creation Units through "in-kind" transactions.

11. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting the affiliated persons of an Index Fund described above from purchasing or redeeming Creation Units through "in-kind" transactions. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued in the same manner as the Index Fund's Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the affiliated persons of an Index Fund, or the affiliated persons of such affiliated persons, described above, to effect a transaction detrimental to other holders of Fund Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Index Fund.

⁹ There also exists the possibility in the future that a large institutional investor could own 5% or more, or more than 25%, of the outstanding voting securities of one or more other registered investment companies (or series thereof) advised by the Adviser, making the investor an affiliate of an affiliate of the Funds (a "Second Tier Affiliate").

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Index Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, Fund Shares are issued by each Index Fund, which is a registered investment company, and that the acquisition of Fund Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

2. As long as a Trust operates in reliance on the requested order, the Fund Shares will be listed on an Exchange.

3. Neither a Trust nor any Index Fund will be advertised or marketed as an open-end fund or a mutual fund. Each Index Fund's Prospectus will prominently disclose that Fund Shares are not individually redeemable shares and will disclose that the owners of Fund Shares may acquire those Fund Shares from the Index Fund and tender those Fund Shares for redemption to the Index Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Fund Shares are not individually redeemable and that owners of Fund Shares may acquire those Fund Shares from the Index Fund and tender those Fund Shares for redemption to the Index Fund in Creation Units only.

4. The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per Fund Share basis, for each Index Fund: (a) The prior Business Day's NAV and the Bid/Ask Price and a calculation of the premium or discount of such Bid/Ask Price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Index Fund will state that the Web site of the Trust has information about the premiums and discounts at which the Index Fund's Fund Shares have traded.

5. The Prospectus and annual report for each Index Fund will also include: (a) The information listed in condition 4(b), (i) In the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Fund Share basis for

⁸ The Bid/Ask Price per Fund Share of an Index Fund is determined using the highest bid and the lowest offer on the primary listing Exchange at the time of calculation of such Index Fund's NAV.

one, five and ten year periods (or life of the Index Fund), (i) the cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the relevant Underlying Index.

6. Before an Index Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in Fund Shares to deliver a Product Description to purchasers of Fund Shares.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-10753 Filed 6-4-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27848; 812-13341]

John Hancock Trust, et al.; Notice of Application

May 30, 2007.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 12(d)(1)(f) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION:

Applicants request an order that would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts that are within and outside the same group of investment companies.

APPLICANTS: John Hancock Trust ("JHT"), John Hancock Funds II ("JHF II"), John Hancock Funds III ("JHF III"), John Hancock Capital Series ("JHCS," and collectively, "Trusts"), and John Hancock Advisers, LLC ("JHA") and John Hancock Investment Management Services, LLC ("JHIMS," each an "Adviser," together the "Advisers").

FILING DATES: The application was filed on November 7, 2006 and amended on May 23, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a

hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 25, 2007, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants: c/o Mark P. Goshko, Kirkpatrick & Lockhart Preston Gates Ellis LLP, State Street Financial Center, One Lincoln Street, Boston, Massachusetts 02111-2950.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551-6990, or Nadya Roytblat, Assistant Director, at (202) 551-6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549-0102 (telephone (202) 551-5850).

Applicants' Representations

1. The Trusts, organized as Massachusetts business trusts, are registered under the Act as open-end management investment companies and offer multiple series advised by the Adviser ("Portfolios").¹ JHT currently offers 110 Portfolios, JHF II currently offers 96 Portfolios, JHF III currently offers 13 Portfolios and JHCS currently offers 8 Portfolios. Shares of JHT are offered only to registered separate accounts ("Registered Separate Accounts") of the John Hancock Life Insurance Company (U.S.A.) ("JHLICO

¹Applicants request that the order also extend to any future Portfolios of the Trusts, and any other existing or future registered open-end management investment companies and any series thereof that are part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Trusts and are, or may in the future be, advised by the Advisers or any other investment adviser controlling, controlled by, or under common control with the Advisers ("Fund(s)"). The Trusts are the only registered investment companies that currently intend to rely on the requested order. Any other investment company that relies on the order in the future will comply with the terms and conditions of the application.

(USA)"), the John Hancock Life Insurance Company of New York ("JHLICO New York), the John Hancock Life Insurance Company, and the John Hancock Variable Life Insurance Company (collectively, "Insurance Companies"), as the underlying investment vehicles for the variable life insurance and variable annuity contracts ("Variable Contracts") issued by the Insurance Companies. Shares of JHF II are offered directly to the public as well as to certain separate accounts of JHLICO (USA) and JHLICO New York that are not registered as investment companies under the Act in reliance on section 3(c)(11) ("Unregistered Separate Accounts" and together with the Registered Separate Accounts, the "Separate Accounts"). Shares of JHF III and JHCS are offered directly to the public.

2. The Advisers are each a Delaware limited liability company which is registered as an investment adviser under the Investment Advisers Act of 1940. JHA is a wholly-owned subsidiary of John Hancock Financial Services, Inc., a subsidiary of Manulife Financial Corporation and serves as investment adviser for each of the JHCS Funds. JHIMS is an indirect, wholly-owned subsidiary of JHLICO USA and serves as the investment adviser for each of the JHT, JHF II and JHF III Funds.

3. Applicants request relief to permit: (a) A Fund (each a "Fund of Funds") to acquire shares of registered open-end management investment companies that are not part of the same group of investment companies as the Fund of Funds (the "Unaffiliated Investment Companies") and unit investment trusts ("UITs") that are not part of the same group of investment companies as the Fund of Funds ("Unaffiliated Trusts," and together with Unaffiliated Investment Companies, "Unaffiliated Funds"); (b) the Unaffiliated Funds to sell their shares to the Funds of Funds; (c) the Fund of Funds to acquire shares of certain other Funds in the same group of investment companies as the Fund of Funds (the "Affiliated Funds," and together with the Unaffiliated Funds, the "Underlying Funds") and (d) the Affiliated Funds to sell their shares to the Fund of Funds. Certain of the Unaffiliated Funds may be registered under the Act as either UITs or open-end management investment companies and have received exemptive relief to permit their shares be listed and traded on a national securities exchange at negotiated prices ("ETFs"). Each Fund of Funds also may invest in government securities, domestic and foreign common and preferred stock, income-bearing securities, certain types of

futures contracts and options thereon, and in other securities and investments that are not issued by registered investment companies and that are consistent with its investment objective, including money market instruments.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any broker or dealer from selling the shares of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) to the extent necessary to permit the Funds of Funds to acquire shares of the Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) of the Act and to permit the Underlying Funds, their principal underwriters and any broker or dealer to sell their shares to the Funds of Funds in excess of the limits set forth in section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B) which include concerns about undue influence by a fund of funds or its affiliated persons over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemptions are consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue

influence by a Fund of Funds or its affiliated persons over the Underlying Funds. The concern about undue influence does not arise in connection with a Fund of Funds' investment in the Affiliated Funds, since they are part of the same group of investment companies. To limit the control that a Fund of Funds or its affiliated persons may have over an Unaffiliated Fund, applicants submit that: (a) The Advisers and any person controlling, controlled by or under common control with the Advisers, any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised or sponsored by the Advisers or any person controlling, controlled by or under common control with the Advisers (collectively, the "Group"), and (b) any investment adviser within the meaning of section 2(a)(20)(B) of the Act to a Fund of Funds ("Sub-Adviser") and any person controlling, controlled by or under common control with the Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised by the Sub-Adviser or any person controlling, controlled by or under common control with the Sub-Adviser (collectively, the "Sub-Adviser Group") will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants further state that condition 2 precludes a Fund of Funds or the Adviser, any Sub-Adviser, promoter or principal underwriter of a Fund of Funds, as well as any person controlling, controlled by or under common control with any of those entities (each, a "Fund of Funds Affiliate") from taking advantage of an Unaffiliated Fund, with respect to transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or its investment adviser(s), sponsor, promoter, and principal underwriter and any person controlling, controlled by or under common control with any of those entities (each, an "Unaffiliated Fund Affiliate"). No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director,

trustee, advisory board member, investment adviser, Sub-Adviser, or employee of the Fund of Funds, or a person of which any such officer, director, trustee, investment adviser, Sub-Adviser, member of an advisory board, or employee is an affiliated person (each, an "Underwriting Affiliate," except any person whose relationship to the Unaffiliated Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an "Affiliated Underwriting."

6. To further assure that an Unaffiliated Investment Company understands the implications of an investment by a Fund of Funds under the requested order, prior to a Fund of Funds' investment in the shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute an agreement stating, without limitation, that their boards of directors or trustees ("Boards") and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order ("Participation Agreement"). Applicants note that an Unaffiliated Fund (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain its right at all times to reject any investment by a Fund of Funds.²

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. To assure that the investment advisory or management fees are not duplicative, applicants state that, in connection with the approval of any investment advisory or management contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), will find that the management or advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract(s). Applicants further state that the Advisers will waive fees otherwise payable to them by a Fund of Funds in an amount at least equal to any

²An Unaffiliated Fund, including an ETF, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to rule 12b-1 under the Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or an affiliated person of the Adviser by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Fund.

8. Applicants state that with respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the NASD ("NASD Conduct Rule 2830"), will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.

9. Applicants state that the proposed arrangement will not create an overly complex fund structure because no Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions. Applicants also represent that a Fund of Funds' prospectus and sales literature will contain clear, concise, "plain English" disclosure designed to inform investors about the unique characteristics of the proposed arrangement, including, but not limited to, the expense structure and the additional expenses of investing in Underlying Funds.³

³ Each Fund of Funds also will comply with the disclosure requirements concerning the aggregate expenses of investing in Underlying Funds set forth in Investment Company Act Release No. 27399 (June 20, 2006).

B. Section 17(a)

5. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated persons of the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) Any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

6. Applicants state that the Funds of Funds and the Affiliated Funds might be deemed to be under common control of the Advisers and therefore affiliated persons of one another. Applicants also state that the Fund of Funds and the Underlying Funds might be deemed to be affiliated persons of one another if a Fund of Funds acquires 5% or more of an Underlying Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.

7. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that: (a) The terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

8. Applicants believe that the proposed transactions satisfy the requirements for relief under sections 17(b) and 6(c) of the Act as the terms are fair and reasonable and do not involve overreaching.⁴ Applicants state that the

⁴ Applicants acknowledge that receipt of any compensation by (a) An affiliated person of a Funds of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an

terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each Underlying Fund.⁵ Applicants also state that the proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The members of the Sub-Adviser Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group or a Sub-Adviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, then the Group or the Sub-Adviser Group (except for any member of the Group or the Sub-Adviser Group that is a Separate Account) will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Sub-Adviser Group with respect to an Unaffiliated Fund for which the Sub-Adviser or a person controlling, controlled by, or under common control with the Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Investment Company) or as the sponsor (in the case of an Unaffiliated Trust).

A Registered Separate Account will seek voting instructions from its Variable Contract holders and will vote its shares of an Unaffiliated Fund in accordance with the instructions received and will vote those shares for which no instructions were received in

Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds is subject to section 17(e) of the Act. The Participation Agreement also will include this acknowledgement.

⁵ Applicants note a Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions at market prices rather than through principal transactions with the Underlying Fund at net asset value. Applicants would not rely on the requested relief from section 17(a) for such secondary market transactions. A Fund of Funds could seek to transact in "Creation Units" directly with an ETF pursuant to the requested section 17(a) relief.

the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either: (i) Vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares; or (ii) seek voting instructions from its Variable Contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that its Adviser and any Sub-Adviser to the Fund of Funds are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Investment Company, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Investment Company to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Investment Company; (b) is within the range of consideration that the Unaffiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Investment Company and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it

is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Underlying Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Investment Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Investment Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Investment Company will review these procedures periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Investment Company. The Board of the Unaffiliated Investment Company will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Investment Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Investment Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of an Unaffiliated Investment Company will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Investment Company will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting

once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth the: (a) Party from whom the securities were acquired, (b) identity of the underwriting syndicate's members, (c) terms of the purchase, and (d) information or materials upon which the determinations of the Board of the Unaffiliated Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Investment Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Investment Company of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Advisers will waive fees otherwise payable to them by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to rule 12b-1 under the Act) received from an Unaffiliated Fund by

the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Sub-Adviser, or an affiliated person of the Sub-Adviser, from an Unaffiliated Fund, other than any advisory fees paid to the Sub-Adviser or its affiliated person by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Investment Company made at the direction of the Sub-Adviser. In the event that the Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Funds of Funds will not exceed the limits applicable to a funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-10752 Filed 6-4-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55829; File No. SR-DTC-2006-20]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify DTC's Fee Schedule

May 30, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 20, 2006, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) and Rule 19b-4(f)(2) thereunder so that the proposed rule change was effective upon filing with the Commission.² The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change would revise fees for certain services provided by DTC, including (1) decreases to certain fees related to settlement services as part of DTC's continuing efforts to more closely align fees with costs, (2) increases to certain fees related to securities processing, custody and asset servicing, and underwriting services to realign fees with costs, (3) introduction of fees for to discourage certain activities that increase industry inefficiencies, and (4) introduction of new fees related to cost recovery for certain manually intensive services, systems development, or use of Investor's Voluntary Redemptions and Sales Service ("IVORS").³

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.⁴

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC is revising its fees for certain services provided by DTC. These changes include (1) Decreases to certain settlement services fees as part of DTC's continuing efforts to more closely align fees with costs and (2) increases to certain fees related to securities processing, custody and asset servicing, and underwriting services to realign fees with costs.

In addition, DTC is implementing fees to discourage activities which increase industry inefficiencies. Changes in these fees for 2007 include fee increases for (1) Withdrawal by transfer (in connection with DTC's continuing efforts to discourage use of physical certificates), (2) deposit services (to encourage the use of the paperless legal deposit services), and (3) custody services (to encourage the elimination of positions in nontransferable securities). DTC is introducing new fees for (1) manually intensive photocopy and research requests performed in the reorganization service, (2) cost recovery relating to the ongoing development of the new issue information dissemination service under DTC's underwriting services, and (3) transactions processed using the rollover feature of the IVORS.⁵

These proposed fee revisions are consistent with DTC's overall pricing philosophy to align service fees with underlying costs, to discourage manual and exception processing, and to encourage immobilization and dematerialization of securities. The effective date for these fee adjustments was January 2, 2007.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁶ and the rules and regulations thereunder that are applicable to DTC because it clarifies and updates DTC's fee schedule. As such, the rule change provides for the equitable allocation of fees among its participants.

⁴ The Commission has modified the text of the summaries prepared by the DTC.

⁵ For more information on the IVORS rollover feature, see Exchange Act Release No. 34-50279 (August 27, 2004) 69 FR 50279 (September 7, 2004) [File No. SR-DTC-2004-08].

⁶ 15 U.S.C. 78q-1.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(ii) and 17 CFR 240.19b-4(f)(2).

³ The text of the DTC's specific fee changes is set forth in its filing, which can be found at <http://www.dtc.org/impNtc/mor/index.html#2006>.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC 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 relating to the proposed rule change have been solicited or received. DTC will notify the Commission of any written comments received by the DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act⁷ and Rule 19b-4(f)(2)⁸ thereunder because it is establishing or changing a due, fee, or other charge applicable only to a participant. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2006-20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-DTC-2006-20. 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 filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site, <http://www.dtcc.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2006-20 and should be submitted on or before June 26, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7-10768 Filed 6-4-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55830, File No. SR-MSRB-2006-09]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to MSRB Rule G-21, on Advertising, and MSRB Rule G-27, on Supervision

May 30, 2007.

On November 21, 2006, the Municipal Securities Rulemaking Board ("MSRB"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change consisting of (i) Amendments to Rule G-21, on

advertising, and Rule G-27, on supervision, and (ii) an interpretation (the "proposed interpretive notice") on general advertising disclosures, blind advertisements and annual reports relating to municipal fund securities. The MSRB amended the proposed rule change on February 12, 2007 ("Amendment No. 1"). The proposed rule change and Amendment No. 1 thereto were published for comment in the **Federal Register** on February 23, 2007.³ The Commission received one comment letter regarding the proposal.⁴ On May 14, 2007, the MSRB filed a response to the comment letter.⁵ This order approves the proposed rule change as modified by Amendment No. 1.

The proposed rule change consists of (i) Amendments to Rule G-21, on advertising, and Rule G-27, on supervision, and (ii) an interpretation (the "proposed interpretive notice") on general advertising disclosures, blind advertisements and annual reports relating to municipal fund securities. In 2005, the MSRB adopted new section (e) of Rule G-21 that established specific standards for advertisements by brokers, dealers and municipal securities dealers of municipal fund securities, including interests in 529 college savings plans.⁶ This section of the rule was modeled in part on Rule 482 adopted by the SEC under the Securities Act of 1933, as amended, and also codified previous MSRB interpretive guidance on advertisements of municipal fund securities. On May 12, 2006, the MSRB published interpretive guidance on certain elements of amended Rule G-21 as they apply to advertisements of 529 plans.⁷

³ See Securities Exchange Act Release No. 55302 (February 15, 2007), 72 FR 8222 (February 23, 2007) ("Commission's Notice").

⁴ See letter from Jacqueline T. Williams, Chair, College Savings Plans Network, dated March 16, 2007.

⁵ See letter from Ernesto A. Lanza, Senior Associate General Counsel, MSRB, to Nancy M. Morris, Secretary, Commission, dated May 14, 2007 ("MSRB's Response Letter").

⁶ Municipal fund securities are defined in Rule D-12. 529 college savings plans are established by states under Section 529(b)(A)(ii) of the Internal Revenue Code as "qualified tuition programs" through which individuals make investments for the purpose of accumulating savings for qualifying higher education costs of beneficiaries. Section 529 of the Internal Revenue Code also permits the establishment of so-called prepaid tuition plans by states and higher education institutions. All references to 529 plans are intended to encompass only 529 college savings plans established under Section 529(b)(A)(ii).

⁷ See Rule G-21 Interpretive Letter—529 College Savings Plan Advertisements, MSRB Interpretation of May 12, 2006, published in MSRB Notice 2006-13 (May 15, 2006) (the "May 2006 Interpretation"). The proposed rule change supersedes this May 2006 Interpretation.

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The proposed rule change further harmonizes the MSRB's advertising rule with the rules of the SEC and NASD relating to investment company advertising. The proposed rule change also provides certain clarifications of and exceptions to existing standards that the MSRB believes more closely tailor the provisions of the rule to the specific characteristics of the municipal fund securities market without reducing the investor protections afforded by the rule. Although most of the amendments effected by the proposed rule change relate specifically to advertisements of municipal fund securities, certain provisions apply to advertisements of all types of municipal securities, including bonds and notes. The MSRB proposed an effective date for the proposed rule change of April 1, 2007 to coincide with the effective date of NASD Rule 2210(d)(3). A full description of the proposal is contained in the Commission's Notice.

The College Savings Plans Network ("CSPN") stated in its comment letter that, in general, they believe that the proposed rule change may be feasibly implemented. However, CSPN stated that they believe several provisions and interpretive statements in the proposed rule change remain unclear, would be unduly costly to implement or would overly restrict their ability to make college savings information available to specific populations, such as existing account owners or potential account owners who have responded to a blind advertisement. CSPN also requested a delay in the effective date of the proposed rule change.

Transaction Confirmations and Periodic Statements

CSPN asked for clarification of the definition of "form letter" that would be added as new subsection (ii) to Section (a) of Rule G-21 to establish that transaction confirmations and periodic statements sent to account owners (along with any messages printed thereon, enclosed therewith or attached thereto) constitute "form letters" for purposes of Rule G-21. The MSRB stated in its Response Letter that "Provisions relating to transaction confirmations and periodic statements in lieu of such confirmations are set forth in MSRB Rule G-15(a). Information provided to customers in connection with transactions in municipal fund securities in satisfaction of the requirements of Rule G-15(a), or as reasonably contemplated thereunder to be included in a confirmation or periodic statement, is treated for purposes of MSRB rules in the same manner as confirmations sent to

customers in connection with transactions in any other type of municipal security, such as municipal bonds or notes. A determination of the status of information provided to customers beyond such items of information required under or reasonably contemplated by Rule G-15(a) (whether such information is physically attached to or otherwise included within a traditional confirmation or periodic statement, or is included in a separate writing or data file), such as whether such additional information would be treated as a form letter under proposed Rule G-21(a)(ii), generally should be based on a consideration of the specific nature of such additional information and any other relevant facts and circumstances." The Commission agrees that whether any additional information not reasonably contemplated to be included in a confirmation or periodic statement by Rule G-15(a) should be treated as a form letter under proposed Rule G-21(a)(ii) should be based on the specific nature of such additional information and any other relevant facts and circumstances.

Form Letters Regarding Related Municipal Fund Securities

CSPN also asked for clarification regarding the intended operation of proposed Rule G-21(e)(i)(B)(3) concerning certain form letters to existing customers. Proposed Rule G-21(e)(i)(B)(3) provides, in part, that a form letter relating to municipal fund securities that is distributed by a dealer solely to its existing customers to whom the dealer has previously provided an official statement for any municipal fund securities issued by the same issuer as the issuer of the municipal fund securities that are the subject of the form letter is not required to include certain disclosures under Rule G-21(e)(i)(A). CSPN stated that the MSRB's discussion of this provision in the Commission's Notice and in the MSRB's Notice⁸ may be interpreted in an unduly restrictive manner because of the use of the term "related" without further definition. The MSRB stated in its Response Letter that the descriptive information in the Commission's Notice and the MSRB Notice summarized the universe of municipal fund securities issued by such issuer as, in general terms, "the same or related municipal fund securities." The MSRB also stated that the general descriptive language does not limit or modify the plain language of the proposed rule itself,

⁸ MSRB Notice 2006-32 (November 21, 2006) ("MSRB Notice").

which the MSRB believes is clear. The Commission finds that the language of the rule itself is clear.

Disclosure of Loads and Annual Operating Expense Ratio

CSPN also asked for clarification that the cost information required to be disclosed by the proposed amendments to section (e)(i)(A)(3) of Rule G-21 and new subsection (i)(A)(4)(a)(iii) to be added to Section (e) of Rule G-21 is solely the cost information that is actually applicable to the municipal fund securities, rather than other information that may be generally applicable to any underlying investment. CSPN further stated: "For example, the actual cost of investing in a tuition savings program that only assesses a single, unitary, fixed fee for investment in any program investment option could be extremely unclear to a potential investor if the advertisement must list the expense ratio for the mutual fund in which the option invests. In such a scenario, a potential investor could draw the erroneous conclusion that he or she would be required to pay both the fixed fee and the underlying fund expense. * * * If an investment portfolio within a tuition savings program invests in multiple mutual funds similar to a fund of funds, it should not be necessary to identify in a performance advertisement about such investment portfolio each separate expense charge applicable to each separate mutual fund included in the investment portfolio. Rather, it should suffice to set forth a single blended expense charge that is calculated by combining the appropriately weighted expense charges of all of the underlying mutual funds in the portfolio. * * * Moreover, a tuition savings program's costs may reflect discounts from those generally applicable to one or more of the underlying investments or may be uniform across all investment alternatives offered, in which case reference to specific underlying fund expense charges could divert the investor's attention away from a positive fee scenario and obfuscate the actual expense charges directly applicable to the investor."

The MSRB responded that "In understanding how this provision is intended to be implemented, two basic principles apply: (i) As the MSRB seeks to maximize the degree to which the public will be assured of receiving information that is comparable across both the municipal fund securities and investment company securities markets, the MSRB believes that the specific fee and expense information required to be disclosed under proposed Rule G-

21(e)(i)(A)(3) generally should match such information required to be disclosed under NASD Rule 2210(d)(3) and Securities Act Rule 482; and (ii) as the MSRB seeks to maximize the understandability of information received by the public about potential investments and the actual costs that an investment may entail, the MSRB believes that the specific fee and expense information required to be disclosed under proposed Rule G–21(e)(i)(A)(3) generally should be the fees and expenses that an investor would actually incur rather than a collection of the components used to determine such actual fees and expenses. Each advertisement or correspondence⁹ that includes performance data must be examined in light of these basic principles as applied in the context of the specific facts and circumstances.

Thus, for example, if an advertisement includes performance data for a single investment option offered under a 529 college savings plan that consists of a portfolio of securities of several underlying registered investment companies, the requirements of this provision generally could be met with the inclusion of a single fee and expense figure if such figure accurately reflects the total fees and expenses that an investor would actually incur in connection with an investment in such option, taking into consideration any program level fees and expenses as well as any fees and expenses that may be attributable to the underlying securities in the portfolio or that are otherwise payable in connection with such investment. If such advertisement includes separate performance data for more than one investment option offered under a 529 college savings plan, the requirements of this provision generally could be met with the inclusion of a single fee and expense figure for each investment option for which performance data is shown if each such figure accurately reflects the total fees and expenses that an investor would actually incur in connection with an investment in each such option, taking into consideration any program level fees and expenses as well as any fees and expenses that may be attributable to the underlying securities in the option or that are otherwise payable in connection with such investment.” The Commission believes the MSRB has provided sufficient

clarification of the cost information required to be disclosed under the proposed rule change. The Commission would expect the MSRB to provide additional guidance on specific situations if needed.

Currentness of Total Annual Operating Expense Ratios

CSPN also requested clarification on how frequently updates must be made to the total annual operating expense ratios that will be reported in advertisements containing performance data for municipal fund securities. CSPN said that they presume that any advertisements containing performance data, including performance tables on a program’s Web site, need only disclose the total annual operating expense ratios as reported in the most recent official statement for the program.

The MSRB responded that “Proposed Rule G–21(e)(ii)(C) provides that the total annual operating expense ratio that appears in advertisements and correspondence that include performance data shall be calculated as of the most recent practicable date considering the type of municipal fund securities and the media through which data will be conveyed. NASD Rule 2210(d)(3) provides that the total annual operating expenses to be disclosed in investment company performance advertisements should be as stated in the fee table of the investment company’s prospectus current as of the date of submission of an advertisement for publication or as of the date of distribution of other communications with the public. Recognizing that the MSRB cannot mandate that such information be included in the issuer’s official statement for municipal fund securities, proposed Rule G–21(e)(ii)(A) provides that, to the extent that information necessary to calculate performance data or to determine loads, fees and expenses is not available from a registration statement or prospectus, the dealer is to use information derived from the issuer’s official statement, otherwise made available by the issuer or its agents or derived from such other sources which the dealer reasonably believes are reliable. The inclusion in an advertisement or correspondence of the total annual operating expense ratio obtained from the official statement, where the official statement is subject to periodic updating by the issuer and such ratio is from the most recent official statement as of the date of submission of the advertisement for publication or as of the date of distribution to the public, generally would be viewed as meeting the currentness standard under proposed

Rule G–21(e)(ii)(C).” The Commission believes the MSRB has provided sufficient clarification regarding how frequently updates must be made to the total annual operating expense ratios in performance advertisements.

Blind Advertisements

CSPN asked for clarification of language in the proposed interpretive notice regarding proposed Rule G–21(e)(i)(B)(2)(b) concerning certain blind advertisements. CSPN stated that there is no need for a requirement that a “distinct barrier between the providing of information and the seeking of orders” be maintained. CSPN further stated that it is doubtful that such a requirement would meaningfully protect potential investors who have evidenced an interest in initiating an order, and that the requirement may discourage persons from actually establishing accounts.

The MSRB responded that “Proposed Rule G–21(e)(i)(B)(2) provides, in part, that an advertisement is not required to include certain disclosures under Rule G–21(e)(i)(A) and (B) if it does not identify a dealer or its affiliates and if it includes only one or more of the following: The issuer’s name, contact information to obtain the official statement or other information, the issuer’s logo or an issuer mark or slogan that does not constitute a call to invest in municipal fund securities. Clause (b) of this provision provides that, if contact information is provided for a dealer acting as the issuer’s agent in making the official statement or other information available, then no orders for municipal fund securities may be accepted through such source unless initiated by the customer. The proposed interpretive notice states, ‘If a potential customer initiates an order through the source identified in the advertisement, a distinct barrier between the providing of information and the seeking of orders must be maintained to qualify as a blind advertisement.’ The proposed interpretive notice also provides certain illustrative examples of this requirement.

The MSRB notes that the blind advertisement provision in proposed Rule G–21(e)(i)(B)(2) is somewhat unique within the structure of the federal securities laws and was created in part as a result of the public–private partnerships that most 529 college savings plans represent and that are not typically seen in other sectors of the securities markets. This provision was intended to permit dealers to partner with the state plans in providing to the public basic information regarding the states’ public purpose goals without

⁹Proposed Rule G–21(e)(vii) provides that all correspondence with the public that includes performance data relating to municipal fund securities must comply with the requirements of the rule regarding such performance data as if such correspondence were a product advertisement.

promoting the sales activities of the dealers. As such, the MSRB views the requirement of a distinct barrier as an appropriately measured step to help ensure that the result of such blind advertisements is more information to the public rather than merely more opportunities for dealers to make sales. The MSRB also noted that to that end, any delays in the ability of an investor to invest as a result of the proposed barrier between the provision of information and sales activity could be viewed, if anything, as providing the potential customer with a greater opportunity to review the information he or she has received and to make an investment decision in a less hurried environment. Dealers seeking more direct promotion of potential investment opportunities may do so using materials that are subject to other provisions of Rule G-21." The Commission believes that the proposed barrier between the provision of information and sales activity is a measured step that is not inconsistent with the Act.

Required Annual Reports

The proposed interpretive notice provides guidance to the effect that, in circumstances where a dealer may be required by state law or rules and regulations to prepare or distribute an annual financial report or other similar information regarding a municipal fund securities program, such report or information will not be treated as an advertisement so long as the dealer provides such report or information solely in the manner required by such state law or rules and regulations. CSPN stated that while this guidance is generally helpful, it is too narrow to the extent that it recognizes only actual state laws or formal administrative rulemaking as the means by which a dealer may be required to prepare or distribute information. CSPN stated that "This limitation is unnecessary to protect the investing public as a whole to the extent that such requirements typically address the distribution of information to existing customers. It is also both arbitrary and unnecessarily intrusive upon state discretion in administering their tuition savings programs in that it provides relief only in connection with programs operated under statutes that include disclosure requirements or administered by public entities that are authorized to adopt administrative rules or regulations and that choose to address their customer's need for such information by exercising this authority. Some programs, however, are administered by public entities, such as trusts, that lack this authority or

that choose to require dealers to prepare and provide such information as a contractual matter."

The MSRB stated that "This interpretive guidance is intended to be consistent with similar guidance provided by NASD with respect to its Rule 2210 as applied to certain performance information and hypothetical illustrations required by state laws to be provided by dealers in connection with retirement investments and variable annuity contracts. The MSRB recognizes that there is considerable variability from state to state in the methods they may use to adopt binding requirements of general applicability. Therefore, the MSRB would not view the expression 'rules and regulations adopted by the state or an instrumentality thereof governing a particular 529 plan or other municipal fund security program' as limiting the types of requirements to which the interpretation is applicable solely to those promulgated pursuant to a specific formal administrative rulemaking process. Instead, the MSRB generally views the interpretation as applicable where the state or instrumentality thereof establishes a mandate of general applicability to, and binding upon, any equally situated person or entity. However, a negotiated contractual provision would not satisfy this requirement as this would permit dealers to avoid the appropriate application of Rule G-21 to promotional materials through narrowly tailored contractual arrangements." The Commission believes that this guidance is not inconsistent with the Act because it provides relief to dealers providing certain information required by state law and is intended to be consistent with similar guidance provided by NASD.

Effective Dates

With one exception, CSPN requested that the proposed rule change be made effective immediately upon publication of the Commission's approval order, rather than the MSRB's previously requested April 1, 2007 effective date. CSPN requested that the revisions to proposed Rule G-21(e)(i)(A)(3) and proposed new Rule G-21(e)(i)(A)(4)(a)(iii), relating to disclosures of maximum sales loads and total annual operating expense ratio, instead be made effective sixty days after the publication of such approval order, and that dealers not be required to implement such provisions until 15 days after the end of the calendar quarter following such effectiveness.

The MSRB agrees with CSPN that the proposed rule change should be made

effective immediately upon approval, provided that dealers should not be required to implement the new provisions of Rule G-21(e)(i)(A)(3) and (4)(a)(iii) relating to disclosure of maximum sales load and total annual operating expense ratio (as well as the related provisions of Rule G-21(e)(ii)(A), G-21 (e)(vii) and G-27(d)(ii)) for any advertisement submitted or caused to be submitted for publication, or any advertisement or correspondence otherwise distributed to the public, prior to July 15, 2007. Nonetheless, the MSRB urges dealers to implement these provisions as soon as practicable. In response to these comments and in recognition of potential production, publication and related technical issues that may exist in some cases in implementing the proposed rule change, the Commission finds that the implementation period proposed by the MSRB will provide dealers adequate time to make any necessary changes.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB¹⁰ and, in particular, the requirements of Section 15B(b)(2)(C) of the Act¹¹ and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules 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 municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.¹² In particular, the Commission finds that the proposed rule change will further investor protection by raising the standards for advertisements of municipal fund securities and by making information provided in such advertisements comparable for different municipal fund securities investments and more comparable to registered mutual funds. The proposal will be effective upon publication in the **Federal Register**, except that dealers will not be required to implement the new provisions of

¹⁰ In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78o-4(b)(2)(C).

¹² *Id.*

Rule G-21(e)(i)(A)(3) and (4)(a)(iii) relating to disclosure of maximum sales load and total annual operating expense ratio (as well as the related provisions of Rule G-21(e)(ii)(A), G-21(e)(vii) and G-27(d)(ii)) for any advertisement submitted or caused to be submitted for publication, or any advertisement or correspondence otherwise distributed to the public, prior to July 15, 2007.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-MSRB-2006-09), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7-10767 Filed 6-4-07; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent To Prepare an Environmental Impact Statement for the Southwest-to-Northeast Rail Corridor Project in Fort Worth, TX

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The FTA and the Fort Worth Transportation Authority (The T) issue this notice to advise interested agencies and the public of their intent to prepare an EIS in accordance with the regulations implementing the National Environmental Policy Act (NEPA) for transit improvements in Fort Worth, and Tarrant County, Texas. Transit improvements from southwest Fort Worth, through downtown Fort Worth, to the northern entrance into the Dallas-Fort Worth International Airport (DFW Airport), are proposed along what is known as the Southwest-to-Northeast Rail Corridor. The proposed alignment will largely follow the Fort Worth & Western Railroad (FWWR), Union Pacific Railroad Company (UPRR), Burlington Northern Santa Fe Railroad (BNSF), and Dallas Area Rapid Transit-owned Cotton Belt rail lines that traverse Tarrant County.

Transportation improvements are needed to meet current and future travel demand and to upgrade the transportation facilities in the corridor.

The EIS will evaluate the future No-Build Alternative, a Transportation Systems Management (TSM) alternative, the preliminary Locally Preferred Alternative (LPA) from the recently completed planning Alternatives Analysis (AA), and any additional reasonable alternatives that emerge from the scoping process.

DATES: *Comment Due Date:* Written or electronic comments on the scope of the EIS, including the purpose and need for transportation action in the corridor, and alternatives and impacts to be considered, should be sent to the project public involvement team (see **ADDRESSES** below) by July 31, 2007.

Scoping Meetings: Public scoping meetings will be held from June 19 to June 21, 2007, at the following times and locations:

Tuesday, June 19, 2007

6 p.m.–7:30 p.m., Texas Department of Transportation—Regional Training Center, 2501 SW Loop 820, (I-20 and McCart Avenue), Fort Worth, Texas 76133.

Wednesday, June 20, 2007

12 p.m. (noon)—1:30 p.m., Intermodal Transportation Center, 1001 Jones Street, Fort Worth, Texas 76102.

Thursday, June 21, 2007

7 p.m.–8:30 p.m., Grapevine Community Activities Center, 1175 Municipal Way, Grapevine, Texas 76051.

The meeting locations are accessible by persons with disabilities. The public involvement team must be contacted in advance regarding special needs such as signing or translation services. The time and place of the public scoping meetings will also be provided through display advertisements in local newspapers; newsletters that will be mailed to persons on the project database who have expressed an interest in the project; E-mail notifications; media releases that will be distributed to all print and electronic media serving the corridor; and posting of information on the project Web site. The scoping information packet is available on the internet at www.SW2NERail.com. The packet is also available in hardcopy form by contacting the project public involvement team as indicated below.

ADDRESSES: Written or electronic comments on the scope of the EIS should be sent to: Southwest-to-Northeast Rail Corridor, 1600 E. Lancaster Avenue, Fort Worth, TX 76102; the Southwest-to-Northeast Rail Corridor Fax: 214-495-0479; or E-mail: info@SW2NERail.com.

Additional scoping information may be requested and other requests made by contacting the Public Involvement Team at: Southwest-to-Northeast Rail Corridor Public Involvement Team, 1600 E. Lancaster Avenue, Fort Worth, TX 76102; the Southwest-to-Northeast Rail Corridor Telephone Hotline: 817-215-8785; or E-mail: info@SW2NERail.com.

FOR FURTHER INFORMATION CONTACT:

Lynn Hayes, Community Planner, Federal Transit Administration, Region VI; (817) 978-0550

SUPPLEMENTARY INFORMATION:

I. Proposed Action

Following a study of the transportation needs in the corridor and an analysis of alternative solutions, The T Executive Committee recommended transportation improvements along portions of the FWWR, UPRR, BNSF, and DART-owned Cotton Belt railroad lines from southwest Fort Worth beginning at approximately Altamesa Boulevard/Dirks Road, through Downtown Fort Worth, and continuing through Haltom City, North Richland Hills, Watauga, Hurst, Colleyville, and Grapevine, before terminating inside the northern entrance of DFW Airport. The planning Alternatives Analysis (AA) document that supported The T's decision on a preliminary Locally Preferred Alternative (LPA) is available for public review on the internet at www.SW2NERail.com or by contacting the public involvement team at the **ADDRESSES** above. The AA, which led to the project's purpose and need statement and the alternatives recommended for further review, will also be available for review at the public scoping meetings.

The FTA and The T will prepare an EIS to evaluate the preliminary LPA (i.e., regional or commuter rail on the Southwest-to-Northeast alignment), the future No-Build alternative, and a TSM alternative. Interested individuals, organizations, businesses, Native American tribes, and federal, state and local government agencies are invited to participate in determining the scope of the EIS, including the purpose and need for transportation action in the corridor, alternative alignments, alternative station locations, impacts to be evaluated, and environmental or community resources to be protected. Specific suggestions on additional alternatives to be examined and issues to be addressed are welcome and will be considered in the development in the final study scope. Scoping comments may be made orally or in writing no later than July 31, 2007. See **ADDRESSES** above. Additional information on the

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

EIS process, the purpose and need, alternatives, and anticipated impact issues are available from The T. See **ADDRESSES** above.

II. Description of the Study Area and Project Purpose and Need

The study area for the EIS evaluation is the travelshed from southwest Fort Worth, through downtown Fort Worth, to DFW Airport, which is a distance of approximately 36 miles. The purpose of the proposed action is to improve mobility between and among activity centers in the corridor, provide multimodal solutions for mobility in the corridor that help mitigate congestion and improve air quality, and provide a transportation solution that interacts seamlessly and efficiently with other transportation systems in the region. FTA and The T seek comment on the project's purpose and need. More details are available in the scoping information packet. See **ADDRESSES** above.

The relationships of concurrent projects, such as the State Highway (SH) 121 Southwest Parkway (currently in final design) being conducted by the Texas Department of Transportation (TxDOT) and the North Texas Tollway Authority (NTTA); the Interstate Highway 35 West (I-35W also commonly referred to as IH 35W) Corridor Improvement Study (CIS) by TxDOT; the Loop 820 East Corridor Environmental Assessment (EA); the SH-121/SH-183 (Airport Freeway) CIS; the SH-114/SH-121 (DFW Connector) CIS; the Loop 820 Northeast Corridor CIS; and others, will also be considered in the EIS process.

III. Alternatives To Be Considered

The alternatives evaluated in the EIS will include, but not be limited to, the preliminary Locally Preferred Alternative (LPA) developed in the AA and adopted by The T's Executive Committee in November 2006. This alternative consists of regional rail using portions of the FWWR, UPRR, BNSF, and DART-owned Cotton Belt rail alignments between southwest Fort Worth and the north entrance to DFW Airport. Feeder bus improvements are also included as part of the recommended LPA. Eleven stations were proposed on the alignment during the AA: Altamesa Boulevard/Dirks Road; I-20 and Granbury Road; Berry/Texas Christian University (TCU); Medical Center; Texas and Pacific (T&P) Terminal (existing); the Fort Worth Intermodal Transportation Center (ITC) (existing); Stockyards/23rd; Beach Street; Grapevine/Main Street; DFW Airport—North; and DFW Airport—Terminal A/B.

The EIS will examine these and other reasonable alternatives that emerge from the scoping process. The EIS will also evaluate the appropriate end-of-line and associated facilities and connections with the Trinity Railway Express (TRE) and a potential future connection with the DART light rail system at DFW Airport. As part of the evaluation, station locations, rail vehicle storage and maintenance facilities, and other ancillary facilities, such as stormwater management systems, will be identified and studied as appropriate.

The EIS will also evaluate the future No-Build Alternative and a TSM Alternative. Other alternatives may be added as a result of scoping and agency coordination efforts.

IV. Probable Impacts for Analysis

The EIS evaluation will analyze social, economic, and environmental impacts of the alternatives. Major issues to be evaluated include air quality, noise and vibration, aesthetics, community cohesion impacts, and possible disruption of neighborhoods, businesses and commercial activities. The impact areas and level of detail addressed in the EIS will be consistent with the requirements of SAFETEA-LU Section 6002 and the FTA/Federal Highway Administration environmental regulation (Environmental Impact and Related Procedures, 23 CFR 771 and 40 CFR 1500–1508) and other environmental and related regulations. Among other factors, the EIS will evaluate:

- Transportation service including future corridor capacity;
- Transit ridership and costs;
- Traffic movements and changes and associated impacts to local facilities;
- Community impacts such as land use, displacements, noise and vibration, neighborhood compatibility and aesthetics; and
- Resource impacts including impacts to historic and archeological resources, parklands, cultural resource impacts, environmental justice, and natural resource impacts including air quality, wetlands, water quality, wildlife, and vegetation.

The proposed impact assessment and evaluation will take into account both positive and negative impacts, direct and indirect impacts, short-term (during the construction period) and long-term impacts, and site-specific as well as corridor-wide and cumulative impacts. Mitigation measures will be considered for any adverse environmental impacts identified. Other potential impacts may be added as a result of scoping and agency coordination efforts.

V. Anticipated Federal Approvals

In accordance with FTA policy, FTA and The T will coordinate compliance with all applicable Federal environmental laws, regulations, and executive orders during the NEPA process. Federal approvals anticipated to be required for implementing the recommended preliminary Locally Preferred Alternative include:

- U.S. Army Corps of Engineers' Section 404 Permit in accordance with the Clean Water Act;
- Trinity Corridor Development Certificate Permit in accordance with North Central Texas Council of Governments' (NCTCOG's) Trinity River Common Vision Program;
- Section 4(f) evaluation in accordance with 49 USC 303; and
- Section 106 review in accordance with the National Historic Preservation Act.

Issued on: May 30, 2007.

Robert C. Patrick,

Regional Administrator, Federal Transit Administration, Fort Worth, Texas.

[FR Doc. E7-10762 Filed 6-4-07; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds Termination; American International Insurance Company of Puerto Rico

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 12 to the Treasury Department Circular 570, 2006 Revision, published June 30, 2006 at 71 FR 37694.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874-6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above-named company under 31 U.S.C. 9305 to qualify as an acceptable surety on Federal bonds was terminated effective May 24, 2007. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 ("Circular"), 2006 Revision, to reflect this change.

With respect to any bonds currently in force with the above listed company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from this

company, and bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the internet at <http://www.fms.treas.gov/c570>.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: May 24, 2007.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 07-2780 Filed 6-4-07; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Terminations: The Buckeye Union Insurance Company, The Fidelity and Casualty Company of New York; Firemen's Insurance Company of Newark, NJ

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 11 to the Treasury Department Circular 570, 2006 Revision, published June 30, 2006, at 71 FR 37694.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874-6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificates of Authority issued by the Treasury to the above-named companies under 31 U.S.C. 9305 to qualify as acceptable sureties on Federal bonds have been terminated. The above-named companies merged with and into The Continental Insurance Company effective December 31, 2006. The surviving corporation of the merger activity is The Continental Insurance Company, a Pennsylvania domiciled corporation. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 ("Circular"), 2006 Revision, to reflect these changes.

In the event bond-approving officers have questions relating to bonds issued by the above-named companies that have merged with and into The Continental Insurance Company, they should contact The Continental Insurance Company at (877) 262-2727.

The Circular may be viewed and downloaded through the internet at <http://www.fms.treas.gov/c570>.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: May 24, 2007.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 07-2779 Filed 6-4-07; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Change in State of Incorporation; the Continental Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 10 to the Treasury Department Circular 570, 2006 Revision, published June 30, 2006, at 71 FR 37694.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874-6850.

SUPPLEMENTARY INFORMATION: The Continental Insurance Company has redomesticated from the state of South Carolina to the state of Pennsylvania, effective October 1, 2006.

Federal bond-approving officers should annotate their reference copies of the Treasury Department Circular 570 ("Circular"), 2006 revision, to reflect this change.

The Circular may be viewed and downloaded through the Internet at <http://www.fms.treas.gov/c570>.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: May 24, 2007.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 07-2778 Filed 6-4-07; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8825

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8825, Rental Real Estate Income and Expenses of a Partnership or an S Corporation.

DATES: Written comments should be received on or before August 6, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-6688, or through the Internet at Carolyn.N.Brown@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Rental Real Estate Income and Expenses of a Partnership or an S Corporation.

OMB Number: 1545-1186.

Form Number: Form 8825.

Abstract: Partnerships and S corporations file Form 8825 with either Form 1065 or Form 1120S to report income and deductible expenses from rental real estate activities, including net income or loss from rental real estate activities that flow through from partnerships, estate, or trusts. The IRS uses the information on the form to verify that partnerships and S corporations have correctly reported their income and expenses from rental real estate property.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 705,000.

Estimated Time per Respondent: 8 hours, 55 minutes.

Estimated Total Annual Burden Hours: 6,288,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 29, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7-10800 Filed 6-4-07; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Investigative Inquiry Forms.

DATES: Written comments should be received on or before August 6, 2007, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, A4-A, Parkersburg, WV 26106-5312, or *Vicki.Thorpe@bpd.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, A4-A, Parkersburg, WV 26106-5312, (304) 480-8150.

SUPPLEMENTARY INFORMATION:

Title: Investigative Inquiry Forms.

OMB Number: None.

Abstract: The information is requested support of background investigations.

Current Actions: None.

Type of Review: New.

Affected Public: Individuals.

Estimated Number of Respondents: 1,125

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 188.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 30, 2007.

Vicki S. Thorpe,

Manager, Information Management Branch.

[FR Doc. E7-10741 Filed 6-4-07; 8:45 am]

BILLING CODE 4810-39-P



Federal Register

**Tuesday,
June 5, 2007**

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 13 and 22

Protection of Eagles and Authorizations Under the Bald and Golden Eagle Protection Act for Take of Eagles; Final Rule and Proposed Rule

Protection of Eagles and National Bald Eagle Management Guidelines; Notices

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 22**

RIN 1018-AT94

Protection of Eagles; Definition of "Disturb"**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (the Service), are codifying a definition of "disturb" under the Bald and Golden Eagle Protection Act (Eagle Act). Given that the Eagle Act's prohibition against disturbance applies to both bald and golden eagles, the definition will apply to golden eagles (*Aquila chrysaetos*) as well as bald eagles (*Haliaeetus leucocephalus*).

If the bald eagle is delisted, the Eagle Act will be the primary law protecting bald as well as golden eagles. The Eagle Act prohibits unregulated take of bald and golden eagles and provides a statutory definition of "take" that includes "disturb." Although disturbing eagles has been prohibited by the Eagle Act since the statute's enactment in 1940, the meaning of "disturb" has not been explicitly defined by the Service or by the courts. To define "disturb," we considered Congressional intent, the common meaning of the term as applied to the conservation intent of the Eagle Act, and the working definitions of "disturb" currently used by Federal and State agencies to manage eagles. This definition of "disturb" will apply to eagles in Alaska, where the bald eagle has never been listed under the ESA, as well as eagles throughout the 48 contiguous States. (Eagles do not occur in Hawaii.)

In addition to this final rule, the Service is publishing three related documents elsewhere in today's **Federal Register**: a notice of availability of the final environmental assessment for the definition of "disturb"; a notice of availability for National Bald Eagle Management Guidelines; and a proposed rule to codify additional take authorizations under the Eagle Act.

DATES: This rule goes into effect on July 5, 2007.

FOR FURTHER INFORMATION CONTACT: Eliza Savage, Division of Migratory Bird Management, (see **ADDRESSES** section); or via e-mail at: Eliza_Savage@fws.gov; telephone: (703) 358-2329; or facsimile: (703) 358-2217.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 2006, in anticipation of possible removal (delisting) of the bald eagle in the 48 contiguous States from the List of Endangered and Threatened Wildlife under the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*), we proposed a regulatory definition of "disturb" under the Bald and Golden Eagle Protection Act (Eagle Act) (16 U.S.C. 668-668d) to guide post-delisting bald eagle management (71 FR 8265). The Service concurrently proposed two other related actions: (1) A notice of availability of draft National Bald Eagle Management Guidelines (Guidelines) (71 FR 8309, February 16, 2006); and (2) a reopening of the comment period on our proposal to remove the bald eagle from the List of Endangered and Threatened Wildlife under the ESA (71 FR 8238, February 16, 2006). On May 16, 2006, we extended the 90-day comment period on those actions by 30 days, to June 19, 2006 (71 FR 28293). Fifty-five respondents commented on both the definition of disturb and the draft Guidelines. Eighteen commented on the definition only and 31 commented on the Guidelines only.

The definition of "disturb" we proposed on February 16, 2006 read: "*Disturb* means to agitate or bother a bald or golden eagle to the degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, causing injury, death, or nest abandonment." On December 12, 2006, we made available a Draft Environmental Assessment (DEA) of our proposed definition of "disturb," and announced its availability through a notice in the **Federal Register** (71 FR 74483). In the DEA, we considered a definition slightly modified from the definition proposed in February as our preferred alternative. The definition was reworded for purposes of clarity, and included a definition of "injury," a term used in the definition of "disturb." During this round of public comment, we received 1,977 comments, approximately 1,875 of which were very similar to one another.

The definition of disturb we are codifying through this rulemaking is a modification of the definition we identified as our preferred alternative in the DEA and reflects our consideration of the various concepts raised to us in the comment processes. The following definition of "disturb" will be codified in regulations at 50 CFR 22.3: "Disturb means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1)

injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior." The final definition thus reduces uncertainty, adds clarity, and appropriately implements the Eagle Act.

The definition was reworded from the preferred alternative in the DEA to address concerns expressed about enforceability and predictability. The earlier definitions we had proposed required injury, death, or nest abandonment to have occurred, whereas the final definition includes the phrase "or is likely to cause," with the result that all actions that are likely to cause the biologically significant event (injury, loss of productivity, or nest abandonment) by agitating and interfering with eagles will constitute disturbance, whether or not the harm is documented. Requiring actual injury, death, or nest abandonment was viewed as creating uncertainty as to whether a disturbance has taken place or whether it will, since death or injury will almost always occur at a later date and sometimes a different location. It also implies that actual harm will have to be proven to have taken place, which would make the prohibition difficult to enforce without evidence of a dead or injured eagle. The final definition is more consistent with the separate elements used in the Eagle Act to define "take" as well as how the term "disturb" has been applied in the past for managing eagles. We are not aware of any local, State, Federal, or tribal guidance or regulation that interprets the term "disturb" to require a threshold as severe as wounding or death.

We believe the addition of the phrase "likely to cause, based on the best scientific information available" in the final rule increases predictability and is the logical outgrowth of the comment process. Many commenters, including numerous state wildlife agencies and our own Office of Law Enforcement, encouraged us to incorporate a "likelihood" clause for purposes of predictability and enforceability. Without such a clause, similar actions may be treated differently, depending on their outcome. Additionally, the phrase is consistent with the goal of the Eagle Act of protecting eagles by preventing injury. The Service will use the best available information to predict the likely outcomes of an action or activity. If it is clear an action is likely to cause one of the negative results, there is a high degree of predictability that the disturbance will occur in

violation of the Eagle Act. It is at this time, when the actor is contemplating the action, that predictability is important, because that is when alternatives are available.

In addition to immediate impacts, this definition also covers impacts that result from human-caused alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle's return, such alterations agitate or bother an eagle to a degree that injures an eagle or substantially interferes with normal breeding, feeding, or sheltering habits and causes, or is likely to cause, a loss of productivity or nest abandonment.

Because one of the criteria for disturbance in the proposed definition of "disturb" was "injury," we proposed in the DEA to define "injury" to clarify our intent. We included the following definition of "injury" as part of our preferred alternative in the DEA: "*Injury* means a wound or other physical harm, including a loss of biological fitness significant enough to pose a discernible risk to an eagle's survival or productivity." We intended this definition to clarify that "injury" is not restricted to a wound in which skin is torn or bruised, or bones are broken. Defining "injury" to include a decrease in biological fitness of the eagle significant enough to affect productivity would clarify that interference with feeding and sheltering habits can cause disturbance short of the eagle being wounded or killed. The inclusion of decreased productivity in the definition of "injury" underscored the biological premise that preservation of eagles depends on protection from disturbance when feeding and sheltering as well as when nesting. In this final rule, we do not define "injury" separately because the final definition of "disturb" directly incorporates the phrase "decrease in its productivity," removing the need for a separate definition of "injury."

A decrease in productivity refers to the reproductive capacity of the eagle(s). A decrease in productivity can be caused by events that occur at various stages of an eagle's life cycle. For example, a decrease in productivity can occur because eagles are not fit enough after the wintering season to breed (e.g., if they have not adequately fed or sheltered). A decrease in productivity can also occur after eagles have initiated breeding behaviors; for example, if they do not lay eggs or lay fewer eggs than would be expected based on the best scientific information available, due to interruptions in their normal behavior. It may also occur if eggs do not hatch after being exposed to extreme heat or cold in the absence of the adults, or

when nestlings do not survive long enough to fledge because they are not adequately fed by adults due to interference at an important foraging area. All of these outcomes can be caused by factors unrelated to human activity. A decrease in productivity is only a prohibited disturbance if it is the result, or likely to be the result, of activities by humans that agitates and bothers the birds and substantially interferes with breeding, feeding, or sheltering behavior.

The final definition removes the reference to death, since "injury" is a broader term than "death" and encompasses injury that results in death. Also, as several commenters noted, killing eagles is already prohibited under the Eagle Act, so it is not necessary to repeat that prohibition within the definition of "disturb." We also note that a definition of "disturb" that required death or injury might be vulnerable to a claim that the definition renders the word "disturb" as surplusage, given that the Eagle Act's definition of "take" separately lists the terms "kill" and "wound."

We also note that the only court to have addressed the relationship between the prohibitions of the ESA and the Eagle Act stated:

Both the ESA and the Eagle Protection Act prohibit the take of bald eagles, and the respective definitions of "take" do not suggest that the ESA provides more protection for bald eagles than the Eagle Protection Act * * *. The plain meaning of the term "disturb" is at least as broad as the term "harm," and both terms are broad enough to include adverse habitat modification. (*Contoski v. Scarlett*, Civ No. 05-2528 (JRT/RLE), slip op. at 5-6 (D. Minn. Aug 10, 2006).)

In any event, the final definition cannot—and does not—broaden the protections provided by the Eagle Act, but merely clarifies the meaning of the protection that exists.

Response to Comments on the Definitions Identified in the February 16, 2006, Proposed Definition and the Draft Environmental Assessment

Comment 1: The Service needs to formally grandfather existing ESA take authorizations under section 10 permits and section 7 biological opinions.

Service response: If the bald eagle is delisted, the Service will honor existing ESA incidental take authorizations. At least until we complete a rulemaking for permits under the Bald and Golden Eagle Protection Act, we do not intend to refer for prosecution the take of any bald eagle under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703-712), or the Bald and Golden

Eagle Protection Act of 1940, as amended (16 U.S.C. 668-668d), if such take is in full compliance with the terms and conditions of an incidental take statement issued to the action agency or applicant under the authority of section 7(b)(4) of the ESA or a permit issued under the authority of section 10(a)(1)(A) or 10(a)(1)(B) of the ESA. Consistent with its authority under the Eagle Act, the Service has proposed in today's **Federal Register**, a separate rulemaking to establish criteria for issuance of permits to authorize the "take" of bald and golden eagles. We address previous ESA authorizations for incidental take of bald eagles in that rulemaking, which, if finalized, would extend comparable authorizations under the Eagle Act.

Comment 2: The Service should provide assurances to persons who received "authorizations" granted through letters of technical assistance while the bald eagle was listed under the ESA.

Service response: The nature and degree of assurances that were provided by letters of technical assistance will not be altered by removal of the bald eagle from the list of threatened wildlife under the ESA.

Comment 3: A new incidental take permitting system needs to be developed under the Eagle Act. A mechanism is needed to address situations where incidental take will be unavoidable (e.g., highway maintenance, bald eagles nesting at the end of an airport runway). An incidental take permit would provide conservation benefits because it would allow the Service to work with applicants to establish mitigation measures that can provide a net benefit to eagles and other wildlife. Moreover, a permit mechanism with associated monitoring and reporting requirements would provide the Service with valuable data and information about the real effects of activities on eagles, allowing the Service to modify management practices accordingly. The Eagle Act provides for this type of incidental take authorization by inclusion of the following language: "Whenever, after investigation, the Secretary of the Interior shall determine that it is compatible with the preservation of the bald eagle or the golden eagle to permit the taking, possession, and transportation of specimens thereof " or that it is necessary to permit the taking of such eagles for the protection of wildlife or of agricultural or other interests in any particular locality, he may authorize the taking of such eagles pursuant to regulations which he is

hereby authorized to prescribe" (16 U.S.C. 668a).

Service response: We agree with this comment and have proposed a take permit regulation, published in today's **Federal Register**, that would authorize the take of bald and golden eagles under certain conditions, including requirements for conservation measures and monitoring. The regulations we have proposed would (1) establish a take permit under the Eagle Act, (2) extend Eagle Act authorizations comparable to the authorizations granted under the ESA to entities who continue to operate in full compliance with the terms and conditions of permits issued under ESA section 10 and incidental take statements issued under ESA section 7, and (3) authorize take of eagle nests that pose a risk to human safety or to the eagles themselves.

Take permits would be issued under 50 CFR part 22, Eagle Permits. The permits would also provide any necessary authorization under the Migratory Bird Treaty Act, as implemented through 50 CFR 22.11(a), which states, "You do not need a permit under parts 17 and 21 " for any activity permitted under this part 22 with respect to bald and golden eagles." The take permit provisions would primarily authorize disturbance of eagles. However, the regulations could also authorize other take of eagles where such take cannot be avoided. For example, take could be authorized for a utility that follows best management practices for minimizing eagle mortalities. Even the use of best management practices cannot ensure that eagles will not be killed by a collision with power lines, and the regulation could cover such take.

Comment 4: As currently written, harm to eagles would have to be proven after the fact, despite the widespread knowledge that many effects on eagles have predictable results. The definition restricts enforcement to incidents where death, injury, or nest abandonment has already occurred. In addition, the injury or death will almost always occur at a later date and sometimes a different location. This type of after-the-fact cause and effect relationship would make violations too difficult to legally establish, and would seriously compromise law enforcement and fail to protect eagles. Another unfortunate result will be that equally culpable acts will be treated differently depending on whether a dead or wounded eagle is recovered. Neither the actor nor the government can know whether the action is lawful or unlawful.

Service response: We agree with these concerns. To address them, we modified the definition to make clear that it encompasses impacts to eagles that cause "or are likely to cause" injury, decreased productivity or nest abandonment. This definition no longer restricts enforcement to situations where death, injury, or nest abandonment has already occurred. The definition codified by this rule therefore facilitates law enforcement, avoids the use of the term "kill," which is also defined in the Eagle Act as a take, adds predictability for the regulated public by treating similar actions the same way, and ensures better protection for eagles.

Comment 5: The threshold impacts of death, injury, and nest abandonment are too extreme. The regulatory definition of "disturb" should be closer to the plain meaning of the term in common usage, which does not imply any such severe results. Furthermore, the Eagle Act already makes it illegal to "wound" and "kill" eagles, so the proposed definition is largely redundant.

Service response: The modifications we describe in our preceding response address these concerns in part. In addition, see the discussion in the Final Environmental Assessment explaining why defining "disturb" as simply causing a physiological response in an eagle is inconsistent with the intent of the BGEPA.

Comment 6: The Eagle Act only prohibits intentional and non-incidental take. "Disturb" can only apply where the act is intentionally directed at eagles.

Service response: We do not agree that the Eagle Act protects eagles only from actions intentionally directed at them, and that "disturb" was not meant to apply to other indirect or incidental impacts to eagles. Such an interpretation is too large a deviation from the common usage of the word "disturb," which more often than not refers to incidental impacts (e.g., her tranquility was disturbed by the neighbor's leaf blower). Also, Congress reaffirmed the Eagle Act's prohibition of incidental take in 1978, when it amended the Eagle Act to authorize the issuance of permits to take golden eagle nests. Without the amendment, mining companies faced violating the Eagle Act by incidentally taking golden eagles during mining operations.

Comment 7: The Eagle Act only applies where an act was committed "knowingly or with wanton disregard." The definition should incorporate that requirement.

Service response: This comment fails to discern between the criminal provisions of the Act, which require

those elements, and the civil provisions, which do not. Congress specifically left that phrase out of the Eagle Act section addressing civil penalties (16 U.S.C. 668(b)), signaling that civil violations are subject to strict liability standards. For criminal violations, since the statute already limits those to acts that are conducted "knowingly or with wanton disregard" (16 U.S.C. 668(a)), there is no reason to repeat the phrase within the definition of "disturb."

Comment 8: The definition should require a negligent standard of conduct in order to add fairness, objectivity, and a predictable standard to the proposed regulation. We see nothing in the overall definition of take to imply that Congress wanted the Eagle Act to punish good faith or innocent conduct.

Service response: Criminal penalties under the Eagle Act already require a negligent standard conduct. Therefore, innocent conduct committed in good faith is not subject to criminal prosecution. As noted in our preceding response, Congress deliberately enacted a strict liability standard for civil penalties, a standard that uniformly applies to each prohibition of the act. Even so, the Service has rarely, if ever, brought any kind of enforcement action under the Eagle Act against a person acting in good faith, even where eagles have been killed. Also, to reduce the possibility that people will innocently violate the Eagle Act by disturbing eagles, we have developed Guidelines for how to conduct activities to minimize the potential for inadvertent disturbance. As stated in the Guidelines, we will prioritize enforcement efforts to focus on violations committed without regard to the consequences of the actions and the availability of conservation measures such as those recommended in the Guidelines. We also have proposed permit regulations to establish a means by which a person can gain authorization to take eagles, and thereby avoid criminal or civil liability.

Comment 9: The definition inappropriately incorporates habitat protection, which is not authorized by the Eagle Act.

Service response: The Service agrees that the Eagle Act is not a habitat management law, however, there is a difference between protecting habitat per se, and protecting eagles in their habitat. The proposed and final definitions protect eagles from certain effects to the eagles themselves that are likely to occur as the result of various activities, including some habitat manipulation.

Comment 10: The proposed definition will not satisfy the Eagle Act's

conservation goals; it should be revised to explicitly include habitat modification or degradation.

Service response: The Eagle Act contains no provisions that directly protect habitat except for nests. Individual members of the species are protected from certain effects to themselves that are likely to occur as the result of various human activities, including some habitat manipulation. Activities that disrupt eagles at nests, foraging areas, and important roosts can wound, kill, or disturb eagles, each of which is specifically prohibited by the Eagle Act. Therefore, eagle nests, important foraging areas, and communal roost sites are accorded protection under the Eagle Act to the degree that their loss would disturb or kill eagles.

Comment 11: The definition of disturb should not apply to feeding or sheltering eagles or to the impacts of activities that take place outside the nesting season.

Service response: The Eagle Act's stated goal is the preservation of the bald eagle and the golden eagle. We are aware of no provision of the Eagle Act or its legislative history to suggest that, in enacting the law, Congress intended to protect only breeding eagles from disturbance, and only during the nesting season. Activities that disrupt eagles at foraging areas and important roosts can lead to decreased productivity, injury, or death.

Comment 12: Under the proposed definition, "injury" is not defined and could be interpreted narrowly to equate with "wound." If so, the prohibition against disturbing eagles will have no meaning independent of the Eagle Act's other prohibitions against wounding and killing eagles, unless a nest is abandoned. The proposed definition would provide little protection for eagles at communal wintering sites and foraging areas, since neither wounding nor death is likely to be directly connected to the disruption of feeding or sheltering behavior, even though such disruption can affect survival and productivity.

Service response: We agree that the definition proposed on February 16, 2006 (71 FR 8265), did not adequately protect nonbreeding eagles. Because the threshold requirement was injury, death, or nest abandonment, the definition could have been interpreted to mean that, aside from the scenario of nest abandonment, an eagle would have to be wounded (e.g., cut or bruised) or killed to have been disturbed. We believe that threshold was too high and did not adequately protect eagles other than when they are nesting (when nest abandonment is an issue) and was

inconsistent with the statutory definition of "take" because "wound" and "kill" were separate specified elements of "take." To address this weakness, the preferred alternative of our DEA included a definition of "injury" to clarify that it includes a "loss of biological fitness significant enough to pose a discernible risk to an eagle's survival or productivity." That definition better protects non-breeding eagles from disturbance at foraging areas and winter roost sites, where human activity is unlikely to actually wound or kill an eagle, but may have serious effects on long-term viability. Although the final rule does not contain a separate definition of "injury," it instead incorporates such elements into its definition of "disturb."

Comment 13: Including nest abandonment in the definition raises the possibility that a one-time departure from the nest could constitute nest abandonment. "Nest abandonment" needs to be defined in the regulation to exclude mere flushing from the nest.

Service response: The Service defined "nest abandonment" in the glossary to the draft Guidelines (see 71 FR 8309, February 16, 2006), which have now been finalized after considering comments received from the public (see our notice of availability in today's **Federal Register** and our Web site at <http://www.fws.gov/migratorybirds/baldeagle.htm>). We do not believe it is necessary to also include this definition in the final rule.

Comment 14: Nest abandonment should not be included in the definition of disturb. If no injury or death has occurred, then nest abandonment should not be of concern. The proposed definition would apply to situations in which adult eagles do not return to a particular tree to nest, on either a temporary or permanent basis, without adverse biological effect and for a variety of reasons not related to human activity. This leaves far too much discretion to the individual enforcement authorities at FWS, and creates an impossible burden of proof for those trying to implement projects or engage in needed maintenance activities. Also, there is no clear standard as to the contribution of human activity to nest abandonment. This will result in strict liability regardless of whether their activity can be shown to have caused the abandonment.

Service response: First, nest abandonment is not always due to interference from humans. Nest abandonment caused by non-human factors is not a violation of the Eagle Act. The fact that similar outcomes can be brought about by other factors is no

reason not to regulate human-caused outcomes. This is similar to other actions and results prohibited by the Eagle Act and many other statutes. For example, all eagles die eventually, whether or not someone kills them. This does not prevent the Service from enforcing the Eagle Act's prohibition against killing eagles. Only "nest abandonment caused by intentional human activity that disturbs eagles would be subject to criminal prosecution. We view the standard set in this definition as sufficiently high to avoid capturing activities conducted according to a reasonable standard of care based on readily available guidance, and therefore we disagree that it creates an impossible burden of proof for those attempting to comply.

Enforcement authorities will continue to exercise the discretion they have (which arguably will be reduced substantially merely by the promulgation of this clarifying regulation) in a reasonable manner. As far as the concern regarding strict liability, the inclusion of "nest abandonment" would not result in strict liability any more than many legal prohibitions, including the Eagle Act's prohibition against killing eagles. In any case, even strict liability requires a showing of causation. In fact, the burden of proof would be greater for nest abandonment. First, the Service would have to demonstrate that an eagle was agitated or bothered, then that there was substantial interference with normal breeding, feeding, or sheltering behaviors, then that the activity, based on the best scientific information available, either caused or was likely to cause the abandonment.

Second, nest abandonment may have an adverse biological impact even without an eagle being killed or injured. Nest abandonment prior to egg-laying will generally have a negative effect on eagle productivity unless the eagles use an alternate nest without significant delay. Therefore, eagle populations can be affected by nest abandonment without the occurrence of actual injury or death of nestlings or eggs.

Third, even where eagles re-nest elsewhere and successfully breed, the disturbance will have a long-term effect on eagles if the interference continues until the nest is no longer viable. The Guidelines suggest that, after five years of disuse, nests may no longer merit protection from disturbance. When human activities completely surround the nest at close proximity, eagles will usually not re-use the nest. After five years, the nest site would be lost for all intents and purposes, and may result in a significant biological impact on eagles. In Florida, for example, many biologists

believe that bald eagles have been nesting in closer proximity to humans and to one another because available nest sites are limited, leading to speculation that eagle populations in Florida will not significantly increase from current size, due to a lack of available nest sites. If so, the loss of a nest site will result in a decrease in the eagle population. The Eagle Act specifically protects nests. That statutory protection recognizes that nests are biologically significant structures constructed in specific locations selected by eagles because of the presence of various ecological factors necessary for survival and productivity.

Comment 15: The Service should add the word “premature” before nest abandonment to clarify that it does not include the scenario where eagles do not occupy a nest in a given year, switching to another nest nearby, or building a new nest and not using the old one.

Service response: The guidelines provide for consideration of impacts to nests and alternate nests. Alternate nests are important to eagle productivity, and are protected by the Eagle Act.

Comment 16: Including nest abandonment in the definition extends liability beyond proximate cause and results in too much uncertainty for the public. Landowners need to know in advance whether their actions might disturb eagles. The proposed definition does not provide enough certainty.

Service response: With regard to its prohibition of disturbance, the Eagle Act is concerned with a result of an action (with respect to the eagle), rather than the action itself. This is a common feature of wildlife laws. (Such laws, including the Eagle Act, also directly prohibit actions, such as importing or shooting at the protected species.) A level of uncertainty is inherent in any statute that prohibits results, rather than actions, as one can never be sure what the results of a particular action might be. However, to minimize this uncertainty as much as possible while maintaining consistency with the statutory language, in response to the comments received we have revised the definition to include the phrase “or is likely to cause.” Inclusion of this phrase will enable people to better predict when their actions may violate the Eagle Act by disturbing eagles, particularly in conjunction with the guidance provided by the Guidelines, which publicize our recommendations for avoiding disturbance. To further reduce uncertainty, we have proposed regulations, published separately in today’s **Federal Register**, that would

provide for issuance of permits for take of eagles; obtaining such a permit would essentially eliminate any remaining uncertainty.

Comment 17: If an eagle returns from its wintering grounds to the vicinity of its nest at a heavily altered site but never returns to the actual nest because the landscape has changed very drastically, the habitat modification might not be a disturbance under the proposed definition, but it should be.

Service response: We do not believe that the Eagle Act was meant to prohibit habitat modification that is undetected by eagles, so if the eagle(s) never return to the site at all, the habitat alterations should not be per se attributed as the cause. However, we do intend that the definition still applies to a situation where eagles, as part of their normal nesting behavior, return to the vicinity of the nest, but the habitat alterations are so vast in scale that the eagles become agitated as a result, alter their behavior, and never return to the nest itself.

Comment 18: The extension of the proposed definition to “impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present” is unreasonable and places an impossible burden on landowners. If “nest abandonment” remains in the definition of disturb, it should be defined narrowly to mean “premature abandonment of an active nest during the nesting season.”

Service response: We disagree that the prohibition against disturbance should exclude impacts to eagles that occur after the activity takes place. Such an exclusion would mean that an activity that causes eagles to abandon a nest could qualify as a disturbance if the eagles were present, but not if the activity was conducted when eagles were away from the nest, whether for a season or a few hours—even if the reaction of (and effect on) the eagles is identical in both cases.

Comment 19: Disturbance should not require injury, death, or nest abandonment. Too many problems are occurring in Alaska because of people feeding eagles, and the definition of disturb should make the practice illegal without requiring such a high threshold.

Service response: Although the Eagle Act does not directly prohibit feeding eagles, the final definition protects eagles from situations where eagle feeding is likely to injure eagles.

Comment 20: Although stated in the preamble, the definition needs to be clearer that the death or injury can occur to eagles other than those that are disturbed (e.g., young or eggs).

Service response: The wording of the final definition more clearly conveys that “disturb” incorporates the injury of an eagle other than the one that was agitated or bothered.

Comment 21: The definition should specifically exclude impacts to nests that have not been used for 5 years, to mirror the draft Guidelines, which state “The likelihood that an alternate nest will again become active decreases the longer it goes unused. If you plan activities in the vicinity of an alternate bald eagle nest and have information to show that the nest has not been active during the preceding 5 nesting seasons, the recommendations provided in these guidelines for avoiding disturbance around the nest site may no longer be warranted.”

Service response: We do not agree that the regulatory definition of “disturb” is the appropriate vehicle to transmit Service recommendations regarding the likelihood of eagle nest re-use. Such recommendations are more appropriately housed under the Guidelines, as written. The Service will prioritize enforcement efforts under the Eagle Act to focus on violations committed without adhering to the Guidelines.

Comment 22: Disturb should be defined to explicitly exclude any impacts resulting from activities conducted in accordance with a State-approved Bald Eagle Management Plan.

Service response: We do not believe it is appropriate or that the Eagle Act affords us the discretion to establish a definition that would differ in application from State to State. The Eagle Act is a Federal statute, and the prohibitions it contains have general applicability throughout the United States.

Comment 23: A permit for intentional take of nests needs to be available. Situations arise where the location of eagle nests jeopardizes human safety, or the eagles themselves.

Service response: We agree that a permit regulation may be warranted to authorize removal or relocation of eagle nests under limited circumstances. We have proposed a regulation, published separately in today’s **Federal Register**, to establish a permit process in the near future that would include such a provision.

Comment 24: More discussion needs to be included as to how the definition will affect golden eagle management.

Service response: Due to different geographic preferences, human activities are less likely to conflict with golden eagles than bald eagles. Because fewer activities have the potential to disturb golden eagles, the effect of

defining “disturb” will be relatively small in relation to golden eagles in comparison to bald eagles. However, we recognize that disturbance caused by human activities can still be an issue with respect to golden eagles. We intend to more fully address golden eagle disturbance as part of the National Environmental Policy Act assessment of the Eagle Act take permit regulations we are proposing.

Comment 25: The Eagle Act was meant to protect eagles from significant stress that affects their ability to forage, nest, roost, breed, or raise young. Any activity that causes such stress should be considered a violation of the Act.

Service response: The final definition of “disturb” encompasses impacts that, based on the best scientific information available, are likely to cause injury to an eagle, or a decrease in its capacity to reproduce. In contrast to the approach suggested by the commenter, however, the definition provides a measure of predictability to the regulated community by indicating thresholds that can be detected or anticipated by the actor or someone trying to enforce the law.

Comment 26: The definition should prohibit “repeated displacement” of eagles from their nests and roosts.

Service response: To the degree that repeated displacement of eagles from their nest is associated with injury or nest abandonment, it can be a useful indicator of disturbance. However, temporary impacts such as “repeated displacement” are not relevant unto themselves to the preservation of eagles; they are relevant only if they produce the likelihood of meaningful biological effects.

Comment 27: In the definition of “injury” the phrase “pose a discernible risk” (to an eagle’s survival or productivity) should be removed because it’s speculative and hypothetical. Instead, the definition should require that the eagle actually dies or doesn’t breed, rather than capturing effects that only “risk” such an outcome. The ESA definition of “harm” requires actual injury or death.

Service response: The ESA definition of “harm” does require injury or death, but “harass” requires only the “likelihood of injury.” We see no reason to assume that “disturb” would resemble “harm” rather than “harass,” and we find limited utility in comparing either ESA term to the Eagle Act’s prohibition of “disturb.” All three are distinct definitions, and “disturb” is from a separate statute enacted 33 years before the ESA. It is useful to compare the ESA terms with “disturb” in order to determine certain types of sentence

construction that may hinder or facilitate compliance with and enforcement of the statute. Having done this comparison, we initially thought that the phrase “pose a discernible risk” was helpful in those regards. To require that the death or loss of productivity be documented could make it difficult to enforce the prohibition. The final definition of disturb no longer incorporates the phrase “pose a discernible risk,” but it does include “or is likely to cause,” which we believe is both readily understandable and will help prevent adverse effects to eagles.

Comment 28: (From numerous airport authorities) We are concerned about maintaining airport safety in light of the risk of air strikes with eagles and the prohibition against disturbing them.

Service response: We appreciate the gravity of these concerns. However, we see no reasonable definition of disturb that would exclude the intentional harassment and displacement of eagles necessary to remove eagles from the vicinity of airports, while adequately protecting eagles from many other potentially disturbing activities that would adversely affect them. Permits are already available and routinely issued under 50 CFR 22.23

(Depredation) to intentionally haze eagles at airports for purposes of human safety. We agree that a permit regulation may be warranted to authorize removal or relocation of eagle nests under circumstances of human health and safety such as at airports. We have proposed a regulation to establish a permit process that includes such a provision (published separately in today’s **Federal Register**).

Comment 29: In light of the Service’s April 15, 2003, Migratory Bird Permit Memorandum, it would be helpful if the Service would clarify whether removal of an unoccupied eagle nest would constitute a violation of the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712) or the Eagle Act.

Service response: As explained in the memorandum referenced by the commenter, it is illegal to collect, possess, and by any means transfer possession of any nest of a species protected by the MBTA, but the MBTA does not contain any prohibition that applies to the destruction of a bird nest alone (without birds or eggs), provided that no possession occurs during the destruction. Thus, destruction of unoccupied nests with no prohibited impacts to a migratory bird (or egg) does not require a MBTA permit. However, the public should be made aware that, while destruction of a nest itself is not prohibited under the MBTA, nest removal that results in the unpermitted

take of migratory birds or their eggs is illegal and fully prosecutable under the MBTA. Furthermore, some unoccupied nests are legally protected by statutes other than the MBTA, including nests of bald and golden eagles. The Eagle Act protects nests from removal by a number of means, including its inclusion of the term “molest” as part of “take” (16 U.S.C. 668c). Congress reaffirmed the Eagle Act’s protection of inactive nests when it amended the Act in 1978 to direct the Secretary of the Interior to make permits available for incidental take of inactive golden eagle nests for resource development and recovery operations. A permit would not be necessary if such take were not otherwise prohibited by the Act.

Comment 30: Does the removal of large trees occasionally used by roosting and perching eagles constitute a violation of the Eagle Act?

Service response: Removal of trees is not in itself a violation of the Eagle Act. The impacts of such action can be a violation, however, if the loss of the trees kills an eagle, or agitates or bothers a bald or golden eagle to the degree that results in injury or interferes with breeding, feeding, or sheltering habits substantially enough to cause a decrease in productivity or nest abandonment, or create the likelihood of such outcomes. However, if the large trees are only occasionally used, the probability of such an outcome is lower than if the trees were within a traditional communal roost site or were the primary perch trees used by eagles in an important foraging area.

Comment 31: The definition should include protection of traditional nest and roost sites during seasons of the year when eagles are not present.

Service response: The Eagle Act does not directly protect habitat (except nests), but manipulation of important eagle use areas, including nests and communal roosts, that results in a prohibited “take” under the Eagle Act would constitute a violation of the Act. Therefore, roost sites are accorded protection under the definition to the degree that their loss would result in eagle disturbance. For example, if destruction of an important bald eagle winter roost site would agitate the eagles that roost there and interfere with feeding and/or sheltering significantly enough to decreasing productivity, then the roost destruction could constitute a violation.

Comment 32: The definition should include communal roost abandonment as explicitly as it addresses nest abandonment. The phrase “nest abandonment” should be replaced with

nest abandonment or communal roost abandonment.”

Service response: While many communal roost sites are identified and well documented, some may not be. The Guidelines define “communal roost sites” as “[a]reas where bald eagles gather and perch overnight “ and sometimes during the day in the event of inclement weather. Communal roost sites are usually in large trees (live or dead) that are relatively sheltered from wind and are generally in close proximity to foraging areas. These roosts may also serve a social purpose for pair bond formation and communication between eagles. Many roost sites are used year after year.” Although many communal roost sites are well known to the public, such as at Mason Neck Wildlife Refuge in Virginia, a satisfactory definition of “communal roost site” that would clearly distinguish all of the important areas upon which eagles depend from all other habitat where eagles might sometimes gather and roost has not (to our knowledge) been put forward by eagle biologists, State agencies, or other wildlife managers. Further, because of the lack of documentation of traditional use of all such areas, we believe it would be problematic to explicitly reference communal roost site abandonment in the same manner as nest abandonment.

Comment 33: Long-term habitat protection will be critical to continued recovery and management of bald eagles throughout the nation. The lack of regulatory protection for concentration areas and foraging habitats will result in the degradation of habitats necessary for both nesting and non-breeding eagles. Protection of nest sites will not be enough to sustain eagle populations, which rely on a matrix of habitats to meet their life-cycle requirements. The definition of “injury” should be broadened to specifically include disturbance to essential habitats as under the definition of “harm” in the ESA.

Service response: Habitat manipulation can amount to a violation of the ESA if it “harms” a protected species, meaning injures or kills it (by impacting essential behavior patterns). Although there is no specific reference to habitat in the definition of “disturb,” habitat degradation can also cause a prohibited disturbance under the Eagle Act, and not just around nest sites, to the extent the activity results in injury, decreased productivity, or nest abandonment.

Comment 34: The phrase “agitate or bother” should be removed since the Eagle Act’s intent is to prevent physical

harm of eagles. The terms could be interpreted to include non-physical harms.

Service response: In order for disturbance to occur, the agitation or bother must lead to injury, or substantially interfere with breeding, feeding, or sheltering to the degree that causes, or is likely to cause, decreased productivity or nest abandonment. Each of these outcomes is a physical harm. Without the phrase “agitate or bother,” the definition would no longer require a direct effect on one or more eagles. This would broaden the definition’s applicability. For example, excessive agricultural runoff might then be said to “disturb” eagles since it might interfere with breeding, feeding, or sheltering, and cause decreased productivity. We do not believe such a broad application was intended by Congress when it included the term “disturb” in the definition of take in the Eagle Act.

The word “directly” should be added to the definition before “causes” in order to meet the “knowingly” standard of the Eagle Act.

Service response: Adding “directly” would not affect whether the act was committed knowingly, since the potential outcome (loss of productivity, death, or nest abandonment) is still a result of the action, whether direct or not. Whether the actor sees the result is immaterial to whether he knew at the time he acted that his conduct would probably result in disturbance. The latter is at issue in the Eagle Act. (The Eagle Act’s standard that an act be committed “knowingly or with wanton disregard” only applies to criminal violations. Civil violations do not require this standard.) Additionally, we specifically do not intend disturbance to be limited to situations where the outcome is immediately evident. The Eagle Act makes no distinction between immediate or direct effects to eagles and those that can reasonably be foreseen, as evidenced by its prohibition of eagle poisoning, and our enforcement of cases where the poisoning was secondary but foreseeable. The Guidelines, and our staff, are available to the public to assist in determinations of what activities are likely to result in a violation of the Eagle Act.

Comment 36: Unlike bald eagles, golden eagles are not on the Federal List of Endangered and Threatened Wildlife. Therefore, there is no need to buttress Eagle Act protections for golden eagles to compensate for bald eagle delisting pursuant to the ESA.

Service response: The Eagle Act equally protects both species of eagles from disturbance. The statute treats golden eagles somewhat differently than

bald eagles in that it provides broader authority to permit certain otherwise prohibited activities in relation to golden eagles (16 U.S.C. 668a). However, the prohibition against disturbance applies in the same way to both species under the Act (16 U.S.C. 668(a) and (b)).

Comment 37: Under the ESA, permits were available for incidental take of bald eagles. Many project proponents who have relied on such authorizations will be put in an untenable position if the Service issues a final delisting decision before incidental take regulations are in place.

Service response: We recognize the difficult position in which many developers, transportation officials, and others will find themselves (without a means to authorize take of bald eagles) if the bald eagle is delisted before the time that regulations for a take permit are finalized. The Service intends to place a high priority on completing the rulemaking that would establish a permit program authorizing “take” of eagles, as appropriate, while maintaining the statute’s requirement of protection and conservation of bald and golden eagles. In the interim, the Service will use the Guidelines and provide technical assistance to the public to minimize the “take” of eagles. As a result of the court-ordered deadline, the Service is required to issue a final decision on the delisting by June 29, 2007 (extended from February 16, 2007), which does not allow enough time to promulgate a final rule for a permit program before a decision on delisting is due. See *Contoski v. Scarlett*, Civil No. 05–2528 (JRT–RLE) (D. Minn. August 10, 2007).

Required Determinations

Energy Supply, Distribution or Use (E.O. 13211). Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because the definition promulgated herein is similar to the current working interpretation of “disturb,” this rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Regulatory Planning and Review (E.O. 12866). This rule is a significant regulatory action subject to review by the Office of Management and Budget (OMB). OMB makes the final determination of significance under Executive Order 12866.

a. The Service does not anticipate that this rule will have an effect of \$100 million or more on the economy. This

rule defines an existing statutory term in a manner largely consistent with how it is currently interpreted by State and Federal agencies.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule deals solely with governance of bald and golden eagle take in the United States. No other Federal agency has any role in regulating bald or golden eagle take. Although some other Federal agencies regulate activities that impact wildlife (including eagles) and such impacts may constitute take, the definition of "disturb" promulgated by this rule is similar to existing operative interpretations of the term.

c. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No entitlements, grants, user fees, or loan programs are associated with the regulation of bald or golden eagle take.

d. This rule may raise novel legal or policy issues.

Regulatory Flexibility Act. The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 804(2).

Description of Small Entities Affected by the Rule. This rule applies to any individual, government entity, or business entity that undertakes or wishes to undertake any activity that may disturb bald or golden eagles. It is not possible to define precisely or enumerate these entities because of uncertainty concerning their plans for future actions and incomplete scientific knowledge of which activities in specific cases will disturb bald or golden eagles. Small entities that are most likely to engage in activities that may disturb bald or golden eagles include: Small businesses that are engaged in construction of residential, industrial, and commercial developments; farms; small timber companies; small mining operations; and small governments and small organizations engaged in construction of utilities, recreational areas, and other facilities. These may include tribal governments, town and community governments, water districts, irrigation districts, ports, parks and recreation districts, and others.

Expected Impact on Small Entities. The rule defines the term "disturb," which is contained in the definition of "take" in the Eagle Act. Thus,

"disturbance" is already prohibited under the law. This rule promulgates a definition that is consistent with the Service's former interpretation of "disturb" for bald eagle management under the Eagle Act, and thus does not further restrict human activity. This codification of the Service's definition of "disturb" does not impose any new reporting, recordkeeping, or other compliance costs on any small entities. Promulgation of the rule and the accompanying Guidelines provides clear guidance to all parties that engage in activities that could potentially disturb eagles. Promulgation of the rule and Guidelines may decrease the costs of complying with the Eagle Act by reducing uncertainty and enhancing resolution of potential conflicts between human activities and eagles. The decreased costs are expected to be minimal. Therefore, this rule will not have a significant effect on small entities.

Unfunded Mandates Reform Act. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. This rulemaking will not impose a cost of \$100 million or more in any given year on local or State government or private entities.

b. This rule will not produce a Federal mandate of \$100 million or greater in any year; *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. Revisions to State regulations are not required; codifying the definition of "disturb" under the Eagle Act does not require any future action by State or local governments.

Takings (E.O. 12630). In accordance with Executive Order 12630, the rule does not have significant takings implications. This is an interpretive rule, defining the statutory term "disturb" under the Eagle Act. The rule promulgates a definition of "disturb" that is consistent with working definitions currently applied to private property, and will be used in conjunction with Guidelines that provide greater flexibility than existing guidelines used by the Service to advise landowners of how to minimize disturbance to eagles. A takings implication assessment is not required.

Federalism (E.O. 13132). In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule will not interfere with States' ability to manage themselves or their

funds. Defining a term within the prohibitions of the Eagle Act will not result in significant economic impacts because this definition is consistent with the meaning of the term as currently interpreted by the Service and the States. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988). In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

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) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. This rule will not interfere with Tribes' ability to manage themselves or their funds.

Paperwork Reduction Act. This rule does not contain information collection requirements. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act. The Service has prepared an environmental assessment of this action, pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). The Notice of Availability for the final environmental assessment is published elsewhere in today's **Federal Register**.

List of Subjects in 50 CFR Part 22

Exports, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons described in the preamble, we amend subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 22—EAGLE PERMITS

■ 1. The authority citation for part 22 continues to read as follows:

Authority: 16 U.S.C. 668a; 16 U.S.C. 703–712; 16 U.S.C. 1531–1544.

■ 2. Section 22.3 is amended by revising the heading and introductory paragraph and adding the definition for "disturb" in alphabetical order to read as follows:

§ 22.3 Definitions.

In addition to definitions contained in part 10 of this subchapter, the following definitions apply within this part 22:

* * * * *

Disturb means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available,

(1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.

* * * * *

Dated: May 23, 2007.

Todd Willens,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07-2694 Filed 6-4-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Parts 13 and 22**

RIN 1018-AV11

Authorizations Under the Bald and Golden Eagle Protection Act for Take of Eagles**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: In anticipation of possible removal (delisting) of the bald eagle from the List of Threatened and Endangered Wildlife under the Endangered Species Act (ESA), the U.S. Fish and Wildlife Service (“we” or “the Service”) is proposing new permit regulations to authorize the take of bald and golden eagles under the Bald and Golden Eagle Protection Act (Eagle Act), generally where the take to be authorized is associated with otherwise lawful activities. Second, we are proposing regulatory provisions to provide take authorization under the Eagle Act to ESA section 10 permittees who continue to operate in full compliance with the terms and conditions of their existing permits. Additionally, these proposed permit regulations would establish permit provisions for intentional take of eagle nests in rare cases where their location poses a risk to human safety or to the eagles themselves.

DATES: We will accept written comments on this proposed rule until September 4, 2007.

ADDRESSES: You may submit comments and other information, identified by RIN 1018-AV11, by any of the following methods:

- Mail or hand-delivery: Division of Migratory Bird Management, Attn: RIN 1018-AV11, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, MBSP-4107, Arlington, Virginia 22203.
- E-mail:

EaglePermitRegulation@fws.gov. Include “RIN 1018-AV11” in the subject line of the message. Please submit electronic comments in plain text files, avoiding the use of special characters and encryption.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions on the site for submitting comments.

FOR FURTHER INFORMATION CONTACT:

Eliza Savage, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mailstop 4107, Arlington, Virginia 22203-1610; or 703-358-2329.

SUPPLEMENTARY INFORMATION:**Public Comments Solicited**

We are soliciting public comments on this proposed rule. You may submit your comments by any one of the methods provided in the **ADDRESSES** section. The comment due date is listed in the **DATES** section. All submissions we receive must include the agency name and Regulatory Identification Number (RIN) for this rulemaking, which is 1018-AV11. In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned in the **ADDRESSES** section. 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.

The Director of the Service will take into consideration the relevant comments, suggestions, or objections that are received by the comment due date indicated above in **DATES**. These comments, suggestions, or objections, and any additional information received, may lead the Director to adopt a final rulemaking that differs from this proposal.

Background

The Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d) (Eagle Act) prohibits the take of bald and golden eagles unless pursuant to regulations (and in the case of bald eagles, take can only be authorized under a permit). While the bald eagle is listed under the ESA (16 U.S.C. 1531 *et seq.*), authorizations for incidental take of bald eagles have been granted through the ESA’s section 10 incidental take permits and ESA’s section 7 incidental take statements, issued with assurances that the Service would exercise enforcement discretion in relation to violations of the Eagle Act and Migratory Bird Treaty Act (16 U.S.C. 703–712) (MBTA). Upon delisting, all prohibitions contained in the ESA, such as those that prescribe the take of bald eagles, would no longer apply. However, the potential for human activities to violate Federal law by taking eagles remains under the prohibitions of the Eagle Act and the MBTA. The Eagle Act defines the “take” of an eagle to include a broad range of actions: “pursue, shoot, shoot at,

poison, wound, kill, capture, trap, collect, or molest or disturb”; the broadest of these terms is “disturb.” “Disturb” has now been defined by the Service in regulations at 50 CFR 22.3 as: “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.” (See the final rule defining “disturb” under the Eagle Act, published in today’s **Federal Register**.)

Many actions that are considered likely to incidentally take (harm or harass) eagles under the ESA will also disturb or otherwise take eagles under the Eagle Act. The regulatory definitions of “harm,” “harass,” and “disturb,” differ from each other; but overlap in many ways. The only court to have addressed the relationship between the prohibitions of the ESA and the Eagle Act stated:

Both the ESA and the Eagle Protection Act prohibit the take of bald eagles, and the respective definitions of “take” do not suggest that the ESA provides more protection for bald eagles than the Eagle Protection Act* * *. The plain meaning of the term “disturb” is at least as broad as the term “harm,” and both terms are broad enough to include adverse habitat modification. (*Contoski v. Scarlett*, Civ No. 05–2528 (JRT/RLE), slip op. at 5–6 (D. Minn. Aug 10, 2006).)

Currently, there is no regulatory mechanism in place under the Eagle Act that permits take of bald or golden eagles comparable to under the ESA. We propose to add a new section at 50 CFR 22.26 to authorize the issuance of permits to take of bald and golden eagles on a limited basis. The regulations would be applicable to golden eagles as well as bald eagles. In comparison with requirements under the ESA, the permitting process we are proposing under the Eagle Act would be less burdensome for the public to comply with, while continuing to provide appropriate protection for bald and golden eagles. Take of bald or golden eagles would be authorized only where it is determined to be compatible with the preservation of bald and golden eagles and cannot practicably be avoided.

We propose to use expedited procedures under this new permit process to issue Eagle Act permits for take in compliance with previously granted ESA section 7 incidental take statements. The expedited permitting

process would also be used to provide Eagle Act authorization for take of bald eagles where the bald eagle was the only listed species covered by an ESA Habitat Conservation Plan (HCP). We are also proposing regulatory revisions to 50 CFR 22.11 to allow persons with a valid ESA section 10 permit that covers multiple species in addition to the bald or golden eagle (and is therefore still a valid permit even if the bald eagle is delisted) to continue to use that permit as the Eagle Act authorization for the same activity as it relates to bald or golden eagles. This provision would also apply to the take of bald and golden eagles that are covered as non-listed species in future HCPs.

Finally, we propose to add a new section at 50 CFR 22.27 to authorize the removal of bald and golden eagle nests that pose a hazard to human safety or to the welfare of eagles. We also propose to introduce and define certain terms under the Eagle Act. Permit issuance under § 22.26 and § 22.27 would be governed by the permit provisions presently in 50 CFR parts 13 and 22, and new provisions we are proposing to add to § 22.26 and § 22.27.

History

Prior to the arrival of Europeans, the bald eagle population in the lower 48 contiguous States is estimated to have been 250,000 to 500,000 birds. The first declines in bald eagle populations began in the mid to late 1800s. Shooting of eagles for feathers and trophies, various forms of predator control, and loss and conversion of habitats contributed to the general decline in numbers until the mid-1940s (U.S. Fish and Wildlife Service 1999). Widespread concern for the future of the bald eagle led Congress to pass the Bald Eagle Protection Act in 1940 (16 U.S.C. 668–668d). The Act prohibited, among other things, the taking, possession, and sale of bald eagles or their parts, eggs, or nests. When passed, the Act did not apply in the then-territory of Alaska. In 1953, after lengthy studies demonstrated that bald eagles did not affect salmon population levels, the remaining bounties on eagles in Alaska were eliminated. The Act was amended in 1959 to include Alaska. The law was further amended in 1962 to protect the golden eagle, in part because of the difficulty in distinguishing golden eagles from immature bald eagles. It was then renamed the Bald and Golden Eagle Protection Act.

Passage of the Eagle Act and promulgation of eagle regulations (50 CFR part 22) probably eliminated many of the major threats to eagles throughout

the United States, and may have helped to slow the decline of eagle numbers. However, the widespread use of organochlorine pesticides after World War II created a persistent threat to the survival of the bald eagle in the continental United States. Beginning in the late 1940s, dichloro-diphenyl-trichloroethane (DDT) was extensively used for mosquito control and later as a general crop pesticide. As DDT use increased, the chemical and its metabolites began to accumulate in the prey base of the bald eagle and later in the tissues of the eagles consuming contaminated prey. By the early 1960s, the ability of bald eagle populations to replace themselves had decreased drastically, and bald eagle numbers plummeted. A partial survey conducted by the National Audubon Society in 1963 documented just 487 active nests in the lower 48 contiguous States. Productivity was considered lower than that required to sustain the population.

On the basis of this steep decline, the bald eagle population south of 40° North latitude was included on the first list of endangered species (32 FR 4001, March 11, 1967), pursuant to the precursor law to the current Endangered Species Act. DDT use was banned in the United States in 1972. Increases in the eagle population were gradual due to the persistence of DDT in the environment, however, and the bald eagle was included on the ESA's List of Threatened and Endangered Wildlife when the ESA was passed in 1973. In 1978, the ESA listing was amended to classify the bald eagle as endangered in the lower 48 contiguous States except in five northern States, where it was listed as threatened (43 FR 6233, February 14, 1978).

With the protection afforded by the ESA and the decline in DDT contaminant levels in the environment and in the bald eagle's food sources, the species experienced a dramatic comeback. In 1990, there were an estimated 3,035 occupied breeding areas in the lower 48 states. By 1994, the bald eagle population had increased 462% over the levels documented in 1974. The increase was sufficient to allow reclassification to threatened in the lower 48 States (60 FR 36000, July 12, 1995). Bald eagle population growth and productivity exceed most of the goals established in the various ESA recovery plans. The Service proposed to remove the bald eagle from the List of Threatened and Endangered Wildlife on July 6, 1999 (64 FR 36454). We estimate the current number of breeding pairs in the 48 contiguous States to be over 9,700. Bald eagles were never listed as threatened or endangered in Alaska,

where we currently estimate bald eagles to number between 50,000 and 70,000 birds, including approximately 15,000 breeding pairs.

The ESA provides broad substantive and procedural protections for listed species but at the same time allows significant flexibility to permit activities that affect listed species. In particular, the ESA provides that we may authorize the incidental take of listed wildlife in the course of otherwise lawful activities (sections 7(b)(4) and 10(a)(1)(B), respectively). Nationwide, since 2002, the Service has issued an average of 52 incidental take statements per year that covered anticipated take of bald eagles under the ESA's section 7. During that same 5-year period, we issued about two (1.8) incidental take permits per year under the ESA's section 10(a)(1)(B) for bald eagles. The requirements, including minimization, mitigation, or other conservation measures, of those ESA authorizations have been more than adequate to achieve the standard of "preservation" for the bald and golden eagle that is required by the Eagle Act for the issuance of take permits. Therefore, we provided assurances with each section 7 incidental take statement and section 10 permit that we would "not refer the incidental take of a bald eagle for prosecution under the Migratory Bird Threat Act of 1918, as amended (16 U.S.C. 703–712), or the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668–668d) if such take was in compliance with the terms and conditions of an incidental take statement issued to the action agency or applicant under the authority of section 7(b)(4) of the ESA or a permit issued under the authority of section 10(a)(1)(B) of the ESA."

If the bald eagle is delisted, the permitting of incidental take under the ESA would no longer occur except possibly in the context of certain multi-species HCPs that were applicable to both listed and non-listed species. In that event, however, a mechanism would still be needed to address take that may be permitted pursuant to the Eagle Act. The Eagle Act provides that the Secretary of the Interior may authorize certain otherwise prohibited activities through promulgation of regulations. The Secretary is authorized to prescribe regulations permitting the "taking, possession, and transportation of [bald or golden eagles] * * * for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks, or for the religious purposes of Indian tribes, or * * * for the protection of wildlife or of agricultural or other interests in any particular locality," provided such

permits are “compatible with the preservation of the bald eagle or the golden eagle” (16 U.S.C. 668a). In accordance with this authority, the Secretary has previously promulgated Eagle Act permit regulations for scientific and exhibition purposes (50 CFR 22.21), for Indian religious purposes (50 CFR 22.22), to take depredating eagles (50 CFR 22.23), to possess golden eagles for falconry (50 CFR 22.24), and for the take of golden eagle nests that interfere with resource development or recovery operations (50 CFR 22.25).

Until now, we have not promulgated permit regulations to authorize eagle take “for the protection of * * * other interests in any particular locality.” This statutory language accommodates a broad spectrum of public and private interests (such as utility infrastructure development and maintenance, road construction, operation of airports, commercial or residential construction, resource recovery, recreational use, etc.) that might “take” eagles as defined under the Eagle Act.

Description of the Proposed Rulemaking

Take Permit Regulations Under Proposed 50 CFR 22.26

We are proposing a new permit regulation under the authority of the Eagle Act for the limited take of bald and golden eagles “for the protection of * * * other interests in any particular locality” where such permits are consistent with the preservation of the bald and golden eagle, and the take is associated with, and not the purpose of an otherwise lawful activity, and such take cannot practicably be avoided. “Practicable” in this context means capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

We anticipate that generally such take permits would authorize activities which could cause an eagle to be disturbed by human activities in proximity to eagle nests, important foraging sites, and communal roosts; however, in some limited cases, where other forms of take besides disturbance are unavoidable, we anticipate that a permit may be issued under this section for such other form of take.

“Unavoidable” in this context means the activity is necessary for the public welfare, and all practicable, industry-accepted measures to minimize the take are in effect. In the case of airports, for example, the permit could cover take that might occur even when the airport is meeting the obligations of its Wildlife Hazard Management Plan (e.g., hazing

wildlife and discouraging nesting and roosting by designing infrastructure to be as inhospitable as possible).

We do not anticipate that permits issued under these proposed regulations will significantly affect eagle populations. Bald eagle populations are currently growing at a rate that we expect will continue to outpace any population effects (primarily through decreased productivity) caused by disturbance. Furthermore, all permittees will be required, as part of their permit conditions, to carry out conservation measures to mitigate impacts to eagles. The statutory requirement that the authorized activities be compatible with the preservation of bald and golden eagles ensures the continued protection of the species while allowing some impacts to individual eagles. For purposes of the regulations we are proposing here, we consider take to be compatible with the preservation of the bald and golden eagle if it will not result in a decline, either at the national or regional level, that could necessitate (among other factors) a designation of an avian species by Partners in Flight (PIF) to their Continental Watch List¹ (the rate of decline that serves as a threshold for that list is more moderate than what would lead to ESA listing (or relisting)). The Service already uses that threshold rate of decline to manage migratory birds; it serves as a primary element in our determination of whether a migratory bird species is of conservation concern. We do not intend to rely on any PIF determination of changed status, and we would not tie any future action on our part with any action by PIF. Rather, we believe it would be sensible and consistent to apply a criterion we already use for migratory bird management, as the threshold level of decline that would not be compatible with the preservation of the bald and golden eagle.

We propose to use modeling in evaluating the level of take which we can permit compatible with this statutory threshold, and taking into consideration the cumulative effects of all permitted take, including other forms of lethal take permitted under this section, against the backdrop of other causes of mortality and nest loss. Due to

the inherent limits of monitoring to detect precise fluctuations in bald and golden eagle numbers, coupled with the uncertainty as to whether individual actions being permitted will in fact result in a “take,” we cannot precisely correlate each individual permit decision with a specific population impact. However, we intend to use the best available data, including data from post-delisting monitoring by States, the Breeding Bird Survey, and fall and winter migration counts to assess the status of eagle populations and adjust permitting criteria on an ongoing basis as appropriate. However, consistent with the preservation mandate of the Eagle Act, we do not anticipate that the cumulative impacts of the activities permitted by these regulations will cause declines in bald and golden eagle populations.

As part of the forthcoming release for public comment of a draft environmental assessment under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) (NEPA), we intend to determine the most meaningful population scale for measuring population impacts using available data (including average natal dispersal distances) and to delineate regional populations that are relatively distinct for management purposes. Our preliminary analysis to date indicates there may be utility in classifying bald eagle populations into nine regional populations (plus some highly isolated sites) for purposes of assessing impacts to bald eagles under these regulations. We intend to perform a similar analysis for golden eagles, to determine the geographic delineations most applicable for management purposes.

A wide variety of activities, including various types of development, resource extraction, and recreational activities near sensitive areas such as nesting, feeding, and roosting sites, can disrupt or interfere with the behavioral patterns of bald eagles. The Service has developed National Bald Eagle Management Guidelines (Guidelines) as a tool for landowners, project proponents, and the general public engaged in activities in the vicinity of bald eagles (see our notice of availability of the Guidelines published separately in today’s **Federal Register**). The Guidelines are also available at <http://www.fws.gov/migratorybirds/baldeagle.htm>). The Guidelines address potential negative effects of human activities on bald eagles, based on observed bald eagle behavior, and provide guidance on what types of activities are likely to cause bald eagle disturbance at varying distances to nests, communal roosts,

¹ Panjabi, A. O., E. H. Dunn, P. J. Blancher, W. C. Hunter, B. Altman, J. Bart, C. J. Beardmore, H. Berlanga, G. S. Butcher, S. K. Davis, D. W. Demarest, R. Dettmers, W. Easton, H. Gomez de Silva Garza, E. E. Iñigo-Elias, D. N. Pashley, C. J. Ralph, T. D. Rich, K. V. Rosenberg, C. M. Rustay, J. M. Ruth, J. S. Wendt, and T. C. Will. 2005. The Partners in Flight handbook on species assessment. Version 2005. Partners in Flight Technical Series No. 3. Rocky Mountain Bird Observatory Web site: <http://www.rmbo.org/pubs/downloads/Handbook2005.pdf>.

and foraging areas and how to avoid such disturbance.

By adhering to the Guidelines, landowners and project proponents will be able to avoid bald eagle disturbance under the Eagle Act most of the time. We anticipate only rarely issuing permits for take associated with activities that adhere to the Guidelines because the great majority of such activities will not take bald eagles. If avoiding disturbance is not practicable, the project proponent may apply for a take permit. (A permit is not required to conduct any particular activity, but is necessary to avoid potential liability for take caused by the activity.)

Disturbance may also result from human activity that occurs after the initial activities (e.g., residential occupancy or the use of commercial buildings, roads, piers, and boat-launching ramps). In general, however, permits would not be issued for routine activities such as hiking, driving, normal residential activities, maintenance of existing facilities, where take could occur but is unlikely, and would be unreasonably difficult to predict and/or avoid. If unusual circumstances exist, however, where the risk of disturbance may be higher than normal, we will consider issuing a permit to authorize the potential impacts of such activities. New uses or uses of significantly greater scope or intensity may raise the likelihood that eagles will be disturbed, and as such could require authorization for take under these regulations. When evaluating the take that may result from an activity for which a permit is sought (e.g., residential development), we would consider the effects of the preliminary activity (construction) as well as the effects of the foreseeable ongoing future uses (e.g., activities associated with human habitation).

The impacts and threshold distances that we would consider will not be limited to the footprint of the initial activity if it is reasonably foreseeable that the activity will lead to adverse secondary prohibited impacts to eagles. For example, when evaluating the effects of expanding a campground, in addition to considering the distance of the expansion from important eagle-use areas, we would consider the effects of increased pedestrian and motor traffic to and from the expanded campground. In many cases, the potential for take could be greater as a result of the activities that follow the initial project. For example, the installation of a boat ramp 500 feet from an important eagle foraging area nest may not disturb eagles during the construction phase, but the ensuing high levels of boat traffic

through the area during peak feeding times is likely to cause disturbance.

Trail construction 400 feet from a nest is generally unlikely to take eagles, but if the trail will be open to off-road vehicle use during the nesting season, we would need to consider the impacts of the vehicular activity as part of the impacts of the trail construction.

As part of this rulemaking, the Service is also seeking public comment on differences between bald and golden eagle tolerance to human activity. Most of the scientific literature and anecdotal evidence pertaining to disturbance is in reference to bald rather than golden eagles; however various raptor biologists have suggested that golden eagles may be more sensitive to some types of human activity than bald eagles. The National Bald Eagle Management Guidelines were developed for bald eagles and some of the recommendations contained in that document may not be appropriate for avoiding golden eagle disturbance. We therefore strongly encourage the public to provide information and data on golden eagle disturbance, and scientifically-based recommendations for buffers sizes, timing restrictions, and other measures to avoid such disturbance. If warranted, we will develop separate criteria for evaluation of golden eagle take permits. In any event, all take permits for golden eagles still must be based on a determination that it is consistent with the preservation of the species.

We acknowledge there is considerable uncertainty with respect to how both species of eagles react to human activity. To decrease uncertainty and ensure that the disturbance component of the proposed eagle take permit regulation is neither unnecessarily burdensome to the public nor incompatible with the preservation of eagles, we would require permittees to provide basic post-activity monitoring by determining whether the nest site, communal roost, or important foraging area continues to be used by eagles for the 3 years following completion of the activity for which the permit was issued. Where an activity is covered by a management plan that establishes monitoring protocols (e.g., an airport Wildlife Habitat Management Plan), the permit may specify that monitoring shall be conducted according to the pre-existing management plan. Reporting data, including supplemental data collected by the Service from some permittees' project areas, would be employed in a formal adaptive resource-management context to assess whether or not the estimated probability of disturbance adequately describes the

relationship between the distance of the activity and the occurrence of disturbance for both species of eagle. If not, the relationship would be re-evaluated using data collected from permittees, as well as other sources, and this regulation and the associated National Management Guidelines will be revised appropriately.

Permit application process and evaluation criteria. Permits would be available to Federal, State, municipal, or Tribal government; corporations and businesses; associations; and private individuals. Except for persons who were previously authorized to incidentally take eagles under ESA's section 7 and 10 (where the eagle was the only covered listed species), we propose to use the following information to make permit determinations. The permit application would have to include a detailed description of the activity that will likely cause the disturbance or other take of eagles; maps and photographs (preferably digital) that depict the locations of the proposed activity and the eagle nests, foraging areas, and concentration sites where eagles are likely to be affected by the proposed activity (including the latitude and longitude of the activity area and important eagle-use area(s) and the distance(s) between those areas); the number of eagles that are likely to be taken and the likely form of that take (e.g., disturbance or other take); whether or not the important eagle-use area is visible from the activity area, or if screening vegetation or topography blocks the view; the nature, extent, duration, and distance from the eagle-use area of existing activities similar to that being proposed; the date the activity will start and is projected to end; an explanation of how issuance of the permit will protect other interests in a particular locality; an explanation of why avoiding the take is not practicable; a description of the measures proposed to minimize and mitigate any resulting impacts on eagles; a certification that the proposed activity is in compliance with applicable local, State, and Federal laws and regulations; and other information we may request specific to that particular proposal, consistent with the information collection requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The Service may provide technical assistance in development of permit applications. In many cases, the Service may be able to recommend measures to reduce the likelihood of take, obviating the need for a permit. The technical assistance we provide from the field will reduce the number of applications

to our permit offices for activities that (1) are unlikely to take eagles, or (2) can practicably be modified to avoid the take. The Service may elect to conduct an on-site assessment to determine whether the proposed activity is likely to take bald eagles and whether reasonable modifications to the project will alleviate the probability of take. In addition, State natural resources agencies may also be able to provide information pertaining to the number and location of eagle nests and other important eagle-use areas within the area potentially affected by the activity.

To determine whether to issue a permit, we would consider a number of factors including (1) whether practicable measures can be taken to reduce the probability of take, and (2) whether the resulting level of take is compatible with the preservation of bald or golden eagles. Factors we would consider include the magnitude of the impacts of the activity; individual eagles' known prior exposure to, and history with, the activity; whether alternative suitable eagle nesting, roosting, and/or feeding habitat is available to the eagles affected by the activity; visibility of the activity from the eagle's nest, roost, or foraging perches; and practices proposed by the applicant to reduce potential disturbance of the activity on eagles. In cases where our evaluation of these additional factors and the best scientific information available leads to the conclusion that disturbance will likely occur, we would assess whether that disturbance is likely to lead to the loss of one or more eagles or the permanent loss of a nesting territory, communal roost site, or important foraging area. We would also consider the potential cumulative effects of other similar authorizations.

For applications for activities that are likely to result in eagle mortalities, we would assess whether the take is unavoidable even where the project proponent is using best management practices (BMPs) to avoid the take. Permits would authorize anticipated lethal take only where BMPs are being fully implemented.

Although we cannot precisely predict the population impact of each take authorization when evaluating individual permit applications, we will periodically assess overall population trends along with annual report data from permittees and other information to assess how likely future activities are to result in loss of one or more eagles, a decrease in productivity of bald or golden eagles, and/or the permanent loss of a nest site, communal roost site, or important foraging area; and how such outcomes will likely affect

population trends, taking into consideration the cumulative effects of other activities that take eagles and eagle mortalities due to other factors. We do not expect population declines as the result of the authorizations granted through these proposed regulations. However, it is also possible external factors could arise that negatively affect eagle populations. Whatever the cause, if data suggest population declines are approaching a level where additional take would be incompatible with the preservation of the eagle (as interpreted above for purposes of this rulemaking), we would refrain from issuing permits until such time that the take would be compatible with the preservation of the bald or golden eagle. However, based on preliminary analysis, we believe the demand for permits under these regulations, and the effects of issuing those permits, including mitigation measures, would not be significant enough to cause a decline in eagle populations from current levels.

Certain general conditions would be included in eagle take permits. The permittee must comply with any avoidance, mitigation, and/or conservation measures required by the permit. If the permit expires or is suspended or revoked before the required measures are completed, the permittee remains obligated to carry out those measures necessary to mitigate for take that has occurred up to that point. Permittees must allow Service personnel access to the areas where take is anticipated, within reasonable hours and with reasonable notice from the Service, for purposes of monitoring eagles at the site(s). Although we do not anticipate the necessity for ongoing monitoring by the Service at the majority of the areas where take would be permitted, we would use the data collected from limited site visits to reevaluate, as appropriate, the recommendations we provide in the Guidelines as well as through case-by-case technical assistance to ensure that eagles are adequately protected without unnecessarily hindering human activity. If a permit is revoked or expires, the permittee must submit a report of activities conducted under the permit to the Director within 60 days of such revocation or expiration. The permit provides take authorization only for the activities set forth in the permit conditions. If the permittee subsequently contemplates different or additional activities, he or she should contact the Service to determine if a permit amendment is required to retain the level of take authority desired.

We intend to develop implementation guidance to address procedural details

of the permitting process, similar in role and format to the Service's Section 7 and HCP Handbooks. The guidance will cover time frames for permit issuance, identification of project impacts, appropriate mitigation measures, monitoring, and other specifics of the permit process, in order to ensure consistency in implementation throughout the Service. We encourage the public to provide input on these types of issues as part of this rulemaking. We will use this public input to craft draft implementation guidance, which will be subject to a public notice and comment process before being finalized.

Eagle Act Authorizations for Entities Operating Under ESA Authorizations and Exemptions

Take prohibited under the ESA is, in many instances, also prohibited under the Eagle Act. Both statutes prohibit killing, wounding, pursuing, shooting, capturing, and collecting the protected species. The ESA additionally prohibits anyone from harming or harassing listed species, while the Eagle Act makes it illegal to molest or disturb bald or golden eagles. The regulatory definitions of "harm," "harass," and "disturb," differ somewhat from each other; however they do overlap in several ways, with the result that a majority of actions considered likely to incidentally take (harm or harass) eagles under the ESA will also incidentally take (disturb) eagles under the Eagle Act.

Under the ESA, we authorized take of bald eagles using the permit provisions of section 10 for non-Federal entities or the consultation provisions of section 7 for Federal agencies. The regulations here proposed would extend Eagle Act authorizations to holders of existing ESA authorizations as seamlessly as possible under the laws. The mechanism through which these regulations will provide this authorization is two-fold. First, it provides for expedited processing of Eagle Act permits to entities previously authorized to take eagles under section 7 incidental take statements and section 10 incidental take permits where the bald eagle was the only listed species covered in the Habitat Conservation Plan. Second, we are proposing regulatory provisions to provide take authorization under the Eagle Act to ESA section 10 permittees where the bald eagle was one of several listed species, including future permittees (where the bald or golden eagle is included in the HCP as a covered nonlisted species) as long as the permittees remain in full compliance

with the terms and conditions of their ESA permits.

Section 10(a)(1)(B) of the ESA authorizes incidental take permits for activities included in a Habitat Conservation Plan (HCP). A handful of permits authorize incidental take of golden eagles for ESA purposes (should the golden eagle be listed in the future), where they are included in HCPs as covered non-listed species. All these permits were issued with a statement of enforcement discretion from the Service that provided assurances that the Service would not refer any take of bald or golden eagles for prosecution under the Eagle Act, as long as the take was in full compliance with the terms and conditions of the permit and HCP, including that the permittee carried out all conservation measures required by the permit. Thus, none of these incidental take permits or incidental take statements provided explicit authorization for take under the Eagle Act. While the bald eagle was protected under the ESA, these assurances also conveyed the Federal Government's commitment to make no additional conservation demands of permittees who were fully implementing the conservation measures within their HCPs.

If the bald eagle is delisted, all of these ESA permits would continue to provide viable authorizations under the ESA, except where the bald eagle was the only ESA-listed species covered by the permit (addressed below). For permits where the bald eagle was one of multiple ESA-listed species, the permit remains in effect and would continue to provide the same authorizations for bald eagles based on the original conditions; the only difference being that the bald eagle would be converted from a "covered listed species" to a "covered non-listed species" under the ESA permit after delisting.

The Eagle Act provides that bald eagles may not be taken unless a permit is first procured from the Secretary of the Interior. Because a permit from the Secretary of the Interior was already obtained under ESA section 10(a)(1)(B), the provisions we are proposing would ensure a second permit (under the Eagle Act) is not required. We propose to amend Eagle Act regulations at 50 CFR 22.11 to extend Eagle Act authorizations comparable to the authorizations granted under the ESA to entities who continue to operate in full compliance with the terms and conditions of permits issued under ESA section 10. Failure to abide by the section 10 permit requirements would, however, void this Eagle Act regulatory permit authorization.

The new provision would also apply to take associated with any future ESA section 10 Habitat Conservation Plans that specifically include eagles as covered, non-listed species. An applicant for an ESA section 10(a)(1)(B) permit for incidental take of ESA-listed species may obtain ESA "no surprises" assurances for take of bald or golden eagles by including them as a covered, non-listed species in the ESA section 10(a)(1)(B) permit. To include a species under the ESA permit, the issuance criteria for an ESA section 10(a)(1)(B) permit must be satisfied. The Service recognizes that the measures required to cover the bald or golden eagle under an ESA incidental take permit (which is crafted to safeguard federally listed species, including those that may be listed in the future) are sufficient to protect the species relative to the Eagle Act standard of preservation of the species if it is not listed under the ESA. Thus, take authorized under the ESA and its conservation standard is, we believe, inherently "compatible with the preservation of the bald and golden eagle" that is required by the Eagle Act. Therefore, the new provisions at § 22.11 would extend Eagle Act permit coverage for the take of eagles included as a non-listed species under future ESA 10(a)(1)(B) permits, as long as the permittee fully complies with the terms and conditions of the permit.

For existing ESA section 10(a)(1)(B) incidental take permits where the bald eagle was the only ESA-listed species, the ESA permit will be null and void if the bald eagle is delisted. However, the requirements, including mitigation or other conservation measures, of existing ESA section 10 authorizations would continue to be adequate to achieve the preservation of the species that is required by the Eagle Act. Therefore, as long as the recipients of such permits continue to fully comply with the terms of those permits, the Service would continue to honor its statement that we will not refer take authorized under the permit for prosecution under the MBTA or Eagle Act until regulations are in place to grant, and the permittee has had a reasonable opportunity to apply for, comparable take authorizations under the Eagle Act. Because the Eagle Act requires that an actual permit be procured before a bald eagle may be taken, the proposed new provisions at § 22.11 would not apply to ESA incidental take permits where the bald eagle was the only ESA-listed covered species, since the ESA permit will no longer be effective if the bald eagle is delisted. We intend to use an expedited process to issue Eagle Act permits under

proposed § 22.26 to entities that held ESA incidental take permits for bald eagles where the bald eagle was the only covered listed species, to cover take of eagles that has not yet occurred. The sole evaluation criterion we believe is necessary for these expedited permits would be whether the entity is in full compliance with the terms and conditions of a previously issued ESA section 7 incidental take statement or ESA section 10 incidental take permit with respect to the take of eagles.

Applications for these permits would be given priority in processing by the Service, and as long as the permittee is in full compliance with the terms and conditions of his ESA permit, the Service would expeditiously issue an Eagle Act permit with identical terms and conditions. We would continue to honor these ESA authorizations as effectively valid authorizations under the MBTA and Eagle Act during an interim period that will afford these existing permittees a reasonable opportunity to see and obtain an Eagle Act permit, as long as the permittee remains in full compliance with the terms and conditions of the prior ESA authorization.

We propose to use the same expedited permit issuance process to provide Eagle Act authorization for take that was previously covered under the ESA's section 7. Section 7 requires Federal agencies, in consultation with the Service, to ensure that the activities they carry out, fund, or authorize do not jeopardize the continued existence of listed species, or result in the destruction or adverse modification of critical habitat. When a Federal agency is not able to avoid adverse effects to listed species or critical habitat, the Service must issue a biological opinion as to whether the effects constitute jeopardy to the species or adverse modification of critical habitat. If the Service concludes that the agency action will not cause jeopardy or adverse modification, or the agency adopts reasonable and prudent alternatives to avoid jeopardy or adverse modification, then the Service provides an incidental take statement with the biological opinion. The incidental take statement specifies the anticipated level of take and exempts that take from the prohibitions of section 9 of the ESA. Section 7 incidental take statements that cover take of bald eagles, while the species remains listed under the ESA, include a statement of enforcement discretion similar to the language found in section 10 permits, stating that the Service would not refer for prosecution under the Eagle Act any take of bald eagles that resulted from activities

conducted in accordance with the terms and conditions of the incidental take statement. We propose to issue expedited take permits to grant formal Eagle Act authorization for take that has not yet occurred but was previously covered under ESA section 7 incidental take statements issued under the authority of section 7(b)(4) of the ESA, as long as the recipients of those authorizations continue to fully comply with the terms and conditions of the incidental take statement. We would continue to exercise enforcement discretion during the period before these regulations are finalized.

Some take of bald eagles has been authorized under the ESA's section 10(a)(1)(A) permits for Scientific Purposes and permits for Enhancement of Propagation or Survival (*i.e.*, Recovery permits). Permits for Scientific Purposes authorize take of listed species resulting from scientific research and monitoring activities. Permits for Enhancement of Propagation and Survival authorize take of listed species resulting from establishment and operation of captive or otherwise controlled propagation programs as well as activities included in a Safe Harbor Agreement. Most such section 10(a)(1)(A) permits also contained a specific reference that they were authorizing take under the Eagle Act. However, a few such permits referenced authority only under the ESA, and would no longer be in effect if the bald eagle is delisted. For those 10(a)(1)(A) permits that did not specifically reference authority to take under the Eagle Act, and where the take has not yet occurred, the permittee will need to obtain an Eagle Act authorization by applying for a permit under 50 CFR 22.21 (Eagle Act Scientific and Exhibition Permits). In the meantime, we intend to use enforcement discretion as long as the permittee continues to operate within the terms and conditions of the ESA permit.

Some activities determined to cause a take under the ESA may be determined not to cause a take under the Eagle Act. If an activity determined to cause take under the ESA is also determined to cause take under Eagle Act, some of the requirements for take authorization under the ESA may be found by the Service as not necessary for take authorization under the Eagle Act. Therefore, persons previously granted take authority under the ESA for the take of bald and golden eagles who could be granted comparable take authority under the Eagle Act through these proposed regulations may request a reevaluation from the Service to

determine whether they could benefit from reevaluation of permit conditions.

Eagle Nest Take Under Proposed 50 CFR 22.27

Some eagles nest on or near electrical transmission towers, communication towers, airport runways, or other locations where they create hazards to themselves or humans. Regulations under this section, § 22.27, would authorize removal and/or relocation of eagle nests in what we expect to be the rare cases where genuine safety concerns necessitate the take (*e.g.*, where a nest tree appears likely to topple onto a residence, at airports to avoid collisions between eagles and aircraft, or for a nest located on an electrical transmission tower that interferes with necessary maintenance of the utility and jeopardizes the eagles' safety). Where practicable, nests should be relocated to a suitable location within the same territory from which they were removed to provide a viable nesting site for breeding purposes of eagles within that territory unless such relocation would create a similar threat to safety. Permits may also be issued to remove nests when it is determined by the Service that the nests cannot be relocated.

These permits would be issued only in cases of a determination that the requested action is necessary to address actual safety concerns. Additionally, some § 22.26 permits that authorize disturbance could also result in the permanent loss of a nest site, even without actually "taking" the nest. Those take permits that are most likely to result in the permanent loss of a nest site would therefore also need to be considered when assessing the impact of permits to move or remove nests in order for the Service to determine that the permits issued remain consistent with the statutory requirement for preservation of the species. We would not issue take permits under § 22.26 and § 22.27 of this part if and when we were to determine that this statutory standard was not being met. As part of adaptive management, we will also take into account eagle occupation of new territories. If eagles continue to occupy new nest sites, the number of eagle nests that we could permit to be permanently lost may increase. We will use the best available scientific data regarding bald and golden eagle use of new nest sites, as well as abandoned and lost nest sites, to adjust the threshold accordingly.

New and Modified Definitions Under 50 CFR 22.3

We propose to amend the regulatory definition of "take," as applied to bald

eagle nests, to ensure consistency with the statutory prohibition of unpermitted eagle nest destruction. For this reason, we propose to add the term "destroy" to the regulatory definition of "take." We propose to define "eagle nest" as a "readily identifiable structure built, maintained, or used by bald or golden eagles for breeding purposes." This definition is based on, and would replace, the existing "golden eagle nest" definition, in order to apply with respect to both species. We therefore propose to remove the existing definition of "golden eagle nest" from the list of definitions. We also propose to introduce a new term in the permit regulations under 50 CFR 22.26: "important eagle-use area." This term refers to nests, biologically important foraging areas, and communal roosts, where eagles are potentially likely to be taken as the result of interference with breeding, feeding, or sheltering behaviors.

We propose the following definition for "important eagle-use area": "an eagle nest, foraging area, or communal roost site that eagles rely on for sheltering and feeding, and the landscape features surrounding such nest, foraging area, or roost site that are essential for the continued viability of the site for breeding, feeding, or sheltering eagles." This term refers to the particular areas, within a broader area where human activity occurs, where eagles are more likely to be taken (*i.e.*, disturbed) by the activity because of the higher probability of interference with breeding, feeding, or sheltering behaviors at those areas.

Revisions to General Permit Conditions at 50 CFR Part 13

As part of establishing the new permit authorizations under 50 CFR 22.26 and 22.27, we propose to amend 50 CFR 13.12 to add the proposed permit types to be issued under 50 CFR 22.26 and 22.27. We also propose to amend 50 CFR 13.11(d), the nonstandard fee schedule, to establish application processing fees (user fees) for the permits. The general statutory authority to charge fees for processing applications for permits and certificates is found in 31 U.S.C. 9701, which states that services provided by Federal agencies are to be "self-sustaining to the extent possible." Federal user fee policy, as stated in Office of Management and Budget (OMB) Circular No. A-25, requires Federal agencies to recoup the costs of "special services" that provide benefits to identifiable recipients. Permits are special services, authorizing identifiable recipients to engage in activities not

otherwise authorized for the general public.

For the § 22.26 take permit, we propose a \$500 permit application fee and a \$150 permit amendment fee except that no application fee would be charged persons who have previously received an ESA authorization for the same take. For the § 22.27 nest take permit, we propose a \$300 permit application fee and a \$150 permit amendment fee. While higher than many other Service permit application processing fees, these proposed fees are comparable to those assessed for other migratory bird permits and reflect the relative level of review necessary to process and evaluate an application for a permit to take eagles or to remove eagle nests under the authorities of the Eagle Act. The statutory authority to charge fees for permits and certificates is found in 31 U.S.C. 483(a), which provides that a Federal agency may charge fees for services including permits and certificates to make these services "self-sustaining to the extent possible."

However, the proposed permit application process would be significantly less burdensome for the applicant than the current permit process under the ESA, since an HCP is not required. Preparing an HCP can be time-consuming and is usually delegated to a professional consultant. Plans often cover large geographic areas—some larger than a million acres—and set forth terms and mitigation measures designed to protect species for up to 100 years. In contrast, the information required to apply for an Eagle Act permit does not require the habitat analysis and is less extensive and easier to compile (see (b)(1)(i) of the proposed rule).

We estimate it would cost the Service approximately \$2,400 to process most § 22.26 take applications, and \$1,200 to process § 22.27 permits for emergency nest take. Service biologists at GS-11 to 13 grade levels on the Office of Personnel Management General Pay Schedule, with support of GS-9 staff, would be responsible for pre-application technical assistance; reviewing and determining the adequacy of the information provided by an applicant; conducting any internal research necessary to verify information in the application or evaluate the biological impact of the proposed activity; assessing the biological impact of the proposed activity on the bald or golden eagle; evaluating whether the proposed activity meets the issuance criteria; preparing or reviewing NEPA documentation; and preparing either a permit or a denial letter for the

applicant. To evaluate the impact of the proposed activity, Service biologists may also need to visit the location to examine site-specific conditions.

Altogether, we estimate that it would take Service employees approximately 80 hours to process a § 22.26 permit application and approximately 40 hours to process a § 22.27 application for emergency take of an eagle nest. Therefore, an application fee of \$500 would offset only about 20% of the cost to the Government of responding to a request for a § 22.26 take permit. The \$300 application fee for the nest take permit would recoup about 25% of the cost of processing that permit application.

Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires all Federal agencies to "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat." This proposed rule is currently being reviewed pursuant to section 7 of the ESA. Section 7 consultation, if needed, will be concluded before this rule is finalized.

Required Determinations

Energy Supply, Distribution or Use (E.O. 13211). On May 18, 2001, the President issued Executive Order 13211 addressing regulations that affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Regulatory Planning and Review (E.O. 12866). In accordance with the criteria in Executive Order 12866, the Office of Management and Budget (OMB) has designated this rule as a significant regulatory action because it raises novel legal or policy issues.

a. This proposed rule would not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A brief assessment to clarify the costs and benefits associated with this proposed rule follows.

The Service is currently assembling data to estimate the number and impact of permits that would likely be issued under this proposed rule. We are requesting public comment on the

economic effects of the rule to help us with this analysis. Specifically, we are requesting information on the following:

(1) How much will it cost to assemble the necessary information to apply for a take permit?

(2) How much will it cost to comply with (including monitoring and reporting) a take permit?

(3) Will you be more likely to apply for an eagle take permit under the proposed regulations compared to under the ESA?

(4) If you plan to apply for a permit, what type of activities do you plan to conduct that might require an eagle take permit, and where would the take likely occur?

(5) If you have a previously issued ESA section 7 authorization or section 10 permit and plan to apply for an expedited permit, how much will it cost to assemble the necessary information to apply for the permit?

Proposed Change. This rule would provide for the authorization of activities with impacts to bald eagles and golden eagles under the Bald and Golden Eagle Protection Act (Eagle Act). As such, the public would have the opportunity to apply for permits to authorize the take of bald and golden eagles under the Eagle Act. Any authorizations for take in Alaska would be new. Most authorizations for take of golden eagle anywhere in the United States would be new.

Baseline. Establishing the status quo is complicated because more than one rule pertaining to bald eagles is being promulgated within the next year. Most notably, it is anticipated that bald eagles may be delisted before this permitting rule is finalized. If the bald eagle is removed from the List of Threatened and Endangered Wildlife under the Endangered Species Act (ESA), management of the bald eagle would fall primarily under the Eagle Act. Currently, unlike under the ESA, there are no regulations under the Eagle Act that authorize associated take of eagles. Thus, there would be an unknown length of time during which no new eagle take permits would be authorized between any eagle delisting under ESA, a decision on which must be made by June 28, 2007, as the result of litigation, and the finalization of this permitting rule under the Eagle Act. Furthermore, only a portion of existing bald eagle permits and consultations would continue to be valid after the delisting of the bald eagle. The costs and benefits would result from (1) the authorization of take of bald and golden eagles throughout the United States under proposed § 22.26, (2) the number of permits for emergency take of eagle

nests throughout the United States under proposed § 22.27, and (3) the reauthorization of activities for which take was previously allowed under the ESA but would not be valid after the delisting of the bald eagle. This analysis does not assess the impacts of delisting the bald eagle. Under the ESA, the final determination to delist the bald eagle will be based solely on the best available scientific and commercial data.

Costs Incurred. In general, the costs incurred due to the proposed rule would relate to the costs of assembling the necessary information for the permit application, permit fees, and the costs of monitoring and reporting requirements associated with the permit. As explained below, it is difficult to predict the number of applications the Service should anticipate under these proposed regulations. However, due to various factors (explained further below), we expect that demand for eagle take permits will increase, from about 54 authorizations per year under the ESA to approximately 300 permits per year under the Eagle Act. Therefore, if we use the current number of authorizations issued under the ESA as a baseline, approximately 246 permit applications would be new and some of these entities would bear the higher permit application fee costs under the Eagle Act as compared to the current fee for an ESA incidental take permit (to capture a more equitable share of the costs to the Service that would otherwise be borne by taxpayers), although many applicants will be State, local, tribal, or Federal agencies, which are exempt from application processing fees for Service permits. Costs for other aspects of the permit application process will generally be lower than costs associated with the ESA section 10 permit application process (e.g., less information needs to be compiled and provided to the Service as part of this proposed permit application versus the requirement to create a Habitat Conservation Plan (HCP) under the ESA).

Persons conducting activities under the terms and conditions of previously issued ESA section 7 and section 10 (where the bald eagle was the only listed species) authorizations would need new, expedited permits under the Eagle Act, but would not be charged a permit application fee, and so would incur minimal additional costs.

We are proposing a \$500 permit application processing fee for the § 22.26 take permit and a \$300 permit application processing fee for the emergency nest-take permit. Both permit types would require a \$150 fee

for permit amendments. We anticipate receiving about 300 § 22.26 take permit applications nationwide annually, and about 5 § 22.27 emergency nest take permits. (We anticipate that we will issue permits in nearly all these cases, because applicants will already have coordinated with the Service before applying for a permit, and many project proponents will have either adjusted their projects so as not to need a permit or concluded that a permit will not be issued for the take associated with the proposed project. The remaining potential applicants are those who are likely to need and qualify for a permit.) Approximately 10 permits may need amendment annually. We expect about two thirds of the applicants to be Federal, State, local, or tribal governments, none of which are required to pay a permit application or amendment fee. Therefore, we estimate that annual application fees and amendments would total approximately \$51,050 (100 permits × \$500 fee + 2 permits × \$300 fee + 3 amendments × \$150 fee). There would be no fee for processing annual reports. These permit fees would be new costs related to this proposed rule. There may be additional costs associated with the permit process, which may include mitigation costs, and if the applicant engages a consultant or attorney, consultant and legal fees. However, the permit application process would be significantly less burdensome than the current permit process under the ESA, since an HCP is not required. Preparing an HCP can be time consuming and is usually delegated to a professional consultant. Plans often cover large geographic areas—some larger than a million acres—and set forth terms and mitigation measures designed to protect species for up to 100 years. In contrast, the information required to apply for an Eagle Act permit does not require the habitat analysis and is less extensive and easier to compile (see (b)(1)(i) of the proposed rule). Information such as latitude and longitude are publicly available (e.g., Google Earth). The majority of people could submit this information to the Service without the need to hire a consultant, especially with the help of local and state government staff who are usually willing to provide assistance with location and distance information between project and eagle nest/use location. The Service will direct applicants to available, free or inexpensive tools and services for obtaining the necessary information. Larger project proponents may prefer to hire consultants. Consultant fees could

range from \$300 to many thousands of dollars, depending on the scale of the project, but presumably still would be cost-effective, as compared to avoiding the take, since the choice is the applicant's to make. In many cases, for larger projects, consultants would need to be engaged to address a multitude of other factors in addition to impacts to eagles, so additional costs related to Eagle Act authorizations would be minimal. We seek input from the public regarding anticipated costs, and will adjust this analysis based on that input.

We anticipate that there will be many instances where project proponents approach the Service, and based on preliminary coordination with us, adjust project plans to reduce the likelihood of take to the point where no permit is needed, and none is therefore issued. There will be some costs associated with this process. Although these costs are not the result of this permit regulation, but stem from the statutory prohibitions against taking eagles, we nevertheless, encourage the public to provide input to help us assess what these costs may be.

Costs would also be incurred by current projects that are in process and are delayed and future projects that are not initiated due to the lack of new eagle permits after delisting. These costs would be attributed to the determination to delist the bald eagle. Therefore, this analysis does not quantify these costs.

In addition to costs to the public, the Service would incur administrative costs due to this proposed rulemaking. We do not have a firm basis on which to confidently foretell how much demand there will be for permits under these proposed regulations. We cautiously estimate the number of eagle take permits would increase under the rule from an average of 54 authorizations currently issued under the ESA to 300 Eagle Act permits, annually. We expect an increase because: (1) Many smaller projects will no longer be able to get under the umbrella of a Federal project when seeking authorization to take bald eagles; (2) after delisting, it will be more acceptable and less burdensome to get a permit to take eagles; (3) eagle populations are increasing; and (4) permits will be available for golden eagle take. The cost of issuing permits will decrease, but many authorizations similar to those we previously granted under section 7 of the ESA (where the consultation covered numerous species in addition to bald eagles) would now require the issuance of a permit in addition to a biological opinion. On average, we estimate it will cost the

Service approximately \$2,400 to process the average permit application under § 22.26 and \$1,200 to process the average permit application under § 22.27. Assuming approximately 300 § 22.26 permit applications and 5 § 22.27 emergency nest take permits annually, the annual new costs associated with issuance of permits to the Service would total approximately \$721,000 (300 new § 22.26 permits × \$2,400) + (5 § 22.27 nest take permits × \$1,200).

The Service will also incur the cost of providing technical assistance, even where no permit is issued. The workload associated with each such consultation would be lower on average than for cases where a permit is required, but we believe it would not be insubstantial. We estimate the average technical consultation will require 20 hours of staff time, and we anticipate the number of such consultations (not resulting in permits) to be about 600 per year, resulting in \$360,000 in increased costs to the Service from technical consultations. In our preliminary analysis, we estimate that new administrative costs for the Service to implement this rule will be about \$1.1 million per year. (This estimate includes only the costs to regional and field offices for actual implementation of the permit program, and does not include costs associated with the development and maintenance of the program (e.g., rulemaking, responding to Freedom of Information Act requests, budget formulation, etc), which will be borne by the Service's Migratory Bird and Endangered Species program offices).

Benefits Accrued. Under the proposed rule, benefits to the public would accrue from issuance of permits to take bald and golden eagles throughout the United States. In general, benefits would include increased value in land that can now be developed or harvested for timber, as well as the elimination of the risk and future costs associated with the potential unpermitted take of eagles that could occur from the development activities. Benefits would depend on the level of potential future growth associated with the authorized permit activity.

Only minimal take of golden eagles (as covered non-listed species in HCPs) has been authorized under the ESA prior to proposing this rule. As a result, most take of golden eagles throughout the United States that would be authorized by the permits issued under these proposed regulations could result in new development and activities that could not have proceeded legally without this proposed rule. We expect economic benefits may accrue as a

result of the implementation of this rule for oil and gas development operations, farming and ranching operations, mining companies, utilities, the transportation sector, and private land owners.

Overall, if this proposal is adopted, we anticipate issuing approximately 300 take permits per year, about 246 more authorizations per year than we have issued while the bald eagle has been listed as a threatened species under the ESA; and approximately 5 emergency nest-take permits. We anticipate that the amount of take that will be requested and authorized under this permit regulation will not significantly affect bald or golden eagle populations. We are conducting an environmental assessment (EA) of the effects of this rulemaking and will make a draft of the EA available to the public for review and comment before this rulemaking is finalized.

b. This rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule deals solely with governance of bald and golden eagle take in the United States. No other Federal agency has any role in regulating bald and golden eagle take, although some other Federal agencies regulate activities impacting wildlife (including eagles) and these impacts may constitute take.

c. This rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No entitlements, grants, user fees, or loan programs are associated with the regulation of bald and golden eagle take.

d. OMB has determined that this rule may raise novel legal or policy issues; therefore this rule has been reviewed by OMB.

Regulatory Flexibility Act. Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of

small entities." See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The proposed rule may benefit a variety of small businesses including real estate developers and brokers (NAIC 531); construction companies (NAIC 23); forestry and logging (NAIC 113), farming (NAIC 111), and ranching operations (NAIC 112); tourism companies (NAIC 713); utility companies (NAIC 221); and others. Across the United States, there are 255,871 small real estate companies; 617,737 small construction companies; 9,596 small forestry and logging companies; 46,730 small tourism companies; and 10,173 small utility companies. We anticipate receiving about 300 § 22.26 take permit applications nationwide annually, and about 5 § 22.27 emergency nest take permits. As noted under the Regulatory Planning and Review section above, we anticipate issuing approximately 300 § 22.26 take authorizations per year are expected to be granted across the United States if this proposed rule is adopted, and approximately 5 emergency nest-take permits. Based on past permit authorizations under the ESA, we anticipate approximately one-third of new permit applicants would be small businesses. If 100 applicants are small businesses within 4–6 different industries across the United States, the demand would not represent a substantial number of small entities in individual industries. The economic impact to individual small businesses is dependent upon the type of activity in which each business engages. As noted in the E.O. 12866 section of the preamble, permit applicants will incur some costs assembling the necessary information for the permit application, permit fees, and the costs of monitoring and reporting associated with the permit. For example, an applicant will have to pay \$500 for a take permit, \$300 for an emergency permit, and \$150 for permit amendments. In addition, particularly for larger projects, there may be consultant and/or attorney's fees ranging from a few hundred to thousands of dollars. However, the permit application process would be significantly less burdensome than the current ESA. Moreover, if the permit applicant is successful, the economic benefits to the small entity should outweigh the economic costs of obtaining the permit. For some

individual businesses, the benefit may be significant.

The Department of the Interior certifies that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Service invites comment from members of the public who believe there would be a significant impact on small businesses.

Small Business Regulatory Enforcement Fairness Act (SBREFA). This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Would not have an annual effect on the economy of \$100 million or more. The principal economic effect of the rule would be to allow the general public to obtain take permits that allow activities on their property where avoiding impacts to eagles is not practicable. We are anticipating that, due to increasing bald eagle populations, there would be an increase in the number of applications for permits under this rule compared to the number of people who seek authorization under the ESA, even though not all activities that require ESA authorization would require Eagle Act authorization. All small entities that benefited from the issuance of permits under the ESA would continue to benefit from permits issued under this rule.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Eagle-take permits would not significantly affect costs or prices in any sector of the economy. This rule would provide a remedy that would allow various members of the general public to pursue otherwise lawful uses of their property where the activity will impact eagles. For example, a person wishing to build on their property in the vicinity of a bald eagle nest may apply under this proposed rule for a permit to disturb eagles, whereas the option would not be possible after delisting without the promulgation of these regulations.

c. Would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed regulation would establish a mechanism to permit effects from activities within the United States that would otherwise be prohibited by law. Therefore, the effect on competition between U.S. and foreign-based enterprises would benefit

U.S. enterprises. There is no anticipated negative economic effect to small businesses resulting from this proposed rule.

Unfunded Mandates Reform Act. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

a. This rule is not a significant regulatory action under the Unfunded Mandates Reform Act. A Small Government Agency Plan is not required. The proposed permit regulations that would be established through this rulemaking would not require actions on the part of small governments.

b. This rule is not a significant regulatory action under the Unfunded Mandates Reform Act. This rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. Revisions to State regulations would not be significant; all States in which the bald eagle occurs already have their own laws regarding bald eagles, including permitting mechanisms.

Takings (E.O. 12630). In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule could affect private property by providing owners the opportunity to apply for a permit to authorize take that would otherwise violate the Eagle Act. A takings implication assessment is not required.

Federalism (E.O. 13132). In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule would not interfere with the States' ability to manage themselves or their funds. Changes in the regulations governing the take of eagles should not result in significant economic impacts because this rule would allow for the continuation of a current activity (take of eagles) albeit under a different statute (shifting from the ESA to the Eagle Act). The proposed regulatory process provides States the opportunity to cooperate in management of bald eagle permits and eases the process for permit applications. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988). In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

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) and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects. This rule would not interfere with Tribes' ability to manage themselves or their funds. Although it would implement a new eagle-take-permit policy that would be available on tribal lands, the option to acquire the permit would be the same on all lands in the United States. This rule would not affect the operations of the eagle distribution system of the National Eagle Repository.

Paperwork Reduction Act. This proposed rule contains information collection requirements. We 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. In accordance with the requirements of the Paperwork Reduction Act (PRA), we are asking OMB to approve this proposed information collection. We will use the information that we collect on permit applications to determine the eligibility of applicants for permits requested in accordance with the Eagle Act. Eagle permit regulations (50 CFR part 22) and general permit regulations (50 CFR part 13) stipulate general and specific requirements that when met allow us to issue permits to authorize activities that are otherwise prohibited.

All Service permit applications are in the 3-200 series of forms, each tailored to a specific activity based on the information requirements for specific types of permits. The application forms for other permits authorized under the Eagle Act are covered by OMB Control Number 1018-0022. We collect standard information for all permits, such as the name of the applicant and the applicant's address, telephone and fax numbers, and e-mail address.

We are proposing two additional forms to be used as (1) the application for a § 22.26 take permit (FWS Form 3-200-71), and (2) the application for emergency take of eagle nests under § 22.27 (FWS Form 3-200-72). The additional information we would collect on FWS Form 3-200-71 is presented in § 22.26(b) of this proposed regulation, and the additional information we would collect on FWS Form 3-200-72 is presented in § 22.27(b). We are proposing to use a new form (FWS Form 3-202-15) as the annual report form for the § 22.26 eagle take permit (FWS Form 3-202-15). The additional information that would be collected on the report form is presented in § 22.26(e) of this

proposed regulation. The information collected for eagle permits is part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

We estimate approximately 200 non-Federal applicants will apply for eagle-take permits and 3 non-Federal applicants will submit applicants for

emergency nest take permits. We believe the annual burden hours for non-Federal entities will be 5,251 as indicated in the table below.

Activity/requirement	Annual no. of respondents (non-Federal)	Total annual responses	Completion time per response (hrs)	Total annual burden hrs	Total burden cost to public (\$30/hr)
FWS Form 3-200-71—permit application	200	200	10	2,000	\$60,000
FWS Form 3-202-15—annual report §22.26 & monitoring	300	300	10	3,000	90,000
FWS Form 3-200-72—permit application	3	3	6	18	540
Monitoring and reporting for § 22.27 permit	3	3	6	18	540
Amendments to permits	6	6	2	12	360
Recordkeeping—§ 22.26-27	*203	*203	1	203	6,090
Totals	512	512	5,251	\$157,530

*Not included in totals—respondents are the same as for permit applications.

We invite interested members of the public and affected agencies to comment on these proposed information collection and recordkeeping activities. Comments are invited on: (1) Whether or not the collection of information is necessary for the proper performance of the functions of the Service, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden for this collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on applicants.

Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-6566 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358-2269 (fax); or hope_grey@fws.gov (e-mail).

National Environmental Policy Act. We have considered this proposed action and determined that we will prepare an environmental assessment (EA) in compliance with the National Environmental Policy Act of 1969. The

public will be invited to participate in this process and will be provided an opportunity for review and comment on the draft EA, when completed.

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 questions such as 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 (but shorter) sections? (5) Does the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble help you to understand the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments about 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 comments on the clarity of this rule to: Exsec@ios.doi.gov.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 22

Birds, Exports, Imports, Migratory Birds, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons described in the preamble, we propose to amend Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 13—[AMENDED]

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j-1, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901-4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

2. Amend § 13.11(d)(4) by adding two entries under “Bald and Golden Eagle Protection Act” in the table, to read as follows:

§ 13.11 Application procedures.

- * * * * *
- (d) * * *
- (4) *User fees.* * * *

Type of permit	CFR citation	Fee	Amendment fee
* * * * *			
Bald and Golden Eagle Protection Act			
* * * * *			
Eagle Take	50 CFR 22	500	150
Eagle Nest Take—Safety Emergency	50 CFR 22	300	150

Type of permit	CFR citation	Fee	Amend-ment fee
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3. Amend § 13.12(b) by adding to the table the following entries in numerical order by section number under “Eagle permits” to read as follows:

§ 13.12 General information requirements on applications for permits.

Type of permit	Section
Eagle permits:	
Eagle Take	22.26
Eagle Nest Take—Safety Emergency	22.27

PART 22—[AMENDED]

4. The authority citation for part 22 is amended to read as follows:

Authority: 16 U.S.C. 668–668d; 16 U.S.C. 703–712; 16 U.S.C. 1531–1544.

5. Amend § 22.1 by revising the first sentence to read as follows:

§ 22.1 What is the purpose of this part?

This part controls the taking, possession, and transportation within the United States of bald and golden eagles and their parts, nests, and eggs for scientific, educational, depredation control purposes; for the religious purposes of American Indian tribes; and to protect other interests in a particular locality.

- 6. Amend § 22.3 as follows:
 - a. By removing the definition of “Golden eagle nest.”
 - b. By revising the definition of “Take” to read as set forth below; and
 - c. By adding new definitions for “Eagle nest” and “Important eagle-use area” to read as set forth below.

§ 22.3 What definitions do you need to know?

Eagle nest means a structure built, maintained, or used by bald or golden eagles for the purpose of reproduction.

Important eagle-use area means an eagle nest, foraging area, or communal roost site that eagles rely on for

sheltering and feeding, and the landscape features surrounding such nest, foraging area, or roost site that are essential for the continued viability of the site for breeding, feeding, or sheltering eagles.

Take means pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb.

7. Amend § 22.4(b) by revising the first sentence to read as follows:

§ 22.4 Information collection requirements.

(b) We estimate the public reporting burden for these reporting requirements to vary from 1 to 10 hours per response, with an average of 3 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms.

- 8. Amend § 22.11 as follows:
 - a. By revising the first sentence of the introductory text to read as set forth below;
 - b. By redesignating paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d); and
 - c. By adding a new paragraph (a) to read as set forth below.

§ 22.11 What is the relationship to other permit requirements?

You may not take, possess, or transport any bald eagle (*Haliaeetus leucocephalus*) or any golden eagle (*Aquila chrysaetos*), or the parts, nests, or eggs of such birds, except as allowed by a valid permit issued under this part, 50 CFR part 13, 50 CFR part 17, and/or 50 CFR part 21 as provided by § 21.2, or authorized under a depredation order issued under subpart D of this part.

(a) A valid permit that covers take of eagles under 50 CFR part 17 constitutes a valid permit issued under this part for any take authorized under the permit issued under part 17 as long as the permittee fully complies with the terms and conditions of the permit issued under part 17.

Subpart C—Eagle Permits

9. Amend part 22, subpart C, by adding new § 22.26 and § 22.27 to read as follows:

§ 22.26 Eagle take permits.

(a) *Purpose and scope.* This permit authorizes: (1) Take of bald and golden eagles for the protection of other interests in any particular locality, where such permits are consistent with the preservation of the bald and golden eagle, and the take is associated with, and not the purpose of, the activity, and cannot practicably be avoided; or

(2) Take of bald eagles that complies with the terms and conditions of a previously granted section 7 incidental take statement, or a section 10 incidental take permit where the bald eagle was the only listed covered species, under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

(b) *Applying for an eagle take permit.* (1)(i) For applications under paragraph (a)(1) of this section, you are advised to coordinate with the Service as early as possible for technical assistance in assembling your permit application package and for advice on whether a permit is needed. The Service will provide guidance on developing complete and adequate application materials and will determine when the application form and materials are ready for submission. Completed applications (Form 3–200–71) must contain the general information and certification required by § 13.12(a) of this subchapter, and the information listed below:

(A) A detailed description of the activity that the permittee believes will likely cause the disturbance or other take of eagles;

(B) The species and number of eagles that are likely to be taken and the likely form of that take;

(C) Maps and digital photographs that depict the locations of the proposed activity and the eagle nests, foraging areas, and concentration sites where eagles are likely to be affected by the proposed activity (including the GPS coordinates of the activity area and eagle-use area(s) and the distance(s) between those areas);

(D) For activities that are likely to disturb eagles, whether or not the important eagle-use area(s) is visible from the activity area, or if screening vegetation or topography blocks the view;

(E) The nature and extent of existing activities in the vicinity similar to that

being proposed, and the distance between those activities and the important eagle use area(s);

(F) The date the activity will start and is projected to end;

(G) An explanation of what interests(s) in a particular locality will be protected by the take (including any anticipated benefits to the applicant);

(H) An explanation of why avoiding the take is not practicable, or for lethal take, why it is unavoidable;

(I) A description of measures proposed to minimize and mitigate the impacts; and

(J) Other information the Service may request specific to that particular proposal and consistent with the information collection requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

(ii) You are responsible for conducting any field surveys that we need for your application to be complete, including compiling data on the location and status of eagle nests and important use areas within the affected area.

(iii) Send completed permit applications to the Regional Director of the Region in which the disturbance would occur—Attention: Migratory Bird Permit Office. You can find the current addresses for the Regional Directors in § 2.2 of subchapter A of this chapter.

(2) For applications under paragraph (a)(2) of this section, your application must consist of a copy of the applicable section 7 incidental take statement or section 10 incidental take permit issued pursuant to the Endangered Species Act (ESA), and a certification that you are fully complying with the terms and conditions of the ESA authorization.

(c) *Evaluation of applications.* (1) In our evaluation of permit applications under paragraph (a)(1) of this section, we will consider a number of factors, including whether practicable measures can be undertaken that would minimize the probability of take, and whether the take to be permitted is compatible with the preservation of bald or golden eagles. Factors to be considered may include the magnitude of the impacts of the activity; individual eagles' prior exposure to, and history with, the activity; visibility of the activity from the eagle's nest, roost, or foraging perches; whether alternative suitable eagle nesting, roosting, and/or feeding habitat is available to the eagles affected by the activity; and practices that will be employed by the applicant to reduce the potential take of eagles. In cases where our evaluation of these additional factors leads to the conclusion that disturbance or other take will likely occur, we will assess whether that take

is likely to lead to a decrease in eagle population size. If a population decrease is likely, we will assess whether or not that decrease is compatible with the long-term preservation of bald and golden eagles. For applications for activities that are likely to result in eagle mortalities, we will assess whether the activity is necessary for the public welfare and whether the project proponent is using Best Management Practices (BMPs) to prevent the take. Permits will authorize anticipated lethal take only where BMPs are fully implemented.

(2) For applications under paragraph (a)(2) of this section, we will evaluate whether you are in full compliance with the terms and conditions of the applicable Endangered Species Act authorization.

(d) *Required determinations.* (1) Before we issue a permit under (a)(1) of this section, we must find that:

(i) The taking is necessary to protect an interest in a particular locality, and for lethal take, the activity is also necessary for the public welfare;

(ii) The applicant has minimized impacts to bald eagles to the extent practicable, and for lethal take, the taking will occur despite application of BMPs;

(iii) The taking is compatible with the preservation of bald and golden eagles, including the cumulative effects of other similar existing and anticipated activities.

(2) For a permit under (a)(2) of this section, you are in full compliance with the terms and conditions of an ESA authorization for eagle.

(e) *Permit conditions.* (1) For permits issued under paragraph (a)(1) of this section, in addition to the conditions set forth in part 13 of this subchapter, which govern permit renewal, amendment, transfer, suspension, revocation, and other procedures and requirements for all permits issued by the Service, your authorization is subject to the following additional conditions:

(i) You must comply with any minimization, mitigation, or other conservation measures determined by the Director as reasonable to assure the preservation of eagles and practicable given the proposed activity, and which are included in the terms of your permit;

(ii) You must monitor eagle use of important eagle-use areas potentially affected by your activities for up to 3 years or as set forth in a separate management plan, as specified on your permit. You must submit an annual report to the Service every year that your permit is valid and for up to 3

years after completion of the activity or termination of the permit, as specified in your permit. If your permit expires or is suspended or revoked before the activity is completed, you must submit the report within 60 days of such date. Reporting requirements include:

(A) Information on eagle use of the important eagle-use areas potentially affected.

(B) Description of the human activities conducted at the site when eagles were observed.

(iii) While the permit is valid and for up to 3 years after it expires, you must allow Service personnel, or other qualified persons designated by the Service, access to the areas where eagles are likely to be affected, at any reasonable hour, and with reasonable notice from the Service, for purposes of monitoring eagles at the site(s).

(iv) The authorizations granted by permits issued under this section apply only to take that results from activities conducted in accordance with the description contained in the permit application and the terms of the permit. If the permitted activity changes after a permit is issued, you must immediately contact the Service to determine whether a permit amendment is required in order to continue to retain take authorization.

(v) Notwithstanding the provisions of § 13.26 of this subchapter, you remain responsible for any outstanding minimization, mitigation, or other conservation measures required under the terms of the permit for take that occurs prior to expiration, suspension, or revocation of the permit.

(2) For permits issued under paragraph (a)(2) of this section, you must comply with all terms and conditions of your authorization issued under section 7 or section 10 of the Endangered Species Act.

(f) *Permit duration.* (1) The duration of each permit issued under paragraph (a)(1) of this section will be designated on its face, and will be based on the duration of the proposed activities and mitigation measures.

(2) The duration of a permit issued under paragraph (a)(2) of this section is that designated on the face of the applicable Endangered Species Act incidental-take authorization.

22.27 Removal of eagle nests for safety emergencies.

(a) *Purpose and scope.* A permit may be issued under this section to facilitate removal or relocation of an eagle nest where its location poses a threat to public safety or to the eagles themselves. Where practicable, the nest should be relocated to a suitable site

within the same territory to provide a viable nesting option for eagles within that territory, unless such relocation would create a similar threat to safety. However, the Service retains the discretion in appropriate instances to issue permits to remove nests that we determine cannot be relocated. The permit may authorize take of eggs or nestlings if present. The permit may also authorize the take of eagles (i.e., disturbance) associated with and resulting from the removal of the nest.

(b) *Applying for a permit to take eagle nests for safety needs.* Before compiling and submitting your permit application, you should contact your local U.S. Fish and Wildlife Service Ecological Services Office. We may make an on-site assessment to verify that the location of the nest poses a threat to human or eagle safety. Send a completed application (Form 3-200-72) and permit application fee to the Regional Director of the Region in which the disturbance would occur—Attention: Migratory Bird Permit Office. You can find the current addresses for the Regional Directors in § 2.2 of subchapter A of this chapter. Your application must contain the general information and certification required by § 13.12(a) of this subchapter, and the information listed below:

(1) The number of nests proposed to be taken, whether the nest(s) is a bald

eagle or golden eagle nest, and whether the nest(s) is active or inactive;

(2) Why the removal of each nest is necessary to alleviate safety concerns;

(3) A description of the property, including maps and digital photographs that show the location of the nest in relation to buildings, infrastructure, and human activities;

(4) The location of the property, including latitude and longitude;

(5) The length of time for which the permit is requested, including beginning and ending dates;

(6) A statement indicating the intended disposition of the nest, and if active, the nestlings or eggs; and

(7) Other information the Service may request specific to that particular proposal and consistent with the information collection requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

(c) *Evaluation criteria.* In our evaluation of permit applications, we will consider whether the purpose for which the nest would be taken is a legitimate emergency safety concern, and whether the take of the nest is consistent with the preservation of bald and golden eagles.

(d) *Conditions.* (1) Any take of nestlings or eggs must be conducted by a qualified, permitted, designated agent, and all nestlings and eggs must be immediately transported to foster/recipient nests or a rehabilitation

facility permitted to care for eagles until such time as they can be placed in foster/recipient nests.

(2) Possession of the nest for any purposes other than removal or relocation is prohibited without a separate permit issued under this part authorizing such possession.

(3) You must submit a report of activities conducted under the permit to the Service within 30 days after the permitted take occurs.

(4) You may be required to monitor the site and report whether eagles attempt to build or nest in another nest in the vicinity for the duration specified in the permit.

(5) You may be required under the terms of the permit to harass eagles from the area following the nest removal when the Service determines it is necessary to prevent eagles from re-nesting in the vicinity and when it is practicable to do so.

(e) *Tenure of permits.* The tenure of any permit to take eagle nests under this section is 1 year from the date of issuance, unless a shorter period of time is prescribed on the face of the permit.

Dated: May 23, 2007.

Todd Willens,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07-2697 Filed 6-4-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

RIN 1018-AT94

Protection of Eagles; Definition of "Disturb"**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of availability: Final environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a Final Environmental Assessment (FEA) evaluating the possible effects of defining "disturb" under the Bald and Golden Eagle Protection Act (Eagle Act), and a Finding of No Significant Impact for the preferred alternative. We prepared the environmental assessment as part of the National Environmental Policy Act process. Based on public comments received on the draft environmental assessment (DEA) and proposed rule defining disturb, we modified the preferred alternative in the FEA, and have adopted the modified version of the preferred alternative as the final definition of "disturb" under the Eagle Act. The final rule codifying the definition of "disturb" is published elsewhere in today's **Federal Register**.

ADDRESSES: You may obtain a copy of this FEA by visiting our Web site at <http://www.fws.gov/migratorybirds/> or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

SUPPLEMENTARY INFORMATION:**Background**

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

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

On December 12, 2006, we announced the availability of a DEA of our proposed definition of "disturb" through a notice in the **Federal Register** (71 FR 74483). In the DEA, we considered a definition slightly modified from the definition proposed in February 2006 as our preferred alternative. The definition was reworded for purposes of clarity, and included a definition of "injury," a term used in the definition of "disturb." During this round of public comment, we received 1,977 comments, approximately 1,875 of which were very similar. We considered all comments, and the definition of "disturb" we are codifying in our rulemaking (the preferred alternative of the FEA) is a modification of the definition we identified as our preferred alternative in the DEA. The final rule codifying the definition of "disturb" is published elsewhere in today's **Federal Register**.

In the FEA, under Alternative 1, we would not define "disturb." Disturbance would remain a prohibited act under the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d), without further regulatory interpretation. Under Alternative 2, the definition of "disturb" would be based on immediate effects to individual birds. We would define "disturb" as having a direct effect, as evinced by immediate behavioral response on the part of a bald eagle or a golden eagle, without consideration for secondary, biologically significant events. Alternative 4 would define "disturb" such that the disturbing action must be intentionally directed at eagles and cause injury or death. The preferred alternative (Alternative 3) defines "disturb" to encompass effects to individual birds that are likely to result in an adverse biological impact:

"Disturb means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior."

Dated: May 16, 2007.

Todd Willens,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07-2696 Filed 6-4-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****National Bald Eagle Management Guidelines****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of availability.

SUMMARY: This notice advises the public that National Bald Eagle Management Guidelines are available to the public.

ADDRESSES: Copies of the National Bald Eagle Management Guidelines can be obtained by writing to: Eliza Savage, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop MBSP-4107, Arlington, VA 22203. The guidelines may also be obtained via the Internet at: <http://www.fws.gov/migratorybirds/baldeagle.html>.

FOR FURTHER INFORMATION CONTACT: Eliza Savage, Division of Migratory Bird Management, (see **ADDRESSES** section); or via e-mail at: Eliza_Savage@fws.gov; telephone: (703) 358-2329; or facsimile: (703) 358-2217.

SUPPLEMENTARY INFORMATION: In anticipation of the possible removal of the bald eagle from the list of threatened species under the Endangered Species Act (16 U.S.C. 1531 et seq.), the Service has developed National Bald Eagle Management Guidelines to provide guidance to land managers, landowners, and others as to how to avoid disturbing bald eagles. After delisting, the Bald and Golden Eagle Protection Act (Eagle Act) (16 U.S.C. 668-668d) becomes the primary law protecting bald eagles. The Eagle Act prohibits take of bald and golden eagles and provides a statutory definition of "take" that includes "disturb."

The Service developed National Bald Eagle Management Guidelines, a draft of which was made available for public comment February 16, 2006 (71 FR 8309). We received 86 comments on the guidelines, which we took into consideration in developing this final document. The guidelines provide the public information to help prevent disturbance of bald eagles and recommend additional non-binding practices that can benefit bald eagles.

In addition to this notice, the Service is publishing three related documents elsewhere in today's **Federal Register**: a final rule, codifying the Eagle Act definition of "disturb"; a notice of availability of the final environmental assessment for the definition of "disturb"; and a proposed rule to codify additional take authorizations under the Eagle Act.

Dated: May 16, 2007.

Todd Willens,

*Acting Assistant Secretary for Fish and
Wildlife and Parks.*

[FR Doc. 07-2695 Filed 6-4-07; 8:45 am]

BILLING CODE 4310-55-P



Federal Register

**Tuesday,
June 5, 2007**

Part III

Department of Labor

**Delegation of Authority and Assignment
of Responsibility to the Assistant
Secretary for Occupational Safety and
Health; Notice**

DEPARTMENT OF LABOR**Office of the Secretary**

[Secretary's Order 5-2007]

Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health

1. *Purpose.* To delegate authority and assign responsibility to the Assistant Secretary for Occupational Safety and Health.

2. *Authorities and Directives Affected.*

A. *Authorities.* This Order is issued pursuant to 29 U.S.C. 551 *et seq.*; 5 U.S.C. 301; 5 U.S.C. 5315; the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.*; the Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35, 37-41, 43-45; the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351-354, 356-357; the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 329, 333; the Maritime Safety Act of 1958, 33 U.S.C. 941; the National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 954(m)(2); 5 U.S.C. 7902 and any executive order thereunder, including Executive Order 12196 ("Occupational Safety and Health Programs for Federal Employees") (February 26, 1980); the Surface Transportation Assistance Act of 1982, 49 U.S.C. 31105; the Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. 2651; the International Safe Container Act, 46 U.S.C. 80507; the Safe Drinking Water Act, 42 U.S.C. 300j-9(i); the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610(a)-(d); the Federal Water Pollution Control Act, 33 U.S.C. 1367; the Toxic Substances Control Act, 15 U.S.C. 2622; the Solid Waste Disposal Act, 42 U.S.C. 6971; the Clean Air Act, 42 U.S.C. 7622; the Wendell H. Ford Aviation Investment and Reform Act For the 21st Century, 49 U.S.C. 42121; the Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A; the Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60129.

B. *Directives Affected.* Secretary's Order 5-2002 is replaced by this Order.

3. *Background.* This Order constitutes the basic Secretary's Order for the Occupational Safety and Health Administration (OSHA), superseding Order 5-2002. This Order delegates and assigns responsibility to OSHA for enforcement of Section 6 (protection of employees providing pipeline safety information) of the Pipeline Safety Improvement Act of 2002 (49 U.S.C.

60129), and makes other minor conforming modifications. All other authorities and responsibilities set forth in this Order were delegated or assigned previously to the Assistant Secretary for OSHA in Secretary's Order 5-2002, and this Order continues those delegations and assignments in full force and effect, except as expressly modified herein.

4. *Delegation of Authority and Assignment of Responsibility.*A. *The Assistant Secretary for Occupational Safety and Health*

(1) The Assistant Secretary for Occupational Safety and Health is delegated authority and assigned responsibility for administering the safety and health, and whistleblower programs and activities of the Department of Labor, except as provided in paragraph 4.a.(2) below, under the designated provisions of the following laws:

(a) Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.*

(b) Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35, 37-41, 43-45.

(c) McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351-354, 356-357.

(d) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 329, 333.

(e) Maritime Safety Act of 1958, 33 U.S.C. 941.

(f) National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 954(m)(2).

(g) 5 U.S.C. 7902 and any executive order thereunder, including Executive Order 12196 ("Occupational Safety and Health Programs for Federal Employees") (February 26, 1980).

(h) Surface Transportation Assistance Act of 1982, 49 U.S.C. 31105.

(i) Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. 2651.

(j) International Safe Container Act, 46 U.S.C. 80507.

(k) Safe Drinking Water Act, 42 U.S.C. 300j-9(i).

(l) Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851.

(m) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610(a)-(d).

(n) Federal Water Pollution Control Act, 33 U.S.C. 1367.

(o) Toxic Substances Control Act, 15 U.S.C. 2622.

(p) Solid Waste Disposal Act, 42 U.S.C. 6971.

(q) Clean Air Act, 42 U.S.C. 7622.

(r) Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121.

(s) Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A.

(t) Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60129.

(u) Responsibilities of the Secretary of Labor with respect to safety and health, or whistleblower provisions of any other Federal law except those responsibilities which are assigned to another DOL agency.

(2) The authority of the Assistant Secretary for Occupational Safety and Health under the Occupational Safety and Health Act of 1970 does not include authority to conduct inspections and investigations, issue citations, assess and collect penalties, or enforce any other remedies available under the statute, or to develop and issue compliance interpretations under the statute, with regard to the standards on:

(a) Field sanitation, 29 CFR 1928.110; and

(b) Temporary labor camps, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for Occupational Safety and Health retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

Nothing in this Order shall be construed as derogating from the right of States operating OSHA-approved State plans under 29 U.S.C. 667 to continue to enforce field sanitation and temporary labor camp standards if they so choose. The Assistant Secretary for OSHA retains the authority to monitor the activity of such States with respect to field sanitation and temporary labor camps. Moreover, the Assistant Secretary for OSHA retains all other agency authority and responsibility under the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps, such as rulemaking authority.

(3) The Assistant Secretary for Occupational Safety and Health is also delegated authority and assigned responsibility for:

(a) Serving as Chairperson of the Federal Advisory Council on Occupational Safety and Health, as provided for by Executive Order 12196.

(b) Coordinating Agency efforts with those of other officials or agencies

having responsibilities in the occupational safety and health area.

B. *The Assistant Secretary for Occupational Safety and Health and the Assistant Secretary for Employment Standards* are directed to confer regularly on enforcement of the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps (see paragraph 4.a.(2) of this Order), and to enter into any memoranda of understanding which may be appropriate to clarify questions of coverage which arise in the course of such enforcement.

C. *The Solicitor of Labor* is responsible for providing legal advice and assistance to all Department of Labor officials relating to implementation and administration of all aspects of this Order. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

D. *The Commissioner of Labor Statistics* is delegated authority and assigned responsibility for:

(1) Furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis, and publication of occupational safety and health statistics consistent with the provisions of Secretary's Orders 4-81 and 5-95.

(2) Making grants to states or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics under Sections 18, 23, and 24 of the Occupational Safety and Health Act.

(3) Coordinating the above functions with the Assistant Secretaries for Occupational Safety and Health and Employment Standards.

5. *Reservation of Authority and Responsibility.*

A. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed

in paragraph 4.a. above is reserved to the Secretary.

B. No delegation of authority or assignment of responsibility under this order will be deemed to affect the Secretary's authority to continue to exercise or further delegate such authority or responsibility.

C. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 1-2002 (September 24, 2002).

6. *Redelegation of Authority.* The Assistant Secretary for Occupational Safety and Health, the Solicitor of Labor, and the Commissioner of Labor Statistics may redelegate authority delegated in this Order.

7. *Effective Date.* This delegation of authority and assignment of responsibility is effective immediately.

Dated: May 30, 2007.

Elaine L. Chao,
Secretary of Labor.

[FR Doc. E7-10747 Filed 6-4-07; 8:45 am]

BILLING CODE 4510-23-P



Federal Register

**Tuesday,
June 5, 2007**

Part IV

The President

**Proclamation 8152—National Child’s Day,
2007**

**Proclamation 8153—Caribbean-American
Heritage Month, 2007**

**Proclamation 8154—National
Homeownership Month, 2007**

Presidential Documents

Title 3—**Proclamation 8152 of May 31, 2007****The President****National Child's Day, 2007****By the President of the United States of America****A Proclamation**

Today's children are tomorrow's leaders, and our Nation has a responsibility to ensure that they develop the character and skills needed to succeed. On National Child's Day, we underscore our commitment to our children and pledge to provide them with the care, protection, and education they deserve.

Children are great blessings in our lives. They rely on the love and guidance of parents, family members, mentors from faith-based and community organizations, and teachers to help them gain a sense of confidence and learn that their actions have consequences. All of us play an important role in teaching our children that the decisions they make today will affect them for the rest of their lives.

My Administration is committed to helping young Americans reach their full potential. One of my top priorities is to reauthorize the No Child Left Behind Act, a good law that has brought great progress. Students are scoring higher and beginning to close the achievement gap, proving that when we set expectations high, America's schools and students will rise to meet them. My Administration is also ensuring that our country is competitive by enhancing math and science education through the American Competitiveness Initiative. Additionally, the Department of Health and Human Services and its partners are working to prevent childhood obesity by encouraging America's youth to exercise and practice healthy eating habits. And the Helping America's Youth initiative, led by First Lady Laura Bush, raises awareness about the challenges that face our young people and motivates caring adults to connect with children in three key areas: family, school, and community. We will continue to work to provide a safe environment and a quality education for our Nation's boys and girls to ensure that they are prepared to lead lives of purpose and success.

On National Child's Day and throughout the year, we are grateful for young Americans and those who support them. Through a loving commitment to America's youth, we can create a more hopeful society, build a bright future for our country, and encourage our children to achieve their dreams.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 3, 2007 as National Child's Day. I call upon our citizens to celebrate National Child's Day with the appropriate ceremonies and activities. I also urge all Americans to dedicate time and energy to educating our youth and providing them with a safe and caring environment.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.



[FR Doc. 07-2825

Filed 6-4-07; 8:55 am]

Billing code 3195-01-P

Presidential Documents

Proclamation 8153 of June 1, 2007

Caribbean-American Heritage Month, 2007

By the President of the United States of America

A Proclamation

During June, we recognize Caribbean Americans and celebrate the many ways they contribute to our Nation.

Generations of Caribbean Americans have helped shape the spirit and character of our country. These individuals are justly proud of their Caribbean roots, and they enrich the American experience by sharing their traditions, history, and values. Caribbean Americans of all walks of life have added to the vitality, success, and prosperity of our country. Their hard work and determination inspire all who dream of a better life for themselves and their families.

Our Nation is deeply grateful to the Caribbean Americans who defend our liberty as members of our Armed Forces. The service and sacrifice of these courageous men and women are helping lay the foundation of peace for generations to come.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 2007 as Caribbean-American Heritage Month. I encourage all Americans to learn more about the history and culture of Caribbean Americans and their contributions to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of June, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.



[FR Doc. 07-2826

Filed 6-4-07; 8:55 am]

Billing code 3195-01-P

Presidential Documents

Proclamation 8154 of June 1, 2007

National Homeownership Month, 2007

By the President of the United States of America

A Proclamation

Owning a home is part of the American dream, and National Homeownership Month is an opportunity to encourage our citizens to explore the benefits of owning a home.

Owning a home provides a source of security and stability for many of our citizens. My Administration is committed to fostering an ownership society and helping more Americans realize the great promise of our country. Today, nearly 70 percent of Americans own their homes, and the rate of minority homeownership has climbed to above 50 percent since I took office in 2001. The Department of Housing and Urban Development is continuing to enforce the Fair Housing Act to confront housing discrimination and advance equal housing opportunities for everyone. We are also working with the Congress to modernize the Federal Housing Administration in order to better provide safe, fair, and affordable mortgages to first-time homeowners, minorities, and individuals with less than perfect credit. In addition, the American Dream Downpayment Act of 2003 is helping thousands of low to moderate income and minority families with the downpayment and closing costs on their homes. My Administration also continues to support more funding for the Self-Help Homeownership Opportunity Program and the HOME Investment Partnership Program, which provide low-income citizens and minorities with more homeownership opportunities.

During National Homeownership Month and throughout the year, I urge citizens to consider homeownership opportunities in their communities, and I applaud American homeowners for helping fuel the economy.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 2007 as National Homeownership Month. I call upon the people of the United States to join me in recognizing the importance of homeownership and building a more prosperous future.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of June, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.



[FR Doc. 07-2827

Filed 6-4-07; 8:55 am]

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